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**ADMINISTRATOR JACKSON**

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JULY 23, 2010

**Senate Halts Effort to Cap CO2 Emissions (*Wall Street Journal*)**

Democrats Forgo Centerpiece of President Obama's Energy Plan, as Cap-and-Trade Fails to Lure Broad Support in Congress
By STEPHEN POWER
Senate Democratic leaders Thursday shelved their effort to cap greenhouse-gas emissions as part of a broad energy bill, putting aside indefinitely a centerpiece of President Barack Obama's ambitious effort to transform the way Americans produce and consume energy.

The proposal would have allowed utilities to trade permits to pollute as they worked to shift away from coal—a concept commonly called "cap and trade."

Senate Majority Leader Harry Reid said Thursday that neither he nor the White House had managed to line up 60 senators to support even a limited proposal seeking to cap carbon-dioxide emissions from electric power companies.

Mr. Reid refused to declare the idea dead. But Thursday's decision called into question when or whether any legislated cap on greenhouse-gas emissions would reach Mr. Obama's desk.

Now, businesses, such as wind-turbine makers, that had bet on a greenhouse-gas provision to make alternatives to coal and oil more cost-competitive must recalculate how long it might take for that to happen.

But industries that opposed congressional action to limit greenhouse-gas emissions still have to reckon with uncertainty over how far the administration may push an effort to do the same thing via the Clean Air Act and the Environmental Protection Agency.

Advocates of the cap-and-trade approach say that making it more expensive to burn coal or oil would encourage investments in new technology that reduces greenhouse-gas emissions and energy consumption, resulting in lower energy costs overall and avoiding the potential long-term toll of climate disruptions on the economy. Some also argue putting a price on carbon can ahelp reduce reliance on foreign oil. Opponents of such legislation dispute this.

Opponents say compelling utilities to pay for emitting carbon dioxide would force them to pass along those costs to consumers in the form of higher prices. Republicans branded a House bill that proposed an economy-wide system for capping carbon dioxide emissions a "job-killing energy tax."

Senate Republicans closed ranks in opposition to even limited use of such mechanisms as the clock ticks down to the November elections.

But a limited cap-and-trade proposal backed by Mr. Reid and the White House also failed to win over a cadre of conservative Democrats from industrial and coal states, who opposed the idea of imposing caps and higher costs on the use of coal and other fossil fuels.

Some also worried that the measure would put U.S. manufacturers at a disadvantage to rivals in China, now the No. 1 consumer of energy according to the International Energy Agency.

China's role in the U.S. debate over climate change cuts both ways. Opponents of capping emissions say enacting such policies would put the U.S. at a competitive disadvantage to China, which has refused to cap its emissions. Advocates of capping emissions say that unless the U.S. puts a price on carbon, it will lose out to China in the race to develop the energy technologies —and jobs—of the 21st century.

Mr. Reid said Democrats will push for more limited energy legislation, aimed at holding BP PLC accountable for the oil spill, providing incentives to the production and purchase of natural-gas vehicles and funding land and water conservation.

The Senate's inaction leaves Mr. Obama's Environmental Protection Agency administrator, Lisa Jackson, in charge of setting federal limits on greenhouse gases. Ms. Jackson has already adopted rules limiting emissions from cars and requiring state regulators to account for such emissions when they issue air-quality permits to large refineries and manufacturing facilities.

The agency's authority to do so is under assault. Business groups have sued, challenging the legality of EPA proposals to regulate greenhouse-gas emissions. And a group of Democrats is pushing legislation to bar the agency for two years from regulating emissions from stationary sources.

Utilities now will be forced to make long-term decisions without knowing how carbon dioxide will be treated, said Mike Morris, chief executive of American Electric Power, Columbus, Ohio.

He said that for the next few years, utilities likely would build gas-fired power plants, which have about half the carbon emissions of plants burning coal. But the cost of nuclear energy will be relatively more costly without a penalty imposed on fossil-fuel use.

Uncertainty over the future price of carbon and what sorts of technology the EPA will require already is having a "chilling effect" on investment in the steel industry, said Thomas Gibson, a former EPA official who now heads the American Iron and Steel Institute.

But other business could be chilled if Washington abandons entirely the idea of raising the price of consuming fossil fuels. Companies trying to develop and sell solar and wind energy technology, energy-conservation systems or electric vehicles have hoped that caps on greenhouse gas emissions would jump-start demand.

These companies will now focus on certain states that have their own clean-energy mandates, such as California, Colorado and New Jersey, said Angiolo Laviziano, chief executive officer of REC Solar Inc., a provider of solar systems in San Luis Obispo, Calif.

Still, the solar industry is growing at the rate of about 40% a year in terms of electrical power installed and is likely to continue to grow, said Ron Kenedi, vice president of Sharp Corp.'s Sharp Solar Energy Solutions Group in Huntington Beach, Calif.

Mr. Reid's decision to pull cap-and-trade from the energy bill could reverberate on Wall Street, where banks and brokerage firms had been anticipating climate legislation that would lead to widespread trading of carbon "credits."

There is already a global carbon-trading market, with the majority of the trading taking place in the regulated European markets. It amounted to $127 billion last year.

It isn't clear how many of the provisions Mr. Reid is promising to include in the narrower energy bill will survive a Senate floor debate. Republicans have objected to Democrats' proposals to eliminate the cap on oil companies' liability for damages related to spills, currently $75 million, saying the proposals, as written, would make offshore drilling unaffordable for all but the largest oil companies and foreign-owned nationalized oil giants. Some business groups are also rallying to defeat the provisions related to natural gas.

**BP Oil Spill Update July 22: Storm Brews, Crew Evacuates (*Long Island Press*)**

By Jaclyn Gallucci on Jul 22nd, 2010
A tropical storm is responsible for a giant pause on Thursday in BP’s efforts to plug it’s ruptured well. Crew members on ships in the Gulf of Mexico were forced to evacuate due to incoming rough weather expected to hit the Gulf within the next few days. Evacuation was started early in anticipation of the storm since it would take several days to get the 65 ships helping with cleanup out of the area.

Retired Coast Guard Adm. Thad Allen said extreme weather could mean reopening the newly placed cap and allowing oil to gush into the Gulf again for days until the storm passes over the weekend.

Crews had planned to spend Wednesday and Thursday reinforcing the end of the relief tunnel with cement, before pumping in mud that is expected to seal the leak permanently. But those plans came to a halt due to the expected bad weather and the job was put on hold.

“What we didn’t want to do is be in the middle of an operation and potentially put the relief well at some risk,” BP vice president Kent Wells said.

If all crews are evacuated it could be two weeks before they can resume their efforts to seal off the well permanently.

**Mine industry sues over Appalachian permits (*Associated Press*)**

Friday, July 23, 2010 | 12:04 a.m.
The coal industry filed a lawsuit Tuesday challenging the Obama administration's efforts to limit surface coal mining in Appalachia.

The National Mining Association's lawsuit accuses the Environmental Protection Agency and the Army Corps of Engineers of illegally preventing mines from obtaining water quality permits in the region. If successful, the NMA says the lawsuit would free a logjam of 235 pending permit applications that have been held up for additional scrutiny by the EPA since 2009.

"Members' efforts to navigate this unlawful process and obtain reasonable and predictable permit terms have been unsuccessful, leaving us no choice but to challenge the EPA and Corps policy in court," NMA President Hal Quinn said in a statement. "The agencies' continued abuse of the law to impose arbitrary standards on mining operations, state agencies and other federal regulatory bodies threatens the entire region with further economic misery and stagnant employment."

The EPA had no immediate comment. The corps referred questions to the U.S. Department of Justice, which also had no immediate comment.

The lawsuit is the latest skirmish in a series of court fights over mountaintop removal coal mining in West Virginia, Kentucky and other Appalachian states. Mine operators say the practice is highly efficient, supports tens of thousands of jobs and provides coal for electric power plants across much of the South and East. But opponents argue that surface mining is too damaging to the environment because it disposes of excess material such as rock by burying streams.

In this series of court battles, lawsuits by coal companies or industry groups have been rare. The companies typically find themselves fighting lawsuits by environmental groups that seek to stop individual permits.

The core of Tuesday's lawsuit is an attack on the new surface mining policy announced by the EPA on April 1. The policy tightened water quality standards solely for valley fills at surface coal mines in West Virginia, Kentucky, Pennsylvania, Ohio, Virginia and Tennessee. EPA Administrator Lisa Jackson said at the time the goal was a standard so strict that few, if any, permits would be issued for valley fills.

The lawsuit seeks to have that policy overturned as well as to eliminate the EPA's practice of offering to approve one valley fill permit at a time, which the NMA says oversteps the agency's authority.

Those decisions should be left to the federal Office of Surface Mining Reclamation and Enforcement, the lawsuit contends.

"EPA and the Corps have launched a moving target in coal mining permitting that is substantially and irreparably harming NMA's coal mining members," the lawsuit says.

**Charlotte selected as coal ash hearing site (*Carolina Weekly*)**

July 23, 2010 Andrew Batten

Officials with the U.S. Environmental Protection Agency have chosen Charlotte as one of the five cities for public hearings on proposed coal ash disposal rules.

The agency's hearing will take place Sept. 14 at the Holiday Inn Charlotte (Airport), 2707 Little Rock Road. Officials have scheduled morning, afternoon and evening sessions, starting at 10 a.m. and continuing as late as 9 p.m., depending on the number of speakers.

Speakers will have three minutes to present their views, and officials will also accept written statements. Anyone interested in speaking, should visit www.epa.gov/epawaste/nonhaz/industrial/special/fossil/ccr-rule/ccr-form.htm by Sept. 9.

Coal ash, a byproduct of burning coal to generate electricity, is added to water and pumped into two holding ponds at Duke Energy's Riverbend Steam Station where gravity pulls heavy particles out of the lava-like substance before the remaining water is discharged into Mountain Island Lake.

The residuals contain contaminants like mercury, cadmium and arsenic, which are associated with cancer and can, "pose serious threats to our health and our environment if it is improperly managed," the agency's Administrator Lisa Jackson has said.

The agency would regulate coal ash under the nation's primary law for regulating solid waste, the Resource Recovery and Conservation Act.

Under the agency's first proposed rule, which would fall under Subtitle C of that law, Riverbend's coal ash ponds would be closed and Duke would have to transport coal ash to a landfill. Federal regulators would enforce those rules.

A second alternative regulation would fall under the section of the Resource Recovery and Conservation Act that governs landfills. That proposal would require Duke to add protective liners to the coal ash ponds, which Jackson believes, "would lead many utilities to seek safer alternatives and transition to landfills." But the government does not have any mechanism to enforce that law and would rely, instead, on citizen lawsuits to ensure Duke follows the law.

Both rules would give Duke five years to comply.

**Along Gulf Coast, Effects of Chemicals in Oil Dispersant Questioned (*PBS News Hour*)**

JIM LEHRER: On the spill, there are also questions about some of the substances that are being used to break up the oil in the Gulf.
NewsHour correspondent Spencer Michels reports from near Buras, Louisiana.
SPENCER MICHELS: Churning his 21-foot boat through the waters near the Gulf of Mexico, 60 miles south of New Orleans, Captain Ryan Lambert is angry. His fishing guide service is essentially dead in the water because of the oil spill. And he's even more worried that chemicals sprayed into the Gulf waters to disperse the oil, nearly two million gallons, will haunt this amazingly beautiful and bountiful bayou country for years.
RYAN LAMBERT, Cajun Fishing Adventures: Well, it's doing exactly what they want it to do. It's sinking the oil out of sight, out of mind. You know, that's -- dispersant is to disperse it and to sink it down. But when it goes under, how long are we going to have to clean it up? How many years will it come in because it will be coming from the depths?
SPENCER MICHELS: But not everyone shares Lambert's fears. At the farmers market in New Orleans, you can still find shrimp fresh caught and for sale. The shrimp seller here, whose husband catches the fish she markets, was thankful for anything that helped get rid of the oil that was ruining their business.
WOMAN: I like to see the oil gone, whichever way they want to do it, but I really don't have the information as far as the dispersant on good or bad. As long as it doesn't hurt anything, it's fine with me.
SPENCER MICHELS: But some shoppers say it will hurt marine life.
SARAH RATH, Louisiana: I think it's horrible. I think they should stop it. And I don't see how -- how the president doesn't have the -- the authority to stop BP from using this stuff.
SPENCER MICHELS: Why?

SARAH RATH: It's toxic.
SPENCER MICHELS: But how toxic is unclear. Spraying chemical dispersants has slowed considerably since the well was capped, but the longer-term effects are not known.
A product with the catchy name of Corexit is what's being used, made by a company, some of whose executives have ties to BP. On their Web site, the Illinois firm, Nalco, posted this video to show how Corexit works by breaking down the oil.
NARRATOR: Our advanced technologies efficiently and safely disperse oil in the open sea and in freshwater applications, where it can be consumed by microorganisms.
SPENCER MICHELS: The value and the potential danger of dispersants are widely debated. At a Senate hearing last week, Environmental Protection Agency Chief Lisa Jackson explained the dilemma she faced in deciding to allow their use.
LISA JACKSON, Environmental Protection Agency Administrator: Because there are scientific unknowns, we had to make decisions that are a series of trade-offs. And, basically, in common language, it was either nothing or in moderation. And my best judgment was that it should be in moderation.
SPENCER MICHELS: LuAnn White is a toxicologist at Tulane University in New Orleans, and she's convinced that Corexit, used on the surface, is better than leaving the oil to foul beaches. She says that headlines about its toxicity are overblown.
LUANN WHITE, toxicologist, Tulane University & Louisiana Department of Health: There's a lot of misconceptions about the dispersants, because there's been a lot on television, on radio, in the newspapers calling them being highly toxic.
While I wish we were in a situation where we didn't have to use dispersants, they are not the most toxic compound. They're metabolized. They're broken down very well by various organisms. And what that means is that our bodies can handle them.
DAVID VALENTINE, geochemist, University of California, Santa Barbara: You can see that, when I shake that, it's dispersed, that is, the oil is broken down by the Corexit into small little particles.
SPENCER MICHELS: Some scientists like David Valentine at the University of California at Santa Barbara, agree that the dispersant is doing more good than harm, at least on the water's surface.
DAVID VALENTINE: Petroleum is far more toxic than the Corexit. And it's -- it's far more likely to accumulate in seafood and pose a problem. In my opinion, the -- the decision to use Corexit was probably the correct decision. Ultimately, it's keeping oil from getting on the beaches, and it's -- it's minimizing the impact on the shore environment and the economic impact.
SPENCER MICHELS: But he is not totally endorsing the use of dispersants, since never before has Corexit been applied in such volume and at such depth.
The oil and the dispersants don't make it to shore, but they remain in the deep ocean. And he's uneasy about that. He has spent several weeks aboard a research vessel in the Gulf, right near the site of the spill, gathering data about the chemical's effects in the deep sea.
DAVID VALENTINE: It seems that there's been far too much added, at over 750,000 gallons in the subsurface alone, over a million gallons at the sea surface, that those quantities were never envisioned for this -- for this kind of compound. And so, there, I

think we have a far different -- different issue and potential problems that may arise, from the sheer quantity applied.
SPENCER MICHELS: What is not known for sure, and yet what scientists disagree about, is the effect of dispersants way under the surface of the water. The temperature there is lower, the pressure is higher. And no one knows exactly what the effect on marine life could be.
That's what marine biologist and environmentalist David Guggenheim wants to know. As he collected samples of water and oil and animal life in and near the Gulf, a flock of spectacular pink birds passed overhead.
DAVID GUGGENHEIM, 1planet1ocean: Those birds, the roseate spoonbills, are a perfect example of what we're worried about with -- because even -- even if we assume that dispersants are not toxic, all of that oil being dispersed throughout the ecosystem is entering the food chain at many different levels.
And those animals eat small mollusks and crustaceans that are in the mud. It's getting into their system. And it accumulates in the tissue over time and can kill em. And the other part of the ecosystem, the real invisible part of the ecosystem, is the deep ocean and the -- the water column, where all of this oil is being dispersed at depth, a mile deep, and can affect a huge geographic area.
SPENCER MICHELS: Filmmaker and oceanographer Jean-Michel Cousteau is convinced the dispersants pose a real danger. He says his own teams have observed how tiny droplets of oil and dispersants linger underwater. They can be ingested by marine life.
We talked with him near his headquarters in California after he returned from the Gulf.
JEAN-MICHEL COUSTEAU, chairman, Ocean Futures Society: Our team took the risk of getting in the water. And it was burning their skin. And they had headache. And they came out.
But we saw that it was everywhere, which means what? It means that, when you have wind, storms, waves, you can put all the booms you want. It goes underneath, and it reaches the critical environmentally sensitive reproduction grounds, which are the marshlands.
For geochemist David Valentine, there is plenty of work ahead, including studying the impact on the oil-eating bacteria that usually help clean up oil spills.
DAVID VALENTINE: We're trying to pull out what the impact of the Corexit might be on the bacteria and their capacity to degrade the oil.
SPENCER MICHELS: And, he says, there more questions than answers.
DAVID VALENTINE: We went into this knowing far less than we should have. Nobody had their eye on the ball. The oil companies didn't. The federal government didn't. Nobody had prepared in any way for this sort of event to occur. Coming out of this, we're going to be slightly more prepared.
SPENCER MICHELS: It could take months or years before scientists know the effect of dispersants. Even BP executives have acknowledged much is still unknown. And fishermen like Ryan Lambert are convinced they will have to cope for years with the aftermath of what's already been sprayed.

**EDITORIAL / OP-ED / COMMENTARY / LETTERS**
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**Backtracking on a climate bill (*Washington Post*)**

July 23, 2010 Friday
Regional Edition
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Maryland
POST PARTISAN;
Excerpts from The Post's opinion blog, updated daily at
washingtonpost.com/postpartisan
Stephen Stromberg
Backtracking on a climate bill
It looks more and more as if President Obama won't be able to make the oceans stop rising this year. He and Senate Democrats have kicked climate legislation down the road since early last year. And on Thursday, Senate Majority Leader Harry Reid, Sen. John Kerry (D-Mass.) and White House energy chief Carol Browner announced that they won't bring a climate bill to the floor next week as planned. Instead, Reid will introduce legislation with provisions relating to the oil spill and a few noncontroversial energy proposals. The plan is to pass that before August and then, perhaps, take up a more ambitious bill in the fall -- just before midterm elections, when little is likely to pass.

Reid, Kerry and Browner insisted that they weren't giving up on a comprehensive climate bill. Quite the opposite, they said. But through all the protesting-too-much, it sure sounded like they were surrendering, at least for now. They just don't have the votes, they said. They didn't give much hope that anyone could be swayed. Tellingly, Reid somberly thanked everyone for their effort.

Many senators say that there isn't enough time left in the legislative calendar to pass a big energy bill, particularly one with a meaningful climate section. There's some truth to that. But the problem that has dogged this debate over the past year and a half is that some key senators on both sides of the aisle are scared to vote for the most efficient policy available -- placing a price on carbon -- even if the policy were designed so that most Americans and, for that matter, the Treasury, wouldn't lose a dime in the process. Republicans who should know better have found it politically useful to -- hypocritically -- attack this market-based solution, a scheme their party embraced in the early 1990s. Democrats haven't stood up well to the attacks, especially after they watered down the policy with giveaways to favored constituencies. Given the low priority they attached to climate legislation, the president and Democratic congressional leaders encouraged others to treat it as expendable this year.

If the Senate continues to do nothing, as seems ever more likely, lawmakers won't like the result. Without a climate bill, the Environmental Protection Agency will begin in

January to regulate carbon emissions using its authorities under the Clean Air Act. Some environmentalists are fine with that -- the government will begin to battle greenhouse emissions seriously. But with the regulatory uncertainty, the bureaucratic hassle and the legal wrangling it will encourage, the EPA approach will almost certainly hurt a lot more.

**With a Whimper (*New York Times*)**

July 23, 2010 Friday
Late Edition - Final
Section A; Column 0; Editorial Desk; EDITORIAL; Pg. 22
On Thursday, the Senate majority leader, Harry Reid, abandoned the fight for meaningful energy and climate legislation. The Republicans -- surprise -- had been fiercely obstructionist. But the Democratic leaders let them get away with it, as did the White House. It has been weeks since President Obama spoke out about the need for a serious climate bill to address the very real danger of global warming and to lessen this country's dependence on imported oil.

Last year, the House passed a decent if imperfect bill that would have placed economywide caps on greenhouse gas emissions. John Kerry and Joseph Lieberman offered an equivalent bill in the Senate. Mr. Reid counted noses and decided his best chance was with a stripped-down version that caps only emissions from power plants. Now even that bill has fallen by the wayside.

Mr. Reid's latest version is not even a pale shadow of what is needed. It will include useful reforms related to the oil spill, and possibly some land conservation and energy efficiency provisions. But there is no cap of any sort. Without that, industry will have little incentive to reduce emissions or invest in cleaner energy sources or new technologies. The bill also fails to require utilities to derive a significant percentage of their power from renewable sources.

The Republicans obviously bear a good part of the responsibility for this failure. With a handful of exceptions, they have denied or played down the problem of **global warming** for years and did pretty much anything they could to protect industry from necessary regulation. There are, however, as many as a dozen Senate Democrats, mainly from the South, Appalachia and the Midwest, who share the blame.

They cowered before the shrill warnings that capping carbon emissions -- and making electricity from traditional fuels like coal more expensive -- would cripple the economy. Never mind the wealth of evidence that the costs will be minimal and, over time, will be richly repaid in terms of new jobs and industries.

Mr. Obama never fully committed to the fight. He raised hopes here and around the world last year when he pledged in Copenhagen to reduce United States greenhouse gas emissions by 17 percent. Until a couple of months ago, he talked a good game,

praising the House bill that aimed at the 17 percent target and promising to make every effort to get the Senate to follow.

Then, despite the opportunity offered by the oil spill to press for a bold energy policy, the president essentially disappeared. What has passed for advocacy by the White House in recent days has consisted largely of one op-ed article by the energy adviser, Carol Browner, and daily assurances from the press secretary, Robert Gibbs, that the White House was "working behind the scenes."

Can the country hope for better in the months ahead? It must. The danger of **global warming** is not going away just because Washington's politicians don't want to deal with it.

Even a scaled-down bill would be an important start. There is no secret about what it must include: a cap on power plant emissions, minimum standards for renewable energy, strong efficiency standards, new incentives for more fuel-efficient cars, investments and loan guarantees for next-generation technologies.

There is no chance unless Mr. Obama comes out fighting: calling out the Republicans, shaming and rallying Democratic laggards and explaining to the American people that **global warming** and oil dependency are clear and present threats to American security.

July 23, 2010

**Older homes at risk for lead paint (*Detroit News)***

GLENN HAEGE
The dangers of toys made in China with lead-based paint were well documented in the past few years, but if your house was built before 1978 it was probably painted with lead-based paint as well.

That isn't a problem if you aren't renovating your home. But if you plan to do some home improvements, you need to be aware of the potential lead poisoning risks and how to protect yourself.

According to the United States Environmental Protection Agency, 24 percent of homes built between 1960 and 1978 are likely to contain lead paint, and that number jumps to 87 percent for homes built before 1940.

Lead poisoning is a serious risk to children, and can also cause health problems for pregnant women, adults and even the family pet.

Often, lead paint is found under several layers of newer paint, and can become a problem due to moisture or flaking and peeling. When doing any home improvement in

a home with lead paint, the major potential for lead poisoning is the dust that people breathe during the renovation process and even afterward if the site is not cleaned up properly.

In April, 2008, the EPA issued a rule requiring the use of lead-safe practices by contractors. (You can read it yourself at http://www.epa.gov/lead/pubs/renovation.htm">www.epa.gov/lead/pubs/renovation.htm) Under the rule, beginning in April 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes built before 1978 must be certified by the EPA and follow specific work practices to prevent lead contamination. The rule originally included an opt-out provision that allowed owner-occupants of pre-1978 homes to "opt-out" of having their contractors follow lead-safe work practices if there were no children under six years of age in the home. However, beginning July 6, 2010, a new EPA rule removed the opt-out provision, and now all contractors performing renovation, repair or painting work in homes built before 1978 must follow lead-safe work practice requirements.

If you suspect you might have lead paint in your home, you can hire a certified professional to check for lead-based paint. For help finding a certified risk assessor or inspector, call the EPA's National Lead Information Center at (800) 424- 5323. The Michigan Department of Community Health, (517) 373-3740, http://www.michigan.gov/mdch">www.michigan.gov/mdch, also has a list of lead abatement companies that can treat or remove lead-based paint and lead-based paint hazards in order to make the property lead-safe.

If you have a home built before 1978, I highly recommend having a reputable contractor who is certified in lead-safe practices by the EPA do any renovations. Gary Kearns of Kearns Brothers, (888) 355-6700, http://www.kearnsbrothers.com">www.kearnsbrothers.com, an EPA-certified renovation firm, said any project in a pre-1978 home in which you "disturb a wall" must meet the EPA lead-safe practices.

First, renovation firms must give the homeowner the EPA pamphlet on lead-safe practices and get a signature from the homeowner that they read and understand it. And, Kearns said, lead-safe practices need to extend both inside and outside the home, depending on the project.

"When we install new windows in an older home, we have to follow all the lead-safe practices, such as covering everything in the room and sealing off the room with thick plastic protective sheeting," Kearns said. "Outside, we also need to cover the ground around the windows we are replacing with protective sheeting so that lead paint chips don't get into the soil."

In addition to these safety measures, Kearns said contractors must also use yellow caution tape so no one enters a room during the renovation and keep everyone out of the house when the work is occurring. Once the job is completed, the contractor must

thoroughly clean up any dust and paint chips, and do a complete wipe-down of the room where the work occurred. Then they must properly dispose of all the protective sheeting used during the job.

Stephen Toth, president of Cadillac Window in Southfield, (248) 352-5404, http://www.cadillacwindow.com">www.cadillacwindow.com, said that complying with the new EPA rule is important for people's well-being, but it does take more time for each job.

While most owners of older homes focus on interior walls painted with lead paint, Gary Kearns said many of these homes also have exterior lead hazards.

"Many homes built in the '30s and '40s had wood porches and siding that was painted with lead paint, so you have to be very careful when working on the exterior as well," he said.

Take the time to learn about lead before you start your next home improvement project inside or outside your home. Your family's health is too important not to be diligent when it comes to lead.

If you would like to suggest a question for this column, e-mail askglenn@masterhandyman.com">askglenn@masterhandyman.com. If you want to talk to Glenn Haege personally, call his Handyman Show on WJR-AM (760) at (866) ASK GLENN, (866) 275-4536, between noon and 2 p.m. Saturday and Sunday. The Handyman Show can be heard on more than 130 radio stations nationwide.

**AIR**

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UPDATE:

**EPA Calls For Further US Government Study Of Oil-Sands Pipeline (*Wall Street Journal*)**

(Updates with State Department's response in seventh paragraph)

By Edward Welsch Of DOW JONES NEWSWIRES CALGARY (Dow Jones)--The environmental impact of crude production from Canada's oil sands should be studied more closely before the U.S. approves a new pipeline from its northern neighbor, the U.S. Environmental Protection Agency said Wednesday.

The State Department is reviewing TransCanada Corp.'s (TRP) plans to expand a pipeline that would roughly double the amount of oil-sands crude shipped from Canada to the U.S. A decision on whether to approve the project could come within weeks. The EPA's letter, however, comes amid growing opposition to the pipeline from U.S.

lawmakers concerned about the climate impact of emissions-heavy oil-sands production, posing a threat that a permit could be delayed, altered or rejected.

Earlier this month, Rep. Henry Waxman (D., Calif.), chairman of the House of Representatives Committee on Energy and Commerce, joined 50 other Democratic members of Congress in writing Secretary of State Hillary Clinton to criticize the State Department for failing to analyze "the most significant environmental impacts" of the Keystone XL pipeline.

In a letter released Wednesday, the EPA's enforcement division recommended that the State Department conduct a more comprehensive review of several environmental impacts before approving the $7 billion Keystone XL expansion project, which would bring oil-sands crude to refineries on the Gulf Coast. In particular, the agency suggested greater scrutiny of the project's impact on greenhouse-gas emissions, air pollution, pipeline safety, wetlands and migratory-bird populations.

The EPA said in its letter that the U.S. government should more closely evaluate alternatives to Canadian oil-sands crude, production of which the agency estimates generates about 82% more greenhouse-gas emissions than production of the "average" crude oil consumed in the U.S. The agency suggests that the State Department consider only approving a smaller pipeline expansion, or delaying approval of the project until oil-sands producers can cut their emissions through technological improvements or energy efficiency.

A TransCanada spokesman said the company disagreed with the EPA's criticism of the State Department's environmental review. "We believe the [State Department] did a thorough and complete job," the spokesman said.

A State Department spokeswoman said the department will consider all public comments it received on the Keystone pipeline, but that it won't have a detailed response until it completes its review of the project.

Although they admit that oil-sands production emits more greenhouse-gas emissions than conventional oil output, Canadian producers say that since 80% of emissions from oil are created when fuel is consumed, oil-sands oil is only 5% to 15% more carbon-intensive than conventional crude.

The expansion of TransCanada's Keystone pipeline would increase the export capacity of the pipeline to 1.1 million barrels a day by 2013 and extend it to Gulf Coast refineries that are specifically designed to handle heavy-crude grades similar to those produced in Canada.

The first phase of the Keystone project was approved by regulators in 2008, and began shipping 435,000 barrels of oil-sands crude a day to refineries in Illinois on July 1.

Production of crude from Canada's oil sands, most of which is shipped to the U.S., is expected to double to more than 3 million barrels a day by 2020.

-By Edward Welsch, Dow Jones Newswires; 403-229-9095; edward.welsch@dowjones.com

Thursday, July 22, 2010, 3:38pm PDT

**Oregon joins greenhouse gas lawsuit (*Portland Business Journal*)**

Oregon has joined 12 other states in support of a U.S. Environmental Protection Agency decision to regulate greenhouse gas emissions from large industrial sources.

The EPA last year began requiring permits for large industrial sources of greenhouse gas emissions. In response, a group backed by oil, steel and chemical industries filed a lawsuit challenging the EPA's authority to regulate carbon emissions under the U.S. Clean Air Act.

Oregon and the other states intervened today on behalf of the EPA's position.

"The science is clear," said Oregon Attorney General John Kroger in a statement. "Global climate change harms public health, and the EPA is taking the right approach by focusing on the big sources of pollution."

**Proposed EPA coal ash rule could hurt small firms (*Reliable Plant*)**

Recycling industry entrepreneurs on July 22 told a key Congressional panel they are concerned new regulations proposed by the Environmental Protection Agency (EPA) could stop them from converting coal-fired power plant waste into safe, eco-friendly building products. During a hearing of the House Committee on Small Business' Rural Development, Entrepreneurship and Trade Subcommittee, witnesses said the rules could raise utility rates and cause layoffs.

"Utilization of coal combustion waste in products like cement can reduce the need for other raw materials, lower production cost and reduce greenhouse gas emissions," said Subcommittee Chairman Heath Shuler (D-North Carolina). "With a balanced policy approach that promotes the beneficial use of coal ash, we can help preserve our environment, while creating new opportunities for small businesses."

Coal-fired power plants produce nearly half of the power generated in the U.S., creating 136 million tons of coal combustion byproduct called "coal ash" in the process. While it can have negative impacts on the environment and be costly to dispose of or store, entrepreneurs have developed safe uses for coal ash, recycling 50 million tons in

construction products like concrete, cement and gypsum wallboard. North Carolina entrepreneurs testified today that coal ash has been used safely in concrete mixes by their state's highway department for two decades because it makes building materials stronger, while reducing construction costs by $5 million a year. Rural electric utilities in the state have also invested in scrubbers, which reduce power plant emissions by capturing the ash.

"Innovative North Carolina entrepreneurs are working hard to help reduce pollution and replace the jobs we've lost to outsourcing by creating good-paying jobs here at home," Shuler said. "It's important to foster green industries that put people back to work and promote a healthier environment for our children and grandchildren."

The EPA is proposing new regulations for coal ash aimed at addressing safety and environmental concerns. Depending on how those regulations are crafted, coal ash could be regulated like a hazardous waste, a move that has raised concerns among small businesses. During the hearing, entrepreneurs in the recycling industry said that a hazardous waste classification carries a stigma and would raise liability fears, making it difficult to use coal ash in building materials. Lawmakers also questioned whether the EPA had evaluated the full impact the proposed rule might have on small businesses. In one exchange with lawmakers, the EPA witness conceded that stiffer regulation of coal ash could potentially cause a 6 percent increase in electricity rates.

"Small businesses involved in the recycling, handling and transportation of coal ash stand to suffer serious economic harm if the EPA doesn't get this right," Shuler said. "I agree that we need strong and enforceable regulations at the federal level for coal ash storage and disposal. I want to work with EPA on a solution to provide better environmental protection without the economic damages of regulating coal ash like a hazardous waste – when it really isn't."

The EPA's proposed rule was released in late June and public comments are being accepted until September 20. During today's hearing, Shuler said he was preparing legislation to help address entrepreneurs' concerns.

**EPA: Emissions rule likely will face court challenge (*News Journal*)**

By NICOLE GAUDIANO • Gannett Washington
Bureau • July 22, 2010

WASHINGTON -- A proposed federal rule aimed at reducing power plant emissions in most states likely will be challenged in court, an Environmental Protection Agency official told a Senate panel today.

But Regina McCarthy, EPA’s assistant administrator of the office of air and radiation, said she expects the new rule, known as the Transport Rule, to be legally defensible. It

was released July 6 in response to a court decision that invalidated its predecessor, the Clean Air Transport Rule, and ordered EPA to create a new rule.

“I fully expect that it will be litigated,” McCarthy said of the Transport Rule. “I think the difference that I’m trying to point out is, I think it adheres much more closely to the requirements in the Clean Air Act.”

McCarthy made her comments at a hearing before the Senate Environment and Public Works
Subcommittee on Clean Air and Nuclear Safety chaired by Sen. Tom Carper, D-Del. The Transport Rule would improve air quality in the eastern United States by reducing power plant emissions of sulfur dioxide and nitrogen oxide in 31 states and the District of Columbia.

Carper and other senators characterized the new rule as “complex” and open to lawsuits. And Carper said the rule needs to be tougher.

“This is a rule to help meet 1997 standards,” Carper said. “It’s 2010, and time we have clarity and certainty on clean air reductions.”

He and Sen. Lamar Alexander, R-Tenn., have proposed legislation that would amend the Clean Air Act to cut mercury emissions and tighten emissions of sulfur dioxide and nitrogen oxides from power plants. Carper said the bill would save more lives than the EPA’s new rule, and at little cost to consumers.

The bill has 14 co-sponsors, but its prospects on the Environment and Public Works Committee are unclear. The committee’s top Republican, Sen. James Inhofe of Oklahoma, said during today's hearing that his staff is working with Carper’s to find common ground on the bill.

“Even if we fall short of reaching an agreement, we are laying the groundwork for bipartisan legislation in the next Congress,” Inhofe said.

McCarthy detailed what she called “overwhelming health benefits” of the Transport Rule.

“We’re talking in 2014, of avoiding 14,000 to 36,000 premature deaths, 21,000 cases of acute
bronchitis, 23,000 cases of nonfatal heart attacks, 26,000 hospital and emergency room visits, and I could go on and on,” she said. “And those benefits translate into at least $120 billion dollars annually.”

McCarthy said average electricity prices could increase less than 2 percent as a result.

“If you pay $100 now on your electric bill, you could pay $1.50 more,” she said.

McCarthy also said she supports Carper's bill, which she said during an interview would create
"significant emission reductions across the country" and complement EPA's efforts.

7/23/2010

**EPA, CARB Workshop Examines Driver Defeat of SCR Engines (*Truckinginfo*)**

By Steve Sturgess, Executive Editor
Changes to the EPA's 2010 emissions regulations relating to selective catalytic reduction technology are being proposed as a result of a suit brought against the EPA by Navistar. During a California workshop Tuesday, both sides had a chance to present comments.

The Navistar lawsuit challenged guidelines issued during the implementation of the SCR technology. Navistar argued that the guidelines were in effect a rule and that the correct procedure had not been followed in the rulemaking process. When EPA agreed to review and issue new guidelines, Navistar agreed to drop the lawsuit.

The EPA and the California Air Resources Board presented proposed rule changes during CARB's heavy-duty diesel Selective Catalytic Reduction workshop. After a nearly two-hour presentation, comments were presented by Navistar, Volvo Powertrain, Mack and Volvo Corporate and Cummins.

The proposals are for ways to make the driver add diesel exhaust fluid - "inducement strategies" if the DEF tanks get to very low levels of the reagent, and to keep them from running without fluid or with incorrect fluid, or tampering with the SCR system.

Navistar's president Jack Allen presented his company's evidence of the ability of drivers to defeat SCR aftertreatment. This would permit post-2010 trucks running the SCR technology to continue to operate without DEF, emitting 10 times or more the regulated amount of NOx (0.2 g per hp-hr). Navistar uses Advanced Exhaust Gas Recirculation to meet the EPA 2010 emissions requirements and is the only manufacturer not pursuing SCR technology.

The company's concerns were presented in a short video, "License to Pollute," that was introduced by vice president of government relations, Patrick Charbonneau. In the video, Navistar showed three vehicles that could be driven either without the diesel exhaust fluid in the urea tank or with water substituting for the DEF.

The competition's response

But making changes to the rule only six months after it went into effect would not be fair nor easy to meet. That was the gist of comments by Steve Berry, director of emission strategy from Volvo Powertrain, John Mies, Mack and Volvo vice president of corporate communications,and Bob Jorgensen from Cummins Environmental Management Group. These three all spoke to the difficulty of making a rule change only six months into the new EPA 2010 emissions regime, especially in view of the proposed changes becoming effective as early as January 2011.

Mies was the most outspoken of the SCR proponents.

"In the midst of all this (SCR) good news for our industry and the environment, we learned a few weeks ago - not even six months after the implementation date for the new technology - that the regulations we followed in good faith were to be reconsidered," he read from his prepared statement. "And why? In large part because of concerns being raised by a single competitor," referencing the Navistar lawsuit and the evidence in the video.

He went on to criticize Navistar and the EPA. He accused Navistar of using the courts to achieve its commercial purpose and the EPA of colluding. He laid out the following about Navistar:

"A competitor that says it is concerned about the environment, but whose U.S. '10 engines will emit two and a half times the 2010 NOx standard, and are only certifiable with emissions credits.

"A competitor that said it was ready for the new standards, yet lobbied for a delay in implementation, and when that failed, resorted to lawsuits against the regulators.

"A competitor that apparently believes that most of its customers, and the trucking industry as a whole, are hell-bent on illegal circumvention of emissions controls.

"A competitor that has only been able to compete in the market this year by selling thousands and thousands of pre-2010 engines.

"A competitor that, if it succeeds in convincing you to change the rules, will turn around and tell customers the rules are bad for their business, and use them as a selling point for their own higher-emitting engines."

Summing up, Mies said: "The fact is that a Volvo truck running at 0.2 grams is and will continue to be much better for the environment than a Navistar truck running at 0.5 grams - and no amount of changes to the inducement strategies will change that."

Jorgensen commented that Cummins had produced 12,000 engines in the first six months of the year offering a 5 percent better fuel economy and that not only were they better for the environment for the low NOx emissions, but the fuel economy also meant lower greenhouse gas emissions and less dependency on foreign oil. He also

commented that the inducement strategy pursued by Cummins was a 25 percent reduction in torque when no DEF is present.

License to Pollute

In the Navistar video, the three trucks - a Freightliner Cascadia with DD15 engine, a T660 with Cummins ISX and a Dodge Ram Class 4 pickup with Cummins B Series diesel - were all run out of DEF. The inducement strategies for the different vehicles (only the Cascadia and Dodge were featured in the video) duly played out with warning messages, dash lights and chimes reminding the driver to refill with the DEF.

In the case of the featured trucks, adding plain water to the DEF tank defeated the severe inducement strategies and allowed the vehicles to be restarted and driven normally, said the commentary. In the case of the Cascadia, the truck was driven a total of 11,000 miles by the time the video was complete with no detriment to the performance, allowing it to be driven up to 55 mph with no impediment and at the full 80,000 pounds GCW. According to Charbonneau, the Cascadia has now completed in excess of 13,000 miles, still with no DEF in its tank.

Running with pure water instead of DEF meant the Cascadia was emitting 10 times the regulated NOx, the Cummins-powered T660 was 30 times the NOx according to EnSIGHT, the third-party testing agency featured in the video. This was the only reference made to the Kenworth. Testing had only been completed in the last 30 days, said Charbonneau.

Further, Navistar alleged that European experience shows that at low exhaust temperatures the DEF does not produce the NH3 (Ammonia) that is essential to the catalytic reduction technology, saying that these low exhaust temperatures may well be seen in urban, stop-start driving conditions.

"Truck owners are paying a substantial price to comply with 2010 NOx requirements," said Allen. "They, and the public, deserve to know that the new equipment they are purchasing actually works as promised to curb pollution. It's obvious, however, that these trucks can operate effectively without liquid urea, and that under these and other conditions, SCR NOx emission control is turned off. We're calling on the EPA and CARB to assure that all vehicles, not just ours, work when they are supposed to be working."

**DE gets authority from EPA for offshore wind permitting (*WGMD Radio*)**

Posted By Mari Lou-WGMD News On July 22, 2010 @ 7:53 pm In Local News | No Comments

Delaware has been given the authority by the EPA to enforce and implement offshore wind permitting related to air quality – after adopting the federal requirements back in June. This is the first time that a state program has been delegated authority of the rule. The first action that will be subject to these regulations in Delaware – a proposed meteorological tower associated with the Blue Water Wind project.

Delaware becomes first state to receive delegation from EPA for offshore wind permitting

DOVER – Delaware has become the first state delegated authority for enforcing and implementing offshore wind permitting related to air quality as it prepares to site the country's first offshore wind farm – continuing as a national leader in renewable and alternative energy.

The Department of Natural Resources and Environmental Control was granted delegating authority this week by the Environmental Protection Agency through a statute of the federal Clean Air Act pertaining to the outer continental shelf.

The EPA delegated to DNREC the primary authority to implement and enforce the federal Outer Continental Shelf (OCS) regulations. Delaware adopted the federal requirements into 7 DE Admin Code 1150, Outer Continental Shelf Air Regulations, in June 2010. These regulations control air pollution from OCS sources by establishing that Delaware's land-based air pollution control requirements apply to sources located on or above the outer continental shelf, which is any area within 25 miles of Delaware's coastline.

Delaware's delegation of the OCS regulation marks the first time that a state program has been delegated authority of the rule. Previously, only a handful of local Air Pollution Control Districts within California had been delegated authority by EPA.

The first action in Delaware that will be subject to these regulations is a proposed meteorological tower associated with the Blue Water Wind project. This meteorological tower is proposed to be constructed approximately 18 miles off the coast of Delaware's shore. The regulation will require that any emissions that occur during its construction and operation, or during any future projects' construction and operation, will be controlled to the same level as if those emissions occurred on land.

"Offshore wind represents an important environmental and economic opportunity for the State of Delaware," said DNREC Secretary Collin P. O'Mara, who also serves as chairman of a Bureau of Ocean Energy Management (BOEM) Delaware task force on offshore wind. "By receiving delegation of federal permitting authority from EPA, we are one step closer to ensuring that the promise of offshore wind is realized in a timely fashion."

Delaware last week hosted the BOEM task force to help coordinate and accelerate the permitting process. This week, Governors Jack Markell of Delaware and Martin O'Malley of Maryland wrote a letter to President Obama asking the federal government to partner with the two states in buying offshore wind energy. Maryland and Delaware continue to work together to expand the Blue Water Wind Mid-Atlantic Wind Farm off the coast of Rehoboth to maximize economic and manufacturing opportunities.

DNREC's having authority for implementing and enforcing air quality permitting is essential for moving forward with offshore wind. "This action allows Delaware to more effectively respond to the permitting needs of any offshore project and associated timing for permit issuance," said Ali Mirzakhalili, director of DNREC's Division of Air Quality.

07/23/2010

**Activists, Utilities Eye Funds As Alternative To Air Waivers In GHG Bill (Inside EPA)**

Utility officials and environmentalists are discussing the possibility of providing subsidies to help the sector reduce emissions of conventional air pollutants as a last-ditch attempt to bridge divisions over legislation capping the sector's greenhouse gas (GHG) limits, according to sources tracking the issue.

The approach could be an alternative to calls for delaying at least temporarily Clean Air Act and other environmental requirements for conventional pollutants in exchange for utility support for a climate cap. However, prospects for an agreement on a utility-only plan in the short time remaining this Congress are dim. One source familiar with the issue also cites several obstacles to a subsidy.

At issue are calls by utilities and some senators to soften Clean Air Act requirements for conventional pollutants in exchange for imposition of a GHG cap. For example, multiple drafts of climate legislation from Sens. John Kerry (D-MA) and Joseph Lieberman (I-CT) have a plan that creates a task force to examine regulatory barriers to plant retrofits -- language that environmentalists fear could open the door to scaling back environmental regulations under several statutes. And Sen. Richard Lugar (R-IN) has floated an alternative energy plan that would waive certain air act and water act requirements for facilities that make a commitment to shut down, though this is not part of a GHG cap.

Utilities have sent mixed signals on whether concessions on Clean Air Act rules for conventional pollutants are necessary to win industry support for a climate measure. The Edison Electric Institute (EEI), among others, has called such a linkage necessary, and a spokesman for Duke Energy calls such concessions an option for boosting industry support but stops short of calling it a dealbreaker for a carbon measure.

The suggestions have raised the ire of environmentalists, who last week wrote senators urging them to oppose proposals that would weaken existing environmental requirements in exchange for a GHG cap on the utility sector.

But with time running out to reach agreement on a utility-centric plan for reducing GHG emissions, utility officials, environmentalists and key senators are involved in an array of discussions trying to resolve differences.

One issue under discussion, sources say, is the possibility of a pollution control subsidy as an alternative to delaying air act requirements. "That seems to be the direction . . . something to help people comply rather than delay" emissions rules for conventional pollutants, says one source tracking the issue.

The first source calls a subsidy approach a potential route to getting around air act disputes and says progress on a utility cap is still possible but a "low probability." At the same time, such an approach faces challenges including how to pay for any subsidy, according to another source.

As part of efforts to keep a utility cap alive, Kerry and Lieberman met July 20 with EEI officials. Kerry told reporters July 20 that the utilities prefer his original, broader American Power Act to a utility-only approach, because the earlier version is more generous in its carbon allocations to the sector. Kerry said he was in the process of determining whether it would be possible to tweak a utility-focused plan to address their concerns.

But Lieberman told reporters July 20 that while EEI officials expressed a willingness to continue work with lawmakers, they need more time. The message was, "they can't do it in 10 days," Lieberman said.

Senate Majority Leader Harry Reid (D-NV) told reporters July 20 that the Democratic caucus is planning to meet July 22 to discuss two issues, "one of which is energy." Reid indicated that Democrats were still wrestling with how to proceed on climate and energy, including possible utility emissions language, and did not indicate whether plans to bring a measure to the floor the week of July 26 were still on. -- *Doug Obey and Charles Davis*

07/23/2010

**EPA Agrees To Revise GHG Reporting Rule To Settle Industry Lawsuits (*Inside EPA*)**

As part of several pending settlements with industry groups, EPA has agreed to revise certain reporting thresholds and monitoring requirements in its greenhouse gas (GHG)

reporting rule, but the agency is continuing talks in two additional suits against the rule filed by an energy recovery company and an environmental group.

The agency published a notice in the *Federal Register* July 20 seeking comment on several proposed settlements with industry groups that challenged the agency's final GHG reporting rule. "Under the terms of the proposed settlement agreements, Petitioners would dismiss their claims if EPA proposes and, after notice and comment, takes final action on certain revisions to the final rule," the notice says. *The notice is available on InsideEPA.com.*

The notice says the proposed settlements will resolve five petitions in whole and one petition in part, although it does not elaborate on which petition will only be partially resolved. The industry groups involved in the settlements are the American Chemistry Council (ACC), Energy Recovery Council, American Petroleum Institute (API), National Petrochemical & Refiners Association, Fertilizer Institute, American Public Gas Association and the Utility Air Regulatory Group.

EPA's GHG reporting rule took effect Dec. 29 and requires suppliers of fossil fuels or industrial GHGs, manufacturers of vehicles and engines, and facilities that emit 25,000 metric tons or more per year of GHGs to submit annual reports to EPA beginning on March 31, 2011.

Industry groups raised various objections to the rule, including the utility industry's objections to requiring data collection for stationary fuel combustion sources, ACC's criticism of an "overly broad" definition of fluorinated GHGs covered by the rule, the Fertilizer Institute's claim that the rule excludes reporting requirements for fertilizer imports, and API's concerns with a 2010 deadline to discontinue the use of best available monitoring methods.

The settlements were not available at press time, but the notice says the proposed agreements will address four main issues: revising the reporting threshold for one type of source, revising the threshold for more stringent monitoring for one type of source, allowing sources to request to continue to use "best available monitoring methods" until 2015 in some circumstances, and revising various monitoring recordingkeeping and reporting requirements.

Two petitions for review -- filed by the Environmental Defense Fund (EDF) and Kinder Morgan CO2 -- will not be settled at this time and instead will continue to be held in abeyance pending further settlement talks, the notice says.

EDF argued in their statement of issues that the agency failed to promulgate GHG reporting mandates for some industrial sectors, including coal mines and food processing facilities.

Kinder Morgan, which supplies carbon dioxide (CO2) to be used in enhanced oil and gas recovery, raised concern in its statement of issues about the rule's requirement to

report the total amount of CO2 produced from CO2 production wells rather than the amount of CO2 that is actually emitted during the production and use of CO2.

EPA recently announced in its Action Initiation List of new rulemakings that it is developing a notice of proposed rulemaking to address several petitions and lawsuits against the GHG reporting rule. The list said the proposal would "address select technical aspects of the requirements of the final rule," but said the proposal "would not fundamentally change the structure of the program."

07/23/2010

**Industry Charges EPA Lacks Authority To Require Modeling For NAAQS (*Inside EPA*)**

Industry plaintiffs in two parallel legal challenges are charging that EPA lacks the legal authority to require states to conduct conservative modeling, in addition to or instead of monitoring data, to demonstrate that a state air plan will achieve compliance with federal standards, even as EPA is requiring such modeling in a key new air standard.

The legal challenges come just a month after EPA finalized a sulfur dioxide (SO2) national ambient air quality standard (NAAQS) amendment requiring modeling in order to demonstrate attainment, both as a solution for state agencies worried about the cost of upgrading monitoring infrastructure, as well as because monitoring -- according to EPA's June 22 *Federal Register* notice -- is inadequate to assess the full impact of SO2 sources on ambient air.

The cases -- both called *Montana Sulphur & Chemical Company (MSCC) v. EPA* and proceeding in the United States Court of Appeals for the 9th Circuit -- are also significant because they could hinder the agency's ability to mandate limits on flaring, or combustion of excess emissions. Flaring during startup, shutdown and malfunction (SSM) periods is critical for refinery safety, according to arguments made by industry associations in just-filed *amicus* briefs.

MSCC's suits are challenging EPA's federal implementation plan (FIP), a federal air quality blueprint to bring Montana into attainment with the SO2 NAAQS. EPA issued the FIP -- which include flaring limits -- after partially rejecting Montana's own plan, known as a state implementation plan (SIP). MSCC is also challenging the rejection of the original SIP. Both of the group's complaints are also being backed by key national trade associations, including the National Environmental Development Association's Clean Air Project, a coalition representing manufacturers, and the American Petroleum Institute.

The company says in a brief filed July 9 in the suit over the SIP rejection that EPA's actions violate the Clean Air Act because EPA ignored data collected by an "extensive"

monitoring network that showed the area was not violating the NAAQS and instead relied on overly conservative modeling predictions to find the plan inadequate.

"If EPA is allowed to use its SIP Call authority to force a State to impose any regulation that the Agency deems necessary to ensure that an area cannot violate the NAAQS in the future, based on a series of highly unrealistic assumptions fed into a computer model, it would be breathtaking expansion of EPA's regulatory authority," according to the company's brief. *Relevant documents are available on InsideEPA.com.*

But EPA's recent final SO2 NAAQS does just that, in addition to establishing a new 1-hour standard at a level of 75 parts per billion. The NAAQS revision imposes a "hybrid" attainment demonstration plan that requires both modeling and monitoring in order to determine compliance with the standard. The plan is an attempt to solve state officials' concerns that the standard would have required overly burdensome monitoring, as well as to ensure that attainment demonstrations capture the full pollution impact of large stationary sources, according to the final rule.

"Because ambient monitors are in fixed locations and a single monitor can only represent impacts that occur at the location of the monitor, a single monitor cannot identify all instances of peak ground-level concentrations if, for example, different wind directions on various days cause peak ground-level concentrations in different areas that do not overlap," said EPA. "The uncertainty associated with this limitation is much higher for an hourly standard than a long-term standard due to the higher degree of spatial and temporal variability associated with peak hourly impacts."

EPA did not respond to a request for comment on how significantly the new requirements depart from past SO2 NAAQS attainment demonstration requirements.

One state official, however, says that although there are "legitimate questions" with EPA requiring states to use "worst case" modeling rather than relying on actual air quality data from monitors, the tight, new one-hour standard -- as well as the secondary fine particulate matter likely to form downstream of the company's SO2 emissions -- are "good reasons to limit the SO2 emissions, and provide motivation for EPA to stick to their guns." The official predicts that the company's arguments are unlikely to prevail.

But a legal source involved with the petitioners says the case stands to undermine the legal authority EPA relied on to require modeling in the new SO2 NAAQS. "We don't think they should be allowed to ignore reality and use all their worst-case scenario assumptions and use modeling to put a state into nonattainment when the monitoring clearly shows it's well below the NAAQS," the source says.

The company briefs say that all of the case law cited by EPA to support its modeling requirement for the Montana SIP is irrelevant, either due to the circumstances of the case at hand or because the Clean Air Act itself has changed. For example, the company notes that the 1990 amendments deleted a previous statutory provision that allowed the EPA to rely on air quality modeling for designating nonattainment areas.

07/23/2010

**EPA Defends Pollutant-By-Pollutant MACT Policy In Key Appeals Court (*Inside EPA*)**

EPA is defending its controversial method of calculating maximum achievable control technology (MACT) limits for air toxics based on the performance achieved by individual emission sources for each pollutant covered by the standard, arguing that it has long relied on the policy and therefore it is no longer judicially renewable.

The agency makes this argument, in addition to defending the policy in substance, in response to a lawsuit challenging its proposal to tighten air toxics limits for hospital, medical and waste incinerators, a case widely seen as a test for the agency's new, stricter approach to setting MACTs.

The pollutant-by-pollutant method of calculating the "floor" for technology-based standards has become a central issue in the agency's air toxics program after the United States Court of Appeals for the District of Columbia Circuit in several rulings over the past decade has limited EPA's efforts to grant flexibilities.

But industry critics in response to the agency's December 2008 proposal on medical waste dubbed the pollutant-by-pollutant method a "Franken-MACT" standard because it was based on performance by separate facilities on each pollutant, rather than reflecting a multipollutant standard that a single unit can achieve. In a lawsuit filed in the D.C. Circuit in October, industry groups charge the final MACT sets too strict an emissions "floor" by relying on the pollutant-by-pollutant methodology, as well as by ignoring other flexibilities that the petitioners say EPA still has available under the Clean Air Act and case law.

EPA in a July 9 brief, however, defends its approach to the rule, arguing that the agency acted within the law by resetting the floor; by using the controversial pollutant-by-pollutant methodology to calculate the MACT; by relying on current emissions data rather than the permit-based, "surrogate" data used when EPA first issued the rule; and by eliminating the exemption for startup, shutdown and malfunction (SSM) periods.

"There simply is nothing in [section 129 of the air act] or its legislative history that even suggests that EPA is prohibited from resetting emissions floors except as part of its five-year review . . . ," EPA says in the brief. "More importantly, there is no provision of section 129 that could possibly be construed to require EPA, on remand, to issue revised standards based on the same lack of credible data and information that the Court already has found lacking." *Relevant documents are available on InsideEPA.com.*

In addition, the agency argues on a procedural basis that several of the most contentious issues being raised by the petitioners are invulnerable to judicial review.

"The only issues remanded in *Sierra Club-HMIWI*, and the only regulatory action being challenged by Petitioners, is EPA's establishment of revised MACT floors for new and existing medical incinerators," according to the brief.

EPA argues that the pollutant-by-pollutant methodology, in particular, is off limits to the court because the approach was established in the original rule in 1997 and was not revisited in the new rule.

Meanwhile, the environmental petitioners who challenged the rule under the Clinton Administration are now defending the Bush administration revisions to the MACT, according to an intervenor brief filed July 16, arguing that the revisions are both consistent with the court's remand and the relevant statutory provision.

07/23/2010

**EPA Consideration Of Strict Coarse Particle Standard Sparks Industry Fear (Inside EPA)**

EPA's latest policy assessment for its ongoing review of the agency's particulate matter (PM) ambient air standards includes a first-time proposed range of limits for a stricter coarse PM (PM10) standard, sparking fear from the mining and agriculture industries -- large sources of PM10 emissions -- that the standard would be impossible to meet.

In its second external review draft of the policy assessment for the PM national ambient air quality standard (NAAQS) review, EPA floats the possibility of a 24-hour NAAQS for PM10 in the range of 65 micrograms per cubic meter (ug/m3) and 85 ug/m3 -- much stricter than the existing 150 ug/m3 standard. *The review draft is available on InsideEPA.com.*

However, EPA is also considering a new approach to setting the standard that would allow more exceedances of the ug/m3 limit before the agency deems an area out of attainment with the NAAQS. Environmentalists caution that this approach to implementing the standard makes it less stringent than it first appears. The agency also leaves the door open to retaining the existing PM10 standard, depending on whether EPA opts not to take into account new data showing harmful effects on human health from PM10 exposure.

The policy assessment released July 8 is designed to "bridge the gap" between highly technical risk assessments and decisions to be taken by the agency on whether to revise the NAAQS, EPA says. The agency will take comment until Aug. 16 from its Clean Air Scientific Advisory Committee (CASAC) and the public on the policy paper, which offers proposed ranges for a NAAQS revision unlike earlier science-focused risk and exposure assessments.

EPA staff in the policy assessment caution that there is considerable uncertainty associated with the science behind coarse PM risks. For example, the body of experimental human inhalation studies is relatively sparse, monitoring for coarse PM is less widespread than that for fine PM (PM2.5), and "very little information is available to inform weight of evidence conclusions for endpoints associated with long-term exposures." Despite the uncertainty, EPA staff recommends changing the PM10 standard, but cautions that "standard levels around the upper end of this range are most strongly supported by the evidence."

The existing form of the standard permits only one exceedance of the NAAQS level in a three-year period. In the policy paper, EPA says that if it tightens the standard within its 65-85 ug/m3 range, it could switch to a so-called 98th percentile form, which would allow 21 exceedances over three years. While activists endorse a stricter PM10 standard, they are raising early concerns about the change in form.

A source with the American Lung Association (ALA) says that a new ambient PM10 standard of 85 ug/m3 using the revised form is "not really that much of a reduction" in air pollution. A NAAQS set at the lower end of the range, however, would be significantly more stringent than the existing limit.

Even with a 65 ug/m3 limit ALA would probably take issue with the proposed form. "We have had problems, historically, with the 98th percentile," as this allows too many spikes in pollution, the source says, adding that this will likely be reflected in ALA's upcoming comments on the policy paper.

To implement the standard, states would have to craft state implementation plans (SIPs) -- air quality blueprints that detail the emission controls they will impose on sources under their regulatory control in order to cut PM10 emissions and attain the standard. Mining and agricultural operations in rural areas tend to have high levels of PM10 emissions and would therefore be likely targets for new controls in SIPs under a stricter NAAQS.

**Despite environmentalists' doubts that a tighter standard would be sufficiently stringent** if EPA changes the form, farming and mining groups are already alarmed at the prospect of a tougher standard in the proposed range -- regardless of the form that EPA selects. "I think that agricultural operations . . . would have a very difficult time achieving a standard set that low," says a National Cattlemen's Beef Association source.

Similarly, a National Mining Association (NMA) source says that the mining industry is a large source of PM10 emissions but it would be difficult to meet a stricter PM10 standard because industry is already using best management practices for controlling those emissions. If EPA tightens the PM10 standard, "we are not sure there is anything to be done about it," the source says, adding that a standard at the stricter end of the proposed range would be a "real regulatory stretch," with few remedies available from the industry to meet the standard.

The ALA source, however, rejects the industry arguments and says a lack of emission control technology should not be the driver behind a NAAQS revision. The Clean Air Act requires that NAAQS be set based only on public health criteria, and the act has always been a "technology forcing" law that drives innovation, the source says.

The draft policy paper also reiterates earlier EPA staff recommendations to tighten the existing annual PM2.5 standard of 15 ug/m3 to a range of 11-13 ug/m3, and either retain the existing 24-hour PM2.5 NAAQS of 35 ug/m3 or revise it down to a stricter level of 30 ug/m3. PM2.5 is widely considered to present the greater public health risk, and is a more urban problem than PM10, which is predominantly an issue in rural areas.

CASAC will discuss all issues relating to the agency's review of its PM ambient air standards at a slated meeting on July 26 and 27 in Durham, NC. -- *Stuart Parker*

07/23/2010

**EPA Backs Growing Calls For GHG Analysis Of Key Tar Sands Pipeline (*Inside EPA*)**

EPA is calling on the State Department to revise its draft environmental assessment of a proposed pipeline that could carry high-carbon Canadian tar sands fuel into the United States, saying the analysis fails to consider the full climate and "national security implications" of increasing the country's dependence on a fuel source the agency found emits nearly double the greenhouse gases (GHGs) of conventional oil.

In July 16 comments submitted to the department, EPA blasts the analysis as "inadequate" due to its lack of a complete analysis of the GHG and other environmental impacts of the project, a move that opens the door to elevating the dispute to the White House Council on Environmental Quality (CEQ), according to the agency.

EPA's stance adds further weight to demands by environmentalists and key members of Congress -- including House Energy & Commerce Committee Chairman Henry Waxman (D-CA) -- that the department delay a final approval decision until after the pipeline's climate impacts have been fully considered.

EPA's critique targets the State Department's draft environmental impact statement (EIS) for the Keystone XL project, a proposed pipeline that if approved would have the nominal capacity to transport up to 900,000 barrels per day of Canadian tar sands -- or "oil sands" -- crude to Texas refineries. According to the agency, the project would result in 27 million metric tons of carbon dioxide-equivalent emissions, translating into a "well-to-wake" footprint for tar sands that is "82 percent greater than the average crude refined in the U.S.," or "roughly equivalent to annual CO2 emissions of seven coal-fired power plants."

The department issued its draft EIS in April, the first step in a process intended to determine whether the pipeline serves the U.S. national interest, a decision expected to come this fall. Though the department attempted to quantify GHG emissions associated with the pipeline itself, it did not analyze the climate impacts of the extremely energy-intensive tar sands extraction. That omission immediately prompted calls from environmentalists and House lawmakers for the department to analyze the project's GHG emissions.

EPA is also calling for a more "robust analysis" of the rationale for approving a major tar sands pipeline and whether it meets "national energy and climate policy objectives." Such an analysis should weigh "different oil demand scenarios over the fifty-year project life" and "proposed and potential future changes to fuel economy standards and the potential for more widespread use of fuel-efficient technologies, advanced biofuels and electric vehicles as well as how they may affect demand for crude oil." *The comments are available on InsideEPA.com.*

Despite the significant GHG emissions associated with tar sands development, advocates justify the proposed pipeline in part by citing the perceived need to reduce the U.S.'s dependence on oil from the Middle East. However, "Alongside the national security benefits of importing crude oil from a stable trading partner," says EPA, "we believe the national security implications of expanding the nation's long-term commitment to a relatively high carbon source of oil should also be considered."

In addition, EPA says the department should more fully consider options for reducing the proposed pipeline's carbon footprint, including the possibility of building a "smaller-capacity pipeline or deferring the project until current efforts to reduce extraction-related GHG emissions through carbon capture and storage, improved energy efficiency, or new extraction technologies are able to lower GHG emissions to levels closer to those of conventional crude." -- *Charles Davis*

**SCR makers return Navistar's serve at emissions workshop (*Today's Trucking)***

SACRAMENTO, Calif. – A handful of Navistar's competitors fired back at their rival and questioned the EPA's recent decision to reexamine the 2010 engine rule six months after SCR engines hit the market.

The comments were part of a public workshop won by Navistar for dropping its lawsuits against environmental regulators.

Navistar -- the only engine maker not to choose SCR emissions-reduction technology for 2010 -- is contesting what it says are "compliance loopholes" for SCR engines.

The company complains that EPA's oversight allows SCR engines to exceed NOx emissions standards if drivers neglect to put diesel exhaust fluid (DEF) in their engines.

Navistar likens this to a giving some engine makers a “licence to pollute” and at the workshop showed a video of the same title.

But while representatives of Volvo, Mack and Cummins were at the workshop to defend their technology, some went on the offensive.

“We question the need to make modifications to SCR strategies just six months after SCR products were brought to market,” said Steve Berry, director, Government Relations for Volvo Powertrain. “These strategies were thoughtfully developed in good faith by EPA, CARB, and EMA, applying their collective best judgment to balance SCR operation with other critical issues, not the least of which is safety.”

Moreover, we find it very unsettling that the requirements … for this Workshop were agreed to in the context of litigation with a non-SCR manufacturer,” Berry continued. “We’re concerned about the precedent that’s being set by these proceedings, whereby the regulated provisions by which a technology is to be deemed acceptable for production are being driven by a competitor using alternative technology.”

Berry said that despite Navistar’s claims, there is no evidence of DEF refill or SCR tampering issues in the field and he believes “it is premature to impose new restrictions in the absence of any evidence of need.”

In fact, since warning alarms sound off when DEF is running low – and the engine will eventually derate if the DEF tank isn’t topped up -- many SCR suppliers insist it’s highly unlikely drivers will neglect DEF and hardly lead to the environmental disaster Navistar claims would occur.

Navistar’s contention that drivers can “trick” the engine by substituting plain water for DEF (and, according to its video commentary, freely driven up to 11,000 miles with H2O) is also another example of misinformation, says John Walsh of Mack Trucks.

Were such a condition to occur, he says in an email to todaystrucking.com, sensors would be triggered. And in rare cases where the driver doesn’t replace the DEF, the engine would derate and ultimately be limited to 5 mph at the time of diesel fuel refill.

Walsh then fired back at Navistar, pointing out the company doesn’t have an engine that meets the 2010 0.2 g NOx standard and is allowed to sell medium-duty engines that exceed the limit by more than double thanks to EPA emissions credits it banked prior to Jan. 1 2010.

“We just find it so ironic that a manufacturer who so far this year has sold exclusively thousands of higher-emitting pre-EPA10 engines, and who has opted for an EPA10 approach that emits twice as much NOx as SCR and tons of additional greenhouse gases into the atmosphere (by burning more fuel), is now concerned about the environment?

“Is the use of credits to far exceed the .2 g NOx standard a ‘loophole’?

His Mack-Volvo counterpart, John Miles, was just as direct in his workshop testimony as he questioned environmental regulators’ decision to reconsider parts of the rule.

“And why?” he asked rhetorically. “In large part because of concerns being raised by a single competitor …

“A competitor that said it was ready for the new standards, yet lobbied for a delay in implementation, and when that failed, resorted to lawsuits against the regulators.

He also blasted Navistar for launching a campaign that assumes “that most of its customers, and the trucking industry as a whole, are hell-bent on illegal circumvention of emissions controls.”

**U.S. EPA seeks delay of Keystone pipeline (*Edmonton Journal*)**

Agency wants more data on emissions
By Trish Audette, edmontonjournal.comJuly 22, 2010 6:38 AM

EDMONTON - The organization responsible for regulating American environmental laws says the extension of a pipeline to carry bitumen across the Canada-U.S. border should be delayed until more information about the carbon footprint of Alberta's oilsands is available.

In a letter last week, the U.S. Environmental Protection Agency said there was not enough information in a draft environmental study for the $12-billion Keystone XL Pipeline expansion to move forward.

"We recommend that the discussion of (greenhouse gas) emissions be expanded to include ... an estimate of the extraction-related (greenhouse gas) emissions associated with long-term importation of large quantities of oilsands crude," an assistant EPA administrator wrote in a July 16 letter.

In her letter, Cynthia Giles said extracting and refining oilsands crude produces more carbon emissions than other kinds of oil production, and extending the pipeline will likely boost Alberta bitumen production.

She estimated emissions from the oilsands are "approximately 82 per cent greater than the average crude refined in the U.S., on a well-to-tank basis."

The agency's letter is advice to the U.S. federal government, which must decide whether to approve a pipeline extension so bitumen can be carried from Hardisty, 206

kilometres southeast of Edmonton, through the American Midwest to refineries in the southern U.S.

To date, Premier Ed Stelmach has been a consistent supporter of the expansion, pointing to the potential for job growth and the American market's reliance on Alberta oil.

Earlier this month, the Stelmach government spent $55,800 on an advertisement in the Washington Post meant to rebut a group of congressmen who said the pipeline should be put on hold to avoid boosting American consumption of oilsands bitumen.

Stelmach has also written a letter to Secretary of State Hillary Clinton.

On Wednesday, a spokesman for Stelmach said the premier respects the regulatory process needed to get the Keystone project online.

"The EPA submission is one step in that process," Cam Hantiuk said in an e-mail. "Our position is that the best available information should be a key component of any jurisdiction's consideration of projects of this nature."

Travis Davies, spokesman for the Canadian Association of Petroleum Producers, said the most recent studies suggest that overall greenhouse gas emissions of fuel from the oilsands are only five to 15 per cent higher than conventional oil.

with files from Mike De Souza, Postmedia News

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07/23/2010

**Activists Urge EPA To Set GHG Performance Standard To Boost Use Of CCS (*Inside EPA*)**

Environmentalists are urging EPA to set first-time new source performance standards (NSPS) for greenhouse gas (GHG) emissions from power plants to ensure use of carbon capture and sequestration (CCS), while industry groups that support federal incentives for the emerging technology argue that CCS is not yet mature enough to be mandated under the Clean Air Act.

The issue could come to a head early next year when states must meet an EPA requirement for determining what GHG controls should be part of best available control technology (BACT) requirements in Clean Air Act permits for facilities. Sources say a planned power plant in Illinois that will use CCS could be a test for how states address deployment of the technology in the BACT permit process, but it is unclear whether the plant will be required to apply for a GHG permit.

Environmentalists argue that states should immediately begin considering CCS in BACT reviews for GHGs permits, and that EPA should establish an NSPS for GHGs that would set minimum requirements for permitting decisions. BACT requirements are set on a case-by-case basis, but activists say an NSPS is still necessary because it would establish national standards that would serve as a floor for permit requirements.

While industry is seeking new federal CCS incentives, which they say could be achieved through either legislation or regulation, they argue the technology is not yet developed enough to be mandated under either BACT or NSPS. Industry argues both standards must consider the cost of technology and say the financial hurdles for CCS are still too high for EPA to mandate it under the air act.

Environmentalists are pushing for the new rules in recommendations to the Obama administration's interagency task force on CCS, which was established by a Feb. 3 memo from the president and is co-chaired by EPA and the Department of Energy. The task force must develop a plan by August to bring 10 demonstration projects online by 2016, and the task force accepted comment until July 2 on how to develop the plan.

In this context, the environmental group Clean Air Task Force (CATF) argues that in the absence of climate legislation EPA should finalize NSPS by 2012 for new and existing coal and natural gas plants based on emission levels that can be achieved by CCS, according to a July 1 report the group filed with the Obama administration's interagency CCS task force. *Relevant documents are available on InsideEPA.com.*

CATF also argues EPA should recommend incentives for CCS in upcoming guidance the agency plans to issue to help states conduct BACT reviews for GHG permits. In particular, the group says EPA should change the process for obtaining an "innovative control technology" waiver under the air act to give facilities seeking to use CCS the flexibility to phase in GHG control requirements.

EPA is seeking advice to inform its upcoming guidance to states on conducting BACT for GHGs. The agency's air chief asked the agency's clean air advisors to focus its BACT recommendations on energy efficiency and the innovation waiver process, which allows states, on a case-by-case basis, to exempt a facility from BACT for a number of years in order to promote a new control technology.

CATF's NSPS and BACT recommendations are part of an overall plan the group is urging the administration to pursue, including building about 30 "pioneer" CCS projects by 2018 to overcome technical uncertainties associated with CCS, building more than 50 gigawatts of CCS projects between 2020 and 2040 to drive innovation and lower costs, and financing these efforts with revenue from a carbon cap, portfolio standards or other approaches.

The issue of how to address CCS in permits is likely to come to a head early next year, when states must begin requiring GHG controls in facility permits. EPA's recent regulation of emissions from vehicles triggered GHG control requirements for other

sources and the agency's recent "tailoring" rule -- which described which facilities would need GHG permits and when -- said states would need to begin requiring GHG permits for the largest sources Jan. 2, 2011.

One environmentalist says states can and should immediately begin considering CCS as a control technology in BACT permits. If states consider CCS in the BACT process in areas where it can be used, there is no reason the technology cannot move into the political mainstream, but such a move will take political will on the part of regulators, the source says. EPA's upcoming BACT guidance could also set minimum requirements for how states consider CCS in the permitting process, the source adds.

However a second environmentalist says EPA's upcoming guidance is unlikely to specify technology options for BACT in different industrial categories because it could be seen as tilting the scales too much in favor of one technology and because the agency would not want to constrict the states in their permitting decisions. "They have to balance the states' request for help . . . with a recognition of the primary role of states as the permitting authority," the source says.

But the first environmentalist says that even if states consider CCS in the BACT process, an NSPS is still necessary because it would set a consistent national floor, which the case-by-case BACT analysis could then exceed. "The best tool is a national standard because the whole point of the clean air act and standards is to level the playing field in our economy," the source says.

But industry, while arguing that new incentives are needed to promote CCS, says the technology is not mature enough to mandate under the air act. "This is a hypothetical situation because CCS is not commercially demonstrated in the [United States] today," an industry source says. EPA is not in a position to develop either NSPS or BACT guidance that effectively require CCS because both determinations require EPA to consider cost as one factor, and it is not economical to build a CCS plant right now without new incentives, the source says.

Any climate legislation should include bonus allowances for CCS facilities to help offset the cost of the technology, the source says. EPA could also potentially write NSPS rules in a way that allows multi-sector emission trading and provides similar bonus allowances to promote CCS, the source says. However, the source notes that legislative proposals to regulate only the utility sector do not spread the cost of CCS across enough of the economy to make the approach feasible, the source says.

The North American Carbon Capture and Sequestration Association echos the concern that CCS is not yet mature enough to be mandated in BACT determinations, according to July 2 comments to the CCS task force. "We support application of existing [BACT] approaches to CCS determinations. This means, for example, that EPA permit decisions should not compel the premature deployment of technologies that are commercially immature with respect to the relevant source category."

The comments go on to say that the BACT process should weigh the "commercial and economic viability" of pipeline transportation and geologic storage in addition to capture capability.

**An integrated gasification combined cycle coal plant Tenaska Energy is planning in Taylorville, IL,** which plans to sequester at least 50 percent of its emissions, could be a test case for how states permit such projects, sources say.

The plant plans to sequester carbon in order to win incentives under state law, which guarantees purchases of electricity from the first plant that sequesters its carbon emissions. Tenaska currently has a permit application for criteria pollutants pending with the Illinois Environmental Protection Agency (IEPA). While the company has not submitted an application for a BACT permit for GHGs, it will be required to do so if the state does not approve its criteria pollutant permit before Jan. 2, 2011.

Laurel Kroack, the air bureau chief for IEPA, said on a recent American Bar Association teleconference that her agency is weighing the CCS issue due to the possibility that the Tenaska plant will have to obtain a GHG permit. One staff member at IEPA has suggested that BACT for a CCS-enabled plant could be more than what is required of a plant that is not capable of sequestering its emissions, Kroack said. However, IEPA has not yet received a permit application from Tenaska and does not yet know how it would approach the issue, she said. "Of course we, like everybody else out there, don't know what [BACT] should be."

A spokeswoman at Tenaska said, "We are looking at the issue and will include GHG BACT should our permit issuance timeline require it. It would be premature at this point to contemplate what an analysis would conclude as we have not yet performed one."

A CATF source expressed hope that the Tenaska project will seek a GHG permit application because the source says it could set a national precedent for how to conduct a BACT analysis for a CCS plant. Since the plant already plans to conduct CCS, the permit could bypass the question of whether CCS is possible and resolve other "thorny issues," involved in CCS permitting, the source says.

For example, the permit could consider what happens if the sequestration site is temporarily unavailable, what happens if a pipeline to transport the carbon dioxide is shut down, and how to structure a BACT requirement so financial planners do not balk at the stringency of the limits, the source says.

**ARSENIC**

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07/23/2010

**Advisers' Call For EPA Policy Stance On Dioxin Risks Could Set Precedent (*Inside EPA*)**

Some EPA science advisers are urging the agency to acknowledge that its preferred approach for assessing the low-dose risks of dioxin is based on a policy determination to be as protective as possible, not a scientific determination -- a model that could be applied to other assessments, such as EPA's arsenic document, to get past debates over which approach to use.

At a July 13-15 Science Advisory Board (SAB) panel meeting, Harvey Clewell, a panelist from the Hamner Institutes, suggested that EPA clearly outline competing linear and non-linear approaches for assessing dioxin risks and then explain that the agency favors a conservative linear approach as a policy matter in order to provide maximum protection.

"Take the science as far as you can, and then apply the policy," he said. "Go ahead and step right in there and get a good argument; carry it through in the graphs and the visualization so people can see the difference, and then say, 'This is our policy.'"

He added that EPA could apply the approach to other assessments, such as arsenic, where the same issue has also become a stumbling block.

One toxicology consultant backs Clewell's approach calling the suggestion "a really good solution" to the long-running question of whether to use linear or non-linear approaches. "You have to admit there is a strong case for these alternatives [to low-dose linear response models]. That's different from saying they're not even there," the source says, adding that the approach the panel has suggested "seems a model for how some of these long-standing issues could be solvable."

But the suggestions could pose hurdles for EPA Administrator Lisa Jackson, who has repeatedly stated that sound science should be the "backbone" of EPA programs and that SAB's role is "to safeguard the integrity and quality of the agency's science-based decisions."

The agency said in a statement that it will wait for the final report from the SAB expert panel before deciding on how to address the panel recommendations. "The final SAB report is not expected for many, many months," the statement said.

SAB is reviewing EPA's response to the National Academy of Sciences (NAS) review of its 2003 draft assessment of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) -- the most toxic form of the ubiquitous class of chemicals and the basis for estimating risks of mixtures of dioxins and related compounds at contaminated sites. Among NAS' recommendations in 2006 is that EPA should consider both linear and nonlinear models for estimating cancer potency at low, environmentally-relevant doses of exposure.

A linear model is EPA's default approach, used when the agency concludes there is insufficient information to determine how a chemical causes cancer, or in the event that its mode of action is determined to be mutagenic. The linear approach assumes that there is no safe level of exposure to the chemical or contaminant -- an assumption that makes the estimate of potency significantly more conservative.

But the approach has drawn significant concern from industry officials and others who charge it is overly conservative and its use is often not based on scientific data (*see related story*).

The debate over linear versus nonlinear approaches is a long-standing one in risk assessment, most recently raised in the agency's draft assessment of arsenic.

The toxicology consultant agrees with Clewell's suggestion, saying any proposed solution or compromise in the dioxin review could be applied to that and other assessments. "Admitting to a lack of definitiveness is the important thing," says the the consultant, who has closely followed EPA's draft arsenic assessment, also under SAB consideration. The source argues that the arsenic assessment "ignores all evidence for nonlinearity" and "pushes really hard on the notion of linearity."

**In its dioxin assessment, EPA responded to NAS' recommendations by including** two nonlinear calculations, but the agency's use of a linear-based number to calculate its proposed cancer potency value caused concern among some members of the review panel.

One of the panelists, Karl Rozman of the University of Kansas' medical school, argued that EPA's latest document was "moderately to non-responsive to NAS" -- largely because of the linear modeling issue. "The studies provided and not provided are not entirely convincing that TCDD causes cancer at environmental exposures. EPA runs the risk of modeling something that is not there," Rozman added.

Rozman and Tony Cox, who agreed with him, were quickly challenged by Dale Hattis, a Clark University professor who assisted EPA in writing the assessment. Hattis is a long-time supporter of linear dose-response modeling.

Another panelist, Paige Lawrence, a University of Rochester professor, seemed incredulous. "Where are we going with this?" she asked. "Are we starting to debate whether this is a carcinogen?"

That prompted the suggestion from Clewell for EPA to clearly articulate its policy stance. Clewell, who said he believes dioxin should receive a nonlinear treatment, also said he agreed "with EPA [that] we don't know enough [about MOA] to depart from the [linear] default. But the policy is clear."

Clewell was seconded by other panelists, including Arnold Schechter, a University of Texas professor, and Helen Håkansson, a professor at the Swedish Karolinska Institute.

Both, however, described EPA's current presentation of the nonlinear modeling as lacking.

"I'm not sure this section is sufficient to respond to the NAS," Håkansson said. "While the linear [section] is very comprehensive and convincing, this is not the case for the nonlinear part. This could be improved."

Schechter agreed. "I also felt while [it is] EPA's prerogative to [present] policy and science, linearity versus nonlinearity is still a debate," he said. "I think it is perhaps better to say there are two points of view and [include] more on the nonlinear [discussion]."

Panelists have yet to find such compromises for other topics of debate, leaving the panel's chairman, Tim Buckley, to note that "we have the luxury of arriving at consensus when we meet in the fall." The panel is to hold a second meeting this fall to try to reach consensus on the outstanding issues before drafting its report to EPA. SAB reports are written by consensus, and minority opinions are rare, according to an SAB source. Panels generally make every effort to avoid them.

Buckley, an Ohio State University professor, closed the meeting by saying, "The issues here are really difficult ones . . . I've been impressed by our ability to agree to disagree. I think it bodes well for us." -- *Maria Hegstad*

**BP SPILL**

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July 22, 2010

**Government Allows BP to Dump Oil-Spill Waste on Black Communities (*Op-Ed News*)**

By Robert Bullard

For three months the nation watched and held its breadth as the busted British Petroleum (BP) well spewed as much as 60,000 barrels (2.5 million gallons) of oil into the Gulf of Mexico every day. Government officials estimate that the ruptured well leaked between 94 million and 184 million gallons of oil into the Gulf, surpassing the record-setting, 140-million gallon Ixtoc I spill off Mexico's coast from 1979 to 1980.

Clearly, the massive BP oil spill disaster has created an environmental nightmare on the Gulf Coast from Florida to Texas. According to National Oceanic and Atmospheric Administration (NOAA), the government closed more than 81,181 square miles in the Gulf to fishing, which is approximately 33.5 percent of Gulf of Mexico federal waters. The spill fouled 120 miles of U.S. coastline, imperiled multibillion fishing and tourism

industries and killed birds, sea turtles and dolphins. The full health, environmental, and economic impact of this catastrophe may not become clear for decades.

While the media spotlight has focused attention on efforts at stopping the massive oil leak and cleaning up the spill, the same level of attention has not been given to where the oil-spill clean-up waste is eventually dumped--even after an Associated Press spot check showed mishandling of waste and shoddy disposal work. Before one drop of oil was cleaned up, black people were asking "where will the oil- spill waste go after it has been collected from the beaches and skimmed off the water?" The answer: solid waste landfills. Concern mounted about which communities would be selected as the final resting place for BP's garbage. Because of the size of the massive oil spill, even white communities in the Gulf Coast began asking this same question, "where is the waste going?"

Given the sad history of waste disposal in the southern United States, it should be no surprise to anyone that the BP waste disposal plan looks a lot like "Dumping in Dixie," and has become a core environmental justice concern , especially among low-income and people of color communities in the Gulf Coast--communities whose residents have historically borne more than their fair share of solid waste landfills and hazardous waste facilities before and after natural and man-made disasters.

For decades, African American and Latino communities in the South became the dumping grounds for all kind of wastes--making them "sacrifice zones." Nowhere is this scenario more apparent than in Louisiana's "Cancer Alley," the 85-mile stretch along the Mississippi from Baton Rough to New Orleans. Gulf Coast residents, who have for decades lived on the fenceline with landfills and waste sites, are asking why their communities are being asked again to shoulder the waste disposal burden for the giant BP oil spill. They are demanding answers from BP and the EPA in Washington, DC and the EPA Region 4 office in Atlanta and EPA Region 6 office in Dallas--two EPA regions that have a legacy of unequal protection, racial discrimination, and bad decisions that have exacerbated environmental and health disparities.

A large segment of the African American community was skeptical of BP, the oil and gas industry, and the government long before the disastrous Gulf oil disaster, since black communities too often have been on the receiving end of polluting industries without the benefit of jobs and have been used as a repository for other people's rubbish. It is more than ironic that black and other communities of color get BP's garbage, while mostly white companies rake in the millions in BP contracts. It does not take a rocket scientist to figure out this inequitable flow of benefits.

An NAACP investigation this month concluded that "Community members and business owners [of color] have been locked out of access to contracts for cleanup and other opportunities related to addressing this disaster." Using the latest Federal Procurement Data System (FPDS) information (July 9, 2010), environmental writer Brentin Mock reports that "minorities see little green in BP oil spill jobs." He finds only $2.2 million of $53 million in federal contracts, a paltry 4.8 percent, has actually gone to small,

disadvantaged businesses. Women-owned businesses received 4.2 percent of contracts. And of the 212 vendors with contracts, just two are African American, 18 are minority-owned, none are historically black colleges or universities (HBCUs), despite the three in New Orleans alone: Xavier University, Dillard University and Southern University at New Orleans.

In mid-June, environmental justice and equity concerns were aired on an EPA conference call meeting "attended" by more than 370 callers. EPA Administrator Lisa P. Jackson, who was on the call for 30 minutes, emphasized that environmental justice was a priority and she indicated that her agency has added staffers to the Joint Information Center to work specifically on environmental justice concerns in day-to-day operations.

In an August 2009 letter to environmental justice stakeholders, Mathy Stanislaus, EPA assistant administrator for the Office of Solid Waste and Emergency Response (OSWER), posited some key questions and challenges for his office. One question seems especially relevant for the BP spill. Stanislaus, asks, "How can we develop better strategies for handling waste or cleaning up contaminated sites?" The answer is simple: make the strategies fair, just, and equitable without regard to race color or national origin, or income status.

African American communities in the Gulf Coast still see the "PIBBY" (Place in Blacks Back Yard) principle operating that allows a disproportionate share of black communities to be targeted for BP oil-spill waste disposal. Gulf Coast residents who live on the fenceline with landfills are determined not to see past mistakes repeated where waste from a major industrial accident or disaster get dumped on poor and politically powerless African American communities.

We saw this pattern emerge more than twenty-five years ago with toxic the dumping of PCB-waste cleaned up from roadways and later dumped in a landfill in mostly black and poor Warren County, North Carolina in 1982. We also saw the pattern continue in 2009 when 3.9 million tons of toxic coal ash from the massive Tennessee Valley Authority (TVA) power plant spill in East Tennessee were cleaned up and shipped more than 300 miles south by train and disposed in a landfill in rural and mostly black Perry County, Alabama.

Today, we are seeing this disturbing pattern re-emerge in the disposal of the BP oil-spill waste. Because of the haphazard handling and disposal of the wastes from the busted well, the U.S Coast Guard and the U.S. EPA leaned on BP and increased their oversight of the company's waste management plan. BP's waste plan, "Recovered Oil/Waste Management Plan Houma Incident Command," was approved on June 13, 2010. The company hired private contractors, including Waste Management, Inc., the nation's largest trash hauler, to cart away and dispose of thousands of tons of polluted sand, crude-coated boom and refuse that washed ashore. At the beginning of July, waste haulers sent more than 3,913 tons of oil garbage to landfills in Alabama, Florida, Louisiana, and Mississippi.

Although the U.S. EPA has made environmental justice one of its seven priorities, no environmental justice or equity analysis has been conducted as to where the BP oil-spill clean-up waste ends up. The approved Gulf Coast solid waste landfills (Subtitle D landfills) and the percent minority residents living within a one-mile radius of the facilities are listed below:

ALABAMA

Chastang Landfill (Waste Management Inc.), Mount Vernon, AL (56.2%)

Magnolia Landfill (Waste Management Inc.), Summerdale, AL (11.5%)

Timberland Landfill (Allied Waste), Brewton, AL (15.4%)

FLORIDA

Springhill Regional Landfill (Waste Management, Inc.), Campbellton, FL (76.0%)

LOUISIANA

Colonial Landfill (Allied Waste), Ascension Parish, LA (34.7%)

Jefferson Parish Sanitary Landfill (Waste Management, Inc.), Avondale (51.7%)

Jefferson Davis Parish Landfill (Allied Waste), Welsh, LA (19.2%)

River Birch Landfill (Waste Management, Inc.), Avondale, LA (53.2%)

Tide Water Landfill (Environmental Operators LLC), Venice, LA (93.6%)

MISSISSIPPI

Central Landfill (Waste Management, Inc.), Pearl River, MS (5.0%)

Pecan Grove Landfill (Waste Management, Inc.), Harrison, MS (12.5%)

Even as the Obama administration oversees BP's waste management plan, the oil giant been allowed to dump oil-spill waste on a disproportionately large share of African Americans and other people of color communities in the Gulf Coast states. This targeting of people of color for BP oil-spill waste is consistent with past practices in the region.

Generally, it has been more of the same when it comes to disposal of oil-spill waste. African Americans and other people of color comprise a majority of the residents living within a one-mile radius in five of the nine landfills (56%) where BP oil-spill waste has

been dumped. Two landfills in mostly white communities--Jefferson Davis Landfill in Walsh, LA and the Central Landfill in Poplarville, MS--although approved for disposal, have not yet received any BP oil-spill waste.

The two government approved landfills in Mississippi are located in mostly white communities. The disposal of BP waste in the Pecan Grove Landfill in Harrison and the "contingency plan" that would allow oil waste to be dumped at the Central Landfill in Pearl River County, MS generated an inordinate amount of media and government attention, unlike that generated in the mostly black communities where BP waste is dumped. Oil-spill waste was dumped in the Harrison County Pecan Grove Landfill over the objections of county supervisors. However, as of July 13, no BP oil waste had made its way to the Central Landfill in Pearl River County. Waste Management, Inc. Market Area Engineer Dan Bell informed Pearl County supervisors that there was no "economic value" in dumping any of the oil-spill waste at its Central Landfill. Ball added, "It is just more feasible right now and closer to the site at this time to use Pecan Grove. Right now we have no plans to use Central Landfill. But that could change tomorrow."

BP oil-spill waste in Florida is sent to the lone landfill that's located in a community where three-fourths of the population is people of color. One of the three landfills (33%) in Alabama approved for BP oil-spill waste is located in a mostly black community.

Although African Americans make up about 32 percent of Louisiana's population, three of the four approved landfills (75%) in the statethat have received BP oil-spill waste are located in mostly black communities. African American communities in Louisiana's Gulf Coast were hardest hit by Hurricane Katrina and have experienced the toughest challenge to rebuild and recover after five years. Now they are targets for BP garbage. Dumping more disaster waste on them is not a pathway to recovery and long-term sustainability.

Clearly, Environmental Justice Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," signed by President William J. Clinton in 1994, requires the EPA and the U.S. Coast Guard to do a better job monitoring where BP oil-spill waste ends up to ensure that minority and low-income populations do not bear an adverse and disproportionate share of the burdens and negative impacts associated with the disastrous BP oil spill. Allowing the BP, Gulf Coast states, and the private disposal industry to select where the oil-spill waste is dumped only adds to the legacy of environmental racism and unequal protection.

DE gets authority from EPA for offshore wind permitting (WGMD News)

Posted By Mari Lou-WGMD News On July 22, 2010 @ 7:53 pm In Local News | No Comments

Delaware has been given the authority by the EPA to enforce and implement offshore wind permitting related to air quality – after adopting the federal requirements back in

June. This is the first time that a state program has been delegated authority of the rule. The first action that will be subject to these regulations in Delaware – a proposed meteorological tower associated with the Blue Water Wind project.

**Delaware becomes first state to receive delegation from EPA for offshore wind permitting (*Examiner.com*)**

DOVER – Delaware has become the first state delegated authority for enforcing and implementing offshore wind permitting related to air quality as it prepares to site the country's first offshore wind farm – continuing as a national leader in renewable and alternative energy.

The Department of Natural Resources and Environmental Control was granted delegating authority this week by the Environmental Protection Agency through a statute of the federal Clean Air Act pertaining to the outer continental shelf.

The EPA delegated to DNREC the primary authority to implement and enforce the federal Outer Continental Shelf (OCS) regulations. Delaware adopted the federal requirements into 7 DE Admin Code 1150, Outer Continental Shelf Air Regulations, in June 2010. These regulations control air pollution from OCS sources by establishing that Delaware's land-based air pollution control requirements apply to sources located on or above the outer continental shelf, which is any area within 25 miles of Delaware's coastline.

Delaware's delegation of the OCS regulation marks the first time that a state program has been delegated authority of the rule. Previously, only a handful of local Air Pollution Control Districts within California had been delegated authority by EPA.

The first action in Delaware that will be subject to these regulations is a proposed meteorological tower associated with the Blue Water Wind project. This meteorological tower is proposed to be constructed approximately 18 miles off the coast of Delaware's shore. The regulation will require that any emissions that occur during its construction and operation, or during any future projects' construction and operation, will be controlled to the same level as if those emissions occurred on land.

"Offshore wind represents an important environmental and economic opportunity for the State of Delaware," said DNREC Secretary Collin P. O'Mara, who also serves as chairman of a Bureau of Ocean Energy Management (BOEM) Delaware task force on offshore wind. "By receiving delegation of federal permitting authority from EPA, we are one step closer to ensuring that the promise of offshore wind is realized in a timely fashion."

Delaware last week hosted the BOEM task force to help coordinate and accelerate the permitting process. This week, Governors Jack Markell of Delaware and Martin

O'Malley of Maryland wrote a letter to President Obama asking the federal government to partner with the two states in buying offshore wind energy. Maryland and Delaware continue to work together to expand the Blue Water Wind Mid-Atlantic Wind Farm off the coast of Rehoboth to maximize economic and manufacturing opportunities.

DNREC's having authority for implementing and enforcing air quality permitting is essential for moving forward with offshore wind. "This action allows Delaware to more effectively respond to the permitting needs of any offshore project and associated timing for permit issuance," said Ali Mirzakhalili, director of DNREC's Division of Air Quality.

Oil spill update: EPA whistleblower speaks out about Corexit, says dolphins, people hemorrhaging (video)

EPA whistleblower Hugh Kaufman spoke on Democracy Now about the BP coverup regarding Corexit and the effects it is having on the Gulf of Mexico and the life forms that it comes in contact with. He also alleges that the EPA is covering up the toxic effects that will result from using nearly 2 million gallons of the chemical dispersant since the start of the catastrophic oil spill.

Hugh Kaufman is a former US Air Force Captain and joined the EPA in its beginning stages in 1971. He also helped write the laws that are on the federal books regarding the disposal, storage, handling and treatment of solid and hazardous waste. Though the EPA has approved the use of Corexit as an oil dispersant, Hugh Kaufman alleges that it is extremely toxic, dangerous and shows proof that the chemical was linked to many health problems when used in the Exxon Valdez oil spill.

Hugh Kaufman also believes that BP's conspiracy includes using the chemical dispersant to dissolve as much oil as possible to prevent the public from ever truly knowing how vast the spill actually is. Kaufman also alleges that people who are coming in contact with Corexit now, are suffering internal bleeding and hemorrhaging. You may see the full report in the video player, but here is a clip.

"... Consequently, we have people, wildlife—we have dolphins that are hemorrhaging. People who work near it are hemorrhaging internally. And that's what dispersants are supposed to do. EPA now is taking the position that they really don't know how dangerous it is, even though if you read the label, it tells you how dangerous it is.

And, for example, in the Exxon Valdez case, people who worked with dispersants, most of them are dead now. The average death age is around fifty. It's very dangerous, and it's an economic—it's an economic protector of BP, not an environmental protector of the public."

Hoosier Ag Today – News

**Grassley Tries to Address EPA Overreach on Agriculture (*Hoosier Ag Today*)**

07/22/2010
NAFB News Service
Iowa Senator Chuck Grassley says he wants the EPA to stop treating agriculture like second-class citizens. Grassley is joining Nebraska Senator Mike Johanns to cosponsor legislation that would expedite a decision by the EPA to exempt milk containers from regulations initially intended for oil spills. He says it's just another example of EPA overreach – especially when it comes to ag. Grassley notes dairy farmers are already struggling and adding burdensome, unnecessary regulations would put many of them in a precarious position – or even put them out of business. What's more- he says forcing farmers to make unnecessary modifications to their operations could easily increase prices for consumers at the grocery store.

According to Grassley – it defies common sense that the EPA would even consider treating milk like oil. But despite indications in January 2009 that the EPA would exempt milk storage from Spill Prevention, Control and Countermeasure regulations – they have yet to make a final rule. The legislation Grassley is co-sponsoring would require the EPA to finalize the proposed rule to exempt milk containers within 30 days and would delay EPA fines or other compliance penalties against milk containers until EPA makes a decision on the proposed exemption.

Grassley is also leading an effort to keep the EPA from placing further economic pressure on rural America if the agency would choose to impose more stringent regulations on dust. The Iowa Senator is concerned a draft policy assessment on particulate matter – in which the EPA staff concluded the administrator could either retain the current standards on particulate matter or make them more stringent – puts the EPA one step closer to imposing more unnecessary regulations on farmers.

**EPA's plan could cost dairy farmers (*WIVB*)**

Updated: Thursday, 22 Jul 2010, 5:53 PM EDT
Published : Thursday, 22 Jul 2010, 5:53 PM EDT
* Brian Tabor
* Posted by: Eli George

BUFFALO, N.Y. (WIVB) - U.S. Senator Charles Schumer wants to be sure farmers don't have to cry over spilled milk.

The EPA requires companies to have plans to deal with oil spills. That could cost farmers thousands of dollars. Farmers are covered under the rule because milk contains oil, which is an animal fat. But Senator Schumer says farms shouldn't be subjected to the same rules as Exxon-Mobil and BP.

Sen. Schumer said, “EPA is now considering removing this link and saying that milk is milk and oil is oil and there are no extra burdens on dairy farmers. We're urging them to do that and do it very quickly. It's an absurd proposal. These are the things that make people scratch their heads in wonderment and say, "What the heck is going on in Washington?""”

Schumer says if the EPA doesn't change the rule, he will introduce legislation to do it.

**BUDGET**

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07/23/2010

**On Eve Of Markup, Unions Seek To Increase EPA's FY11 Staff Budget (*Inside EPA)***

As House lawmakers prepare to mark up EPA's budget for fiscal year 2011, EPA unions are urging Congress to devote a greater share of the agency's budget to personnel than they have in the past, arguing that the spending increases in FY10 have still not offset the workload increases and personnel cuts imposed over the past few years.
The American Federation of Government Employees (AFGE) sent a July 20 letter to members of Congress outlining its concerns, including the lack of correlation between the budget and the number of full-time equivalents (FTEs) hired by the agency. *The letter is available on InsideEPA.com.*

The group points out that despite a 30 percent increase in the FY10 budget, FTE levels per billion dollars in the agency's budget is projected at 1,757 for FY11, down from 2,382 in FY00. "FTE levels in the agency have declined since FY1999, and have not kept pace with the growth in EPA's responsibilities as Congress has enacted an increasing number of environmental laws, as well as major amendments to those statutes," the letter says. "This needs to change."

The group's call for increased staffing comes as Rep. James Moran (D-VA), chairman of the House panel that oversees EPA's budget, is offering strong support for the agency's work and is vowing to increase the agency's budget when lawmakers take up spending legislation.

But at a town hall meeting with EPA employees June 20 Moran stopped short of specifically endorsing the union's call for increasing FTE levels. The agency had been "dismissed and devalued" under the Bush administration, Moran said, and needs money "to turn things around," in addition to the $3 billion increase the agency has seen in the last two years under President Obama. "We want to see that increase continue.

And as long as EPA stands up and speaks out on behalf of the American public, it will increase." he said.

Moran -- whose subcommittee is scheduled to mark up EPA's FY11 budget bill July 22 -- hinted that he was backing a call from Administrator Lisa Jackson "to give EPA the ability to outreach more to communities, not just to political types who have their own agenda, but to inform the American people" about environmental issues and EPA's work.

For example, Moran said many in Congress do not understand EPA's so-called tailoring rule, which eased the threshold for facilities to apply for GHG permits. "They don't realize that it is a very substantial compromise, a common sense compromise to carry out its mission by tightening on the worst sources of pollution and doing it in a way that doesn't destroy jobs but does create a much healthier environment for communities."

Similarly, Moran said the public doesn't understand the risks chemicals pose to young people, citing the potential that chemicals contribute to autism and childhood cancer. He said EPA needs to determine what is causing these health problems, whether it is prescription drugs that are not being removed at water treatment plants or chemicals given to animals in industrial farms. "We don't even know why and in a lot of cases its because EPA has been literally suppressed for at least eight years. So you have an enormous task ahead of you, an enormous responsibility. And its not hyperbolic to suggest that the health of the country is on your shoulders," he said.

Moran said this kind of information "needs to get out and you have that information, you need to be empowered to get it out and we have receptive leadership now that hopefully will give you the means to do so."

Speaking at a July 20 AFGE event on Capitol Hill, Rep. Betsy Markey (D-CO) was more explicit about backing the union's concerns, saying that agency responsibilities were increasing, and it was important for the union and agency management to look at workforce issues. "Something has to give," Markey said.

**One EPA source says there should be a correlation between the agency's budget** and its FTE levels to ensure that there are enough personnel to complete the additional work expected with the larger budget. In addition to the congressional mandates, events like the BP oil spill in the Gulf of Mexico are also a considerable draw on personnel resources, the source says.

The AFGE letter also cites implementation of the stimulus law as a major new EPA mandate requiring additional resources.

The union is also reiterating calls for the agency to conduct comprehensive studies to determine staffing needs, though EPA has so far stopped short of agreeing to the demand despite support for the move from the Government Accountability Office (GAO). EPA has recently circulated a survey to senior managers asking them to

describe the "challenges" they face, though the move stops short of the analysis the union is seeking.

The union letter to Congress says the workload and workforce analysis would provide the necessary information to "properly determine FTE levels for the agency and link them to the budget."

This analysis is important before implementing a new program in an effort to avoid wasteful spending, poor planning and "divestments" from other congressionally mandated programs, the union says. "If the agency is to persist in its practice of 'investing' and 'divesting' in programs, then at a minimum, the agency needs to be able to document the impact of these investments and divestments through workload and workforce analysis," the letter says. The analysis should be updated regularly and made public, the group continues.

AFGE would like to see a workload and workforce analysis conducted over two years, beginning with a pilot review of EPA's Great Lakes program, which was expanded as part of the agency's FY10 budget with a $475 million appropriation. The group calls for Congress to ask GAO to investigate the program, charging that it has violated federal financial control requirements.

**CLIMATE CHANGE / GLOBAL WARMING**
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**NY joins 13-state 'global warming' coalition (*Empire State News*)**

NEW YORK - Attorney General Andrew Cuomo announced a 13-state coalition has filed a motion in Washington, D.C. Circuit Court of Appeals defending a new environmental regulation limiting greenhouse gases.

Starting in January 2011, pollution control requirements under the federal Clean Air Act will apply for the first time to new or modified facilities that emit global warming pollution. A new rule from the U.S. Environmental Protection Agency (EPA) focuses these requirements on the largest facilities, such as power plants, cement kilns, and oil refineries. These large facilities account for 70 percent of the greenhouse gases from stationary sources.

In response, interest groups representing some of these large polluters have sued the EPA to overturn the rule. The 13-state coalition has filed a motion to intervene to defend the EPA and oppose the lawsuits brought by the industry groups.

“New York is leading a coalition of states from around the country to defend common-sense regulations that will protect our country’s health and well-being from global warming pollution,” said Attorney General Cuomo.

The states joining New York in the motion are the neighboring states of Massachusetts, and Pennsylvania, along with California, Illinois, Iowa, Maryland, Maine, New Hampshire, New Mexico, North Carolina, Oregon, and Rhode Island.

**Democrats Call Off Effort For Climate Bill in Senate (*New York Times*)**

July 23, 2010 Friday
Late Edition - Final
SECTION: Section A; Column 0; National Desk; Pg. 15
By CARL HULSE and DAVID M. HERSZENHORN; John M. Broder contributed reporting.
WASHINGTON -- The effort to advance a major climate change bill through the Senate this summer collapsed Thursday even as President Obama signed into law another top Democratic priority -- a bill to restore unemployment benefits for millions of Americans who have been out of work for six months or more.

Bowing to political reality, Senator Harry Reid, the Nevada Democrat and majority leader, said the Senate would not take up legislation intended to reduce carbon emissions blamed as a cause of climate change, but would instead pursue a more limited measure focused on responding to the oil spill in the Gulf of Mexico and tightening energy efficiency standards.

"We know where we are," Mr. Reid told reporters after reviewing the state of energy legislation with Senate Democrats and administration officials. "We know that we don't have the votes."

The decision was a major disappointment to conservation groups and lawmakers who had invested months in trying to negotiate legislation. The House last year passed its own climate change bill, a proposal that has created a backlash for some politically vulnerable Democrats. The outcome was also viewed as a setback by some utility executives who had hoped that Congress would set predictable rules governing carbon pollution.

Carol M. Browner, director of the White House Office of Energy and Climate Change Policy, who appeared with Mr. Reid and Senator John Kerry, the Massachusetts Democrat who is a chief author of the climate bill, said the Obama administration was not happy but would support Mr. Reid's decision.

"Obviously, everyone is disappointed that we do not yet have an agreement on comprehensive legislation," she said.

Congressional and White House officials said the decision was a pragmatic move that could produce some legislation rather than bogging down the Senate over a bill that had no chance given strong opposition from most Republicans and some Democrats. They noted that the White House had acted on its own to raise fuel efficiency standards and had pushed the development of alternative fuels.

Democrats said the slimmer package would ensure that BP would pay for the cleanup of the gulf oil spill, and would promote further production of natural gas as well as the manufacturing of natural gas vehicles, especially big trucks. They said it would also tighten household energy efficiency requirements and increase financing of the Land and Water Conservation Fund.

But even the Senate's ability to pass a bill with significant bipartisan elements before its scheduled August recess was in doubt given the intense focus on the November elections.

Separately on Thursday night the Senate rejected a House version of an emergency spending bill that also contained billions of dollars for domestic programs, including $10 billion to help states and local school districts avert teacher layoffs. Instead the Senate sent the House a version focused mainly on financing operations in Iraq and Afghanistan.

While Senate Democrats revised their energy plans, the House voted 272 to 152 to send Mr. Obama a $34 billion six-month extension of unemployment pay for Americans who had exhausted their standard 26 weeks of aid. Signing the measure hours later, Mr. Obama said it would "restore desperately needed assistance to two and a half million Americans who lost their jobs in the recession."

The bill had been the subject of a partisan battle, with Democrats saying that the economic crisis was an emergency that justified deficit spending, while Republicans argued that the cost should not be added to the deficit.

"We want to help those who are struggling with the current economic slowdown," said Representative Charles Boustany Jr., a Louisiana Republican. "But we also agree with the American people that new spending must be paid for."

In the final vote, 31 Republicans joined 241 Democrats in supporting the measure. Voting against it were 142 Republicans and 10 Democrats.

Democrats called the Republican opposition shameful given the financial struggles of many families. The bill had been stalled since late May, and advanced in the Senate this week only with the arrival of a new Democratic senator to succeed the late Robert C. Byrd of West Virginia.

"It shouldn't have been so hard," said the House speaker, Nancy Pelosi of California.

## ENERGY

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### Will Cap-and-trade Bill Make Meeting Energy Efficiency Standards a Requirement for House Sale? (*The New American*)

Written by Kurt Williamsen
Thursday, 22 July 2010 12:00
A chain letter that I've received four times already about provisions of the cap-and-trade bill that passed the House and is awaiting Senate approval paints a pretty dire picture: "Beginning 1 year after enactment of the Cap and Trade Act, you won't be able to sell your home unless you retrofit it to comply with the energy and water efficiency standards of this Act. H.R. 2454, the 'Cap & Trade' bill."

Worse, the letter claimed,

This bill prevents you from selling your home without the permission of the EPA administrator.

To get this permission, you will have to have the energy efficiency of your home measured. Then the government will tell you what your new energy efficiency requirement is and you will be forced to make modifications to your home under the retrofit provisions of this Act to comply with the new energy and water efficiency requirements.

Then you will have to get your home measured again and get a license (called a "label" in the Act) that must be posted on your property to show what your efficiency rating is; sort of like the Energy Star efficiency rating label on your refrigerator or air conditioner. If you don't get a high enough rating, you can't sell.

The chain letter comes complete with several hyperlinks at the end to verify its claims, which I clicked on — only to find out that most of the claims were untrue. Under the cap-and-trade bill passed by the House, a federal "Administrator" will create a label that lists the energy efficiency that residential and commercial buildings are expected to achieve based on their design and that also lists what the actual energy efficiency is of an individual building, based on a federally designed test, but the tests are not mandatory for all building owners, though the Administrator is vested with $50 million per year for 10 years to create the standards and tests and also convince states to use it.

To compel states to get onboard, the Administrator can also take money from government sales of carbon allowances and give it to states to create label systems, which pretty much ensures that the energy labels will be mandated by most states, but still, it is unlikely every homeowner will have to get one, unless a homeowner has a house or a commercial building for sale or owns rental properties. The bill actually

encourages the use of the labels when “there are major renovations or additions made to a building in accordance with a building permit,” when building sales are “recorded for tax and title purposes,” when “a new lien [is] recorded on the property,” or when there’s a change in “operation of the building for purposes of utility billing.”

The bill does speak about retrofitting properties, but it covers only how much the government will pay toward having homes retrofitted, who can get the money, and the rent controls that building owners must abide by if they accept government cash. It does not mandate that all homes must be retrofitted.

That’s the good news and most of the bad news.

It’s good that that is all the bill purports to do. It’s bad because the bill will require a huge amount of spending by some building owners to have efficiency testing done, and it is really all for no reason. At the present time, when someone is buying a property or looking to rent a property, he can judge the efficiency of a building by comparing the utility bills of one property against the utility bills of another. This provides the incentive for builders to create energy-efficient buildings — which seems to be the apparent intent of this portion of the bill.

As this portion of the cap-and-trade bill stands, it merely represents another attempt by the government to idiot-proof America — everywhere outside the walls of government anyway.

The remainder of the bad news is that administrators of federal programs regularly exceed their legislative bounds — it’s noteworthy that almost nothing in the cap-and-trade bill, as a whole, is constitutional — and the language as to the exact duties and limits on the person who will administer this plan are so loose as to allow that person to eventually attempt to require almost all of the actions listed in the chain letter. And let's not forget that most of the remainder of the cap-and-trade bill is not nearly so innocuous.

**Boeing’s Chicago HQ earns ENERGY STAR (*Business Review*)**

Boeing, the American aerospace company, earns the EPA’s ENERGY STAR for efficiency in its Chicago headquarters
Laura Clapper | Thu Jul 22, 2010

Boeing’s Chicago headquarters has earned an ENERGY STAR® from the Environmental Protection Agency for energy efficiency. Managed by CB Richard Ellis, the building is more energy efficient than 75 percent of similar buildings around the US.

"Boeing is pleased to accept EPA's ENERGY STAR in recognition of our energy efficiency efforts," said James Bell, executive vice president, corporate president and chief financial officer in a statement. "Boeing is dedicated to being an industry leader

committed to environmental stewardship and recognizes its responsibility to create a better, sustainable future for all stakeholders and the communities in which we work and live."

Boeing's headquarters touts automated lighting systems which reduce its energy consumption and costs. The Chicago headquarters follows facilities in Houston and Long Beach that have earned ENERGY STARs. Boeing has been a partner of ENERGY STAR for over 13 years. As a result of this partnership the company has reduced its carbon emissions by 31 percent and its consumption of energy by 32 percent.

"Improving the energy efficiency of our nation's buildings is critical to protecting our environment," said Jean Lupinacci, Chief of the ENERGY STAR Commercial & Industrial Branch. in a statement "From the boiler room to the board room, organizations are leading the way by making their buildings more efficient and earning EPA's ENERGY STAR."

ENERGY STAR buildings use 35 percent less energy and release 35 percent less carbon dioxide than standard buildings. The EPA created ENERGY STAR almost twenty years ago as a voluntary partnership to reduce carbon emissions and encourage energy efficiency. Since its inception, the ENERGY STAR label is prominent on everything from buildings to appliances.

**FUEL**

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**EPA hears from gas drillers, angry Pa. residents (*Associated Press*)**

**Story also appeared: *Washington Post, Water World, ABC News,***

By MARC LEVY
The Associated Press
Friday, July 23, 2010; 3:45 AM

CANONSBURG, Pa. -- Federal researchers studying a natural gas drilling technique that involves blasting chemical-laced water into the ground got an earful from residents who say it's poisoning them and killing their animals and from industry experts who say it's being unfairly demonized.

People who make a living from the industry and others who believe hydraulic fracturing, or fracking, has polluted their well water packed into a hotel ballroom in southwestern Pennsylvania on Thursday night to make an impression on the U.S. Environmental Protection Agency panel.

The speakers, each taking two minutes at a microphone, alternately told the EPA to expand its study and push tough new regulations or to limit the study and leave regulations to state agencies already doing the job. The hearing was part of a new look by the EPA at fracking as gas drillers swarm to the lucrative Marcellus Shale region primarily beneath Pennsylvania, New York, West Virginia and Ohio and blast into other shale reserves around the country.

A petroleum geologist, Greg Wrightstone, said anti-capitalist demonization and misinformation should not drown out a solid foundation of data from thousands of wells drilled in Pennsylvania over decades that proves water contamination from fracking is highly unlikely.

"I'll ask the commissioners to use reason not hyperbole, facts not fiction, data and not unfounded hysteria in making decisions affecting shale development in the United States," Wrightstone said. "Fears of environmental disaster are overblown and have little relation to actual technology."

The vast majority of speakers raised concerns about the process.

In fracking, drilling crews pump millions of gallons of sand- and chemical-laced water deep into the earth to break up dense rock to free the natural gas. Some of that water returns as a briny, chemical- and metal-laden brew and is usually stored in open pits until it's trucked to treatment plants or underground injection wells.

Residents of Hickory, about 15 miles southwest of Pittsburgh, called for intensive study of fracking and said their well water turned foul after drilling began nearby in the last few years.

Darrell Smitsky said five of his goats died mysteriously and, even though state regulators told him the water was safe, his own test showed sky-high levels of manganese and iron. When he blamed the drilling company, he said, it responded, "Can you prove it?"

Stephanie Hallowitch said her family's well water is no longer safe to even allow her children to run through the sprinklers.

"I urge the EPA to help my family and other families living near drilling to get answers to their questions," she said. The research, she continued, must be done "to protect other families before it is too late and they are in our situation."

The fracking process is currently exempt from federal regulation, and instead states apply their own rules to it.

The oil and gas industry steadfastly defends it as having been proven safe over many years and says it is a crucial tool if the country is going to harvest its gas reserves at a time when natural gas is emerging as a greener energy alternative to coal or oil.

Advancements in horizontal drilling and hydraulic fracturing technology over the past decade have significantly increased the yield and economic viability of shale gas wells. The combination also is demanding larger amounts of water used in each well. Shale drilling is viewed as so lucrative that international exploration companies are investing billions of dollars in the pursuit.

James Erb, of the American Petroleum Institute, which represents major oil and gas producers, told the EPA that the sound application of fracking causes no significant risk to human health, drinking water sources or the environment.

Lou D'Amico, president of the Pennsylvania Independent Oil & Gas Association, made up of hundreds of businesses, said that no example exists of fracking having polluted ground water and that the EPA study should include a review of complaints lodged to state-level agencies and how they were investigated.

"The controversy is one based on media-generated public hysteria and perception, not science, fact or evidence," he said.

Canonsburg is at the heart of hundreds of Marcellus Shale wells that began to be drilled in earnest in 2008. Some geologists say the vast Marcellus Shale region could become the nation's largest natural gas field.

Already, about 1,500 Marcellus Shale wells have been drilled in Pennsylvania in barely two years, and thousands more are expected, transforming areas of the state. Numerous landowners are getting paid to lease their land for drilling or are receiving royalty checks from producing wells. Meanwhile, many industries such as steel pipe makers and haulers are seeing huge new demand from drilling companies.

But many landowners are coming forward to tell stories about spoiled well water.

The EPA's $1.9 million study is expected to yield preliminary results by the end of 2012, Fred Hauchman, director of the EPA's Office of Science Policy, told attendees at the outset.

Hauchman promised to reach out to experts and study a wide variety of water sources, and he said an advisory board of scientists has told the agency to focus on the impact on water quality and quantity.

07/23/2010

**EPA Expected To Subject Offshore Rigs To Strict Spill Compliance Deadline (*Inside EPA*)**

EPA's upcoming proposal granting a host of industries additional time to comply with new spill prevention requirements is expected to preclude offshore facilities from the deadline extension, effectively requiring the rigs to develop amended spill prevention plans later this year due to the oil spill in the Gulf of Mexico, industry sources say.

The strict deadline is the latest indication that EPA is planning on clamping down on the sector. The agency is conducting a sector-wide review of its rules, guidelines and procedures related to responses to oil spills on land and at "fixed" facilities that could discharge oil into U.S. waters, according to the agency's draft strategic plan for fiscal years 2011 through 2015.

In the case of the spill prevention rule, the agency is working to give industries more time to comply with its Spill Prevention, Control and Countermeasure (SPCC) rule -- which was originally drafted in 2002 but whose compliance deadline has been extended several times because of litigation and revisions. The rule generally requires facilities that store large quantities of petroleum and related products on-site to undertake various precautionary measures to prevent a spill and to have a response plan in place to mitigate the effects of a spill should an accident occur.

The most recent revision to the SPCC rule was made after the Obama administration took office and was finalized last year with an effective date of Nov. 9, 2010.

In the amendments, EPA removed exclusions for oil production facilities and farms from loading and unloading rack requirements, established alternative criteria for facilities to self-certify their spill plans, and provided exemptions for certain produced-water storage facilities. An oil industry source has said the changes will not affect a large number of facilities.

As part of the rule, EPA said it would extend the compliance deadline, which the agency proposed to the White House Office of Management & Budget (OMB) last March. Because of some of the changes made in the 2009 amendments -- including removal of certain provisions from the December 2008 version of rule -- "facilities may need additional time to comply with the SPCC amendments. Because of the uncertainty surrounding the final amendments to the December 5, 2008 rule and the delay of the effective date, the agency will propose to extend the compliance date," EPA said when it initiated a rulemaking to extend the deadline.

But the proposed extension was abruptly withdrawn in April in the wake of the BP oil spill in the Gulf of Mexico, according to an EPA source, and a new compliance schedule was sent to OMB in June. According to OMB's website, EPA July 9 withdrew the proposed compliance extension sent in June and submitted a new proposal July 12.

One oil industry source says that, while details about the proposed compliance extension remain elusive, they believe OMB approved the proposed extension with the caveat that EPA exclude offshore drilling from the compliance extension, thereby requiring offshore platforms to comply with the rule beginning in November. The source

says the negative publicity that offshore drilling has received in the wake of the BP oil spill has made it unlikely that the administration would approve a measure that could be construed as aiding the sector.

Another industry source has said that even for facilities winning a deadline extension, they do not believe it will be extended for very long past the November compliance date that offshore facilities will have to meet.

The first source says that EPA is unlikely to delay the implementation of the rule any further once the final compliance date is issued in the *Federal Register*, which they say is imminent. "After every set of amendments, EPA applies for an extension and this one [in March] was no exception," the source says. "This time [compliance] is happening. They promised this would be the absolute last extension."

An OMB spokeswoman declined to comment on the compliance extension because "it's still in the deliberative stage."

**Hundreds to attend EPA hearing on Pa. gas drilling (*Associated Press*)**

CANONSBURG, Pa. — Hundreds of people are expected to attend a U.S. Environmental Protection Agency hearing in southwestern Pennsylvania on a controversial natural gas drilling technique called hydraulic fracturing, or "fracking."

Drilling into the rich Marcellus Shale gas reserve below Pennsylvania is growing rapidly.

Fracking is currently exempt from federal regulation, instead governed by various state rules. The EPA is studying its effect on human health and the environment.

The oil and gas industry says it's been safe for decades and is a crucial tool in the nation's energy future.

The EPA says more than 800 people have registered to attend the public hearing in Canonsburg.

**GRANTS**
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**EPA grant will help vessels reduce emissions (*North Channel Sentinel*)**

By STAFF REPORTS
Published: 07.22.10

The Port of Houston Authority (PHA) and Maersk Line, which partnered with the U.S. Environmental Protection Agency (EPA) on the first low-sulfur “fuel switch” demonstration on a container ship in the Gulf of Mexico last November, have been selected to receive a nearly $1.5 million grant from the National Clean Diesel Program.

Funded by the National Clean Diesel Emissions Reduction Program, the grant will pay the differential costs incurred when Maersk Line vessels switch from high-sulfur bunker fuel to lower-sulfur marine diesel while approaching Texas waters. The Maersk Line vessels call at the APM Terminal located at PHA’s Barbours Cut complex.

The program is set to begin in August with 19 Maersk Line vessels scheduled to participate. Once those vessels are within 24 nautical miles of the Texas coast, they will switch to lower-sulfer fuels. The cleaner marine diesel fuel will contain no more than 0.2 percent sulfur, compared to the 2.7 percent sulfur contained in regular bunker fuel.

The fuel-switching program is set to run until March 31, 2012. The total emission reductions from this project are expected to be:

• 35 tons of nitrogen oxides (NOx)

• 50 tons of particulate matter with a diameter of 10 micrometers or less (PM10)

• 46 tons of particulate matter with a diameter smaller than 2.5 micrometers (PM2.5)

• 441 tons of carbon dioxide (CO2)

• 1,353 tons of sulfur dioxide (SO2)

These emission reductions will improve local air quality and public health in the Houston-Galveston-Brazoria non-attainment area.

While fuel switching is prevalent along the West Coast, this project will be the first of its kind in the U.S. Gulf and specifically involving the PHA. The program is also the latest initiative launched under the port authority’s Clean Air Strategy Plan (CASP), an outreach and implementation plan demonstrating the port authority's commitment to environmental stewardship, air quality improvements, and sustainability.

“This project is a win-win,” says Charlie Jenkins, port authority vice president of strategic planning. “It’s a good program with one of our business partners, and is yet another example of the Port of Houston Authority charting the course in preparation for the new Emission Control Area approved by the International Maritime Organization. We’re building business partnerships and helping the environment at the same time.”

The fuel-switching program will be in place prior to implementation of the North American Emission Control Area (ECA), an effort which the Port of Houston Authority has supported. On March 26, 2010 the IMO officially designated waters off North

American coasts as an area in which stringent international emission standards will apply to all ships. Starting in August 2012, the ECA will require that the sulfur content in fuel be no greater than 1.0 percent. By 2015, all ships operating in the designated ECA will be required to use 0.1 percent sulfur marine fuels.

According to the EPA, by 2020 the ECA is projected to result in the reduction of as many as 14,000 premature deaths, provide relief from respiratory symptoms for nearly five million people each year, and provide more than $110 billion in health-related benefits.

**Port Authority gets EPA grant to conduct study at old Jeep Plant (*WTOL News*)**

Posted: Jul 22, 2010 4:04 PM EDT Updated: Jul 22, 2010 8:37 PM EDT
By Rob Wiercinski -
TOLEDO, OH (WTOL) - A $368,000 EPA grant is being used for the Port Authority to conduct an environmental study of the original Jeep plant in Toledo.

Matt Sapara said, "It would be the staff's goal to be in a position by the August board meeting to take back to the board of directors a comprehensive overview of what it would cost from an acquisition standpoint and remediation standpoint."

The Jeep plant was the epicenter of manufacturing in the Glass City. The Jeep Parkway site helped put food on the table for Pete Gerken for nearly two decades. The former auto worker, who is now a county Commissioner, says it's important for the public sector to spearhead the campaign to redevelop the property. "It's a symbol of our community, of our strength of our wealth," said Gerken. "It can be that again. We need new manufacturing. We also need a site we can do it on. We've got to figure out the cost of cleaning up."

Once the cost of clean up is identified, the next steps will be acquiring the site, cleaning up and attracting a new user. Commissioner Gerken said, "That's a chore, but it's not an insurmountable task. The value, psychologically and financially to the city, it's worth the effort."

**EPA Awards Regional Environmental Education Grants (*Michigan Farmer*)**

U.S. Environmental Protection Agency Region 5 has awarded $190,000 in grants for projects to enhance environmental education and awareness in Illinois, Indiana, Michigan, Minnesota, and Ohio.

These annual grants are given to nonprofit organizations, government agencies, community groups, tribes, schools and universities.

"EPA is pleased to support innovative programs that help increase knowledge about environmental issues through hands-on training and also provide tangible benefits to communities," said EPA Regional Environmental Education Coordinator Megan Gavin.

Michigan State University received $34,217 for Michigan Agriculture and Climate Change: Deliberating toward Stewardship. This initiative aims to increase awareness about soil carbon sequestration and field crop agriculture's role in climate change by working with field crop farmers and training MSU Extension educators. Contact Ashley Speer, 517-355-5040 x286.

EPA is awarding these funds under the 1990 National Environmental Education Act, which gives EPA the authority to support and create environmental education programs nationwide. More information about EPA's environmental education grants program is available at: www.epa.gov/education/grants.html.

For more information about the MSU project, contact Contact Ashley Speer, 517-355-5040 x286.

**MINING**

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July 23, 2010

**Emmylou and the EPA Take on Big Coal (*In These Times*)**

Tough new standards may save Appalachia's mountaintops.
By Peter White
Since the 1960s, coal mining companies have leveled 500 mountains in Appalachia. (Photo courtesy of Natural Resources Defense Council)

'If the EPA sticks to its guns, I think mountaintop mining will end in Appalachia because there's no way coal companies can meet the standards,' says environmental expert Margaret Palmer.

In Nashville's historic Ryman Auditorium in May, country singer Emmylou Harris and friends performed at the "Music Saves Mountains" concert, raising their voices to protect Appalachia from the ravages of coal mining.

"We call the Ryman the Mother Church of country music, and if that's true, then the Appalachian Mountains are its sacred ground," Harris told the audience.

Harris shared the stage with singers Dave Matthews, Alison Krauss and Kathy Mattea, a longtime opponent of the controversial and profitable practice of blowing up mountaintops to get at the coal underneath.

“If the prosperity of some is built on the exploitation of others, everyone loses,” Mattea said. “I’m a hillbilly and proud of it … but I don’t stand against coal or any fellow Appalachian. Yet something must change because the situation as it stands now cannot go on.”

More than 500 mountains in Appalachia have been leveled since mountaintop removal (MTR) mining was first introduced in the 1960s. Since then, about 2,000 square miles of forest in Kentucky, Ohio, West Virginia and Virginia have been destroyed—an area about the size of Delaware.

“You won’t find mountaintop mining in the Sierra Nevada, in the Rockies, in the Adirondacks,” said Allen Hershkowitz of the National Resource Defense Council (NRDC), for which the sold-out concert raised money. “It’s an outlier technology and we want to make it illegal.”

In April, the Environmental Protection Agency (EPA) took a big step in that direction, adopting tough new water quality standards in coal country that signaled the Obama administration’s opposition to MTR. The EPA said the new rules applied to all MTR operations in Appalachia, including the largest in West Virginia history.

In 2007, after a decade of wrangling, the Army Corps of Engineers gave Arch Coal a permit to start blasting 2,300 acres at its Spruce No. 1 Mine in Logan County, W.Va. The EPA’s announcement last month that it intended to block the project brought swift condemnation from Big Coal.

“I am shocked, dismayed and disgusted at [the] EPA’s actions. All of the other agencies involved in the Spruce Mine permit have … opposed EPA’s efforts to initiate this veto action,” said Bill Raney, president of the West Virginia Coal Association.

If the EPA does block the Arch Coal operation, the shock waves will reverberate far beyond Logan County. It will officially put the federal government on the side of groups like the Sierra Club and local activists who have been fighting MTR for decades. It could stop MTR in Appalachia altogether.

The EPA’s new rules were adopted just two months after a January 2010 Science Magazine criticized current regulations practices because mountaintop mining impacts are pervasive and irreversible and mitigation cannot compensate for losses.” The lead author of that report praised the EPA’s new water-quality standards as both appropriate and significant. The EPA plans to test how easily water conducts electricity as a measure of how many trace metals and sulfates have leached into streams from MTR operations.

“If [the] EPA sticks to its guns, I think mountaintop mining will end in Appalachia because there’s no way coal companies can meet the standards,” said Margaret Palmer

of the University of Maryland Center for Environmental Science. Palmer's team analyzed 2,500 water samples collected by West Virginia's Department of Environmental Protection. In watersheds with no MTR operations, contaminants were low and aquatic life was varied and abundant. In streams where MTR was occurring, enough trace metals and sulfates to poison virtually every living thing downhill and downstream from the mines was found.

"Notwithstanding recent attempts to improve reclamation, the immense scale of mountaintop mining makes it unrealistic to think that true restoration or mitigation is possible with current techniques," said Keith Eshleman, one of the study's five authors.

Pollution precision

A Duke University biologist recently took Palmer's research one step further. Emily Bernhardt used satellite photos and water quality data from Kentucky, Virginia, West Virginia and Tennessee to map mine locations and nearby streams. The nonprofit research group SkyTruth provided Bernhardt with remote sensing data for her analysis. SkyTruth recently made news for challenging official estimates of the Gulf oil spill, based on similar satellite imagery analysis.

"Our main goal was to find out how far downstream impacts extend when you have a mine and … the effects of multiple mines in the same watershed," Bernhardt said.

Bernhardt was able to construct a detailed picture of mining activity and streams in every watershed in the four-state study area where water quality data was available, and thus determine how much mining activity is occurring in a particular watershed.

"We built a hydrological model that includes elevation levels, so when a drop of water falls on the ground, we know where it will go," she said.

Nobody has done that kind of analysis in Appalachia before, which makes it possible to measure how far downstream impacts extend from individual mines. In dealing with the human health impacts of mining, the usual approach is to look at disease data by county. That kind of research helps identify cancer clusters and public health risks, but it can't determine causality. Bernhardt's work is an important first step toward linking public health hazards to mining.

"Every mine will degrade water downstream to some extent and the more mining you have, the more impact you will have downstream. But now you can ask, 'What is the likelihood of increased impacts from a new mine going to have against a backdrop of past mining activity?' "

Bernhardt says both regulators and mine operators will find the answer to such questions useful. For example, regulators could use it to catch polluters and mining companies could use it to decide where they should mine and where they shouldn't.

‘It’s polarized people’

If the EPA starts blocking MTR permits, coal companies will likely sue. They may find friendlier ground in the courts than in Appalachia or at the EPA. A 2006 Supreme Court case, Rapanos v. United States, redefined the term “waters of the United States” and weakened the legal basis for denying MTR permits under the Clean Water Act (CWA).

In that case, a majority of justices decided that the CWA does not apply to intermittent streams and isolated wetlands unconnected to navigable waterways. MTR dumps tons of debris into high mountain passes where water does not run all the time; the waste clogs the headwaters of streams all over Appalachia. More than 1,000 miles of streams in the region have been buried in mine waste.

Coal companies say their MTR operations are legal and they’ve spent millions restoring and mitigating its effects. The West Virginia Coal Association lists 31 sites its members have created in Kentucky and West Virginia. They include two golf courses, four airports, two sports complexes, a high school, a hunting preserve, a hiking trail, two industrial parks, six prisons, six landfills and one cemetery.

Anti-coal activists say money won’t buy the companies love. But to many working in the region’s coal industry, steady work matters above all else. At a public hearing in Charleston, W.Va., on May 18, EPA officials got an earful from hundreds of angry miners and others whose livelihoods depend on coal mining. Police officers were called in by officials to maintain order because they feared there would be violence.

“It’s polarized people,” said Mattea, a West Virginia native. “Friend against neighbor, brother against sister. I have a friend who wears a bulletproof vest because her life has been threatened so many times. It’s heartbreaking.”
“[People] have to have the job to put food on the table to feed their children, but people are learning that it poisons the water their children are drinking,” said NRDC’s Hershkowitz. The answer, he says, is green jobs for Appalachia. That may be true, but right now, there are a lot more coal mines in Appalachia than windmills.

## PESTICIDES

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### Federal suit seeks ban of common pesticide (*San Francisco Chronicle*)

Marisa Lagos, Chronicle Staff Writer
Friday, July 23, 2010
(07-22) 17:05 PDT SAN FRANCISCO -- Two environmental groups sued the U.S. Environmental Protection Agency on Thursday, demanding that the federal government decide whether to ban a widely used pesticide that has been linked to illnesses, including asthma and developmental problems such as attention deficit disorder.

The chemical chlorpyrifos was banned for household use nine years ago by the EPA, which cited its effects on children, including delayed mental and motor skill development. But it is still widely used as an insecticide on corn, grapes, oranges, almonds and other crops, on golf courses and for pest control in urban areas.

The lawsuit, filed in U.S. District Court in New York, is the next step after a petition was filed in 2007 for the plaintiffs, the Natural Resources Defense Council and the Pesticide Action Network. At that time, the groups asked the EPA to ban all uses of the pesticide.

"It's been three years, and they haven't given an answer one way or another," said Kevin Regan, a lawyer with Earthjustice, which filed the suit on behalf of the other groups.

"In its class, this pesticide is the worst of the worst," he said. "Its effects can range from headaches to neurological disorders, and in theory it could cause death."

Regan noted that a number of other countries have already outlawed use of chlorpyrifos, including South Africa in May.

Farmers and others who use the pesticide, however, say there are no good alternatives and that chlorpyrifos can be used safely.

The suit, filed in federal court in New York, seeks to compel the EPA to make a decision. Dale Kemery, a spokesman for the agency, said federal officials have not seen the suit and could not comment.

The chemical is used for various reasons in all nine Bay Area counties, according to the state Department of Pesticide Regulation.

However, it is most widely used in the Central Valley and is polluting 29 of the state's waterways, mostly in the Sacramento-San Joaquin River Delta, according to state records. It can cling to crops that have been sprayed, Regan said, but is also capable of vaporizing or settling onto dust particles and being carried through the air.

Regan cited the experience of a 24-year-old Lindsay (Tulare County) resident, Luis Medellin, who lives near orange groves sprayed with chlorpyrifos. Medellin said he and his family suffer headaches, nausea and vomiting when the pesticide is being sprayed, and testing has shown that he has five times more chlorpyrifos in his body than the national average reported by the Centers for Disease Control and Prevention.

The suit contends that the EPA has had plenty of time to make a decision on the issue; Regan noted that their public comment period on the matter expired in December 2007.

Farmers, however, oppose the all-out banning of the chemical, said Cynthia Cory, director of environment for the California Farm Bureau Federation. She said the EPA

has conducted risk assessments and determined it can be used in a safe manner, and that it is an important tool in farmers' arsenal when it comes to protecting crops.

Use of chlorpyrifos by California farmers, she said, has declined by more than half in recent years.

"We have to continually evaluate chemicals and make sure they are used in the safest way - but I do believe that has been done with this chemical," she said. "It's a widely used chemical in California and across the United States, and it's used on a wide range of insects. There's no alternative that's going to replace it tomorrow, but we try to continue to reduce its use."

E-mail Marisa Lagos at mlagos@sfchronicle.com.

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/07/23/BAD41EIGTG.DTL

This article appeared on page C - 1 of the San Francisco Chronicle

07/23/2010

**Ruling Preserves Industry Bid To Seek Hearings On EPA Pesticide Decisions (*Inside EPA*)**

A federal appeals court has upheld the pesticide industry's right to a potentially precedent-setting decision on whether EPA must allow administrative reviews of its risk-based decisions, while remanding the case to a lower court to reach a decision on the specific issues in the case.

The U.S. Court of Appeals for the District of Columbia Circuit July 16 remanded *Reckitt Benckiser v. EPA* to the lower court, saying that the company has a right to a decision on whether the agency could bypass a cancellation procedure when it sought changes to a line of rodenticide products. *Relevant documents are available on InsideEPA.com.*

"[W]e reverse the dismissal of Reckitt Benckiser's complaint and remand the case to the district court to address the company's challenge to EPA's interpretation of its authority under [the Federal Insecticide, Fungicide & Rodenticide Act (FIFRA)] to bring enforcement proceedings for misbranding before, or rather than, regulatory cancellation proceedings under Section 6 against products not voluntarily complying with a reregistration [risk mitigation decision (RMD)]," the decision says. "We, therefore, do not reach the company's contentions that EPA's non-initiation of Section 6 cancellation proceedings was arbitrary and capricious or unreasonably delayed under" U.S. law.

The court's decision is "consistent with prior law" established in the court's *Ciba-Geigy* decision, which found a challenge to EPA's interpretation of its pesticide authority to be ripe for review in district court, and affirms that the company has the right to go to court over whether EPA can bypass the cancellation procedure, a legal source says.

The ruling says, "Reckitt Beckiser has a right to get the question decided, and it will get decided in the district court," according to the source, who adds that the decision does not comment on the merits of the case.

In December, Reckitt appealed the decision of the district court, which declined to hear the case for lack of jurisdiction. Reckitt had urged the lower court to order EPA to grant a hearing under FIFRA regarding the risk assessments of nearly a dozen of its rodenticide products.

In May oral arguments before the appeals court, Reckitt attorney Lisa Blatt charged that EPA "did not follow normal procedure" when it sent the company a letter describing its RMD for the 10 rodenticide products. She said that EPA "unlawfully"took action to ban its products by enforcement, through misbranding claims.

Under FIFRA section 13, EPA can order retailers to stop selling a product or applicators to stop using a product that is not in compliance with the law. But the company says EPA should have gone through registration cancellation proceedings under section 6 of the FIFRA, or taken some other regulatory action, according to the company's April 15 brief.

At the May hearing, Justice Department attorneys representing EPA argued that the company cannot challenge an action the agency has yet to take, and as such, the letter informing Reckitt of the RMD is not judicially reviewable.

**RECYCLING**

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Headline News

**EPA Recognizes E-Stewards Certification (*Recycling Today*)**

7/22/2010

EPA acknowledges certification program in memo to partners in the Federal Electronics Challenge.

The U.S. Environmental Protection Agency (EPA) has formerly recognized the e-Stewards Recycler Certification and associated e-Stewards Standard for the Responsible Recycling and Reuse of Electronic Equipment, according to a press release issued by the Basel Action Network (BAN), Seattle.

BAN developed the standard and certification program in conjunction with members from the recycling industry and expert in occupational health and safety, data security, certification and other fields.

"We are very pleased that EPA has acknowledged the validity of the standard that growing numbers of individuals, corporations and electronics recyclers consider to be the bottom line in responsible recycling," says Lauren Roman, BAN e-Stewards business director. "Our standard fully supports the free trade of non-toxic valuable commodities to developing countries while protecting citizens of these nations from the burden of getting toxic waste along for the ride."

The EPA sent a memo to its partners in the Federal Electronics Challenge that states: "Use of either an R2 (Responsible Recycling) certified or e-Stewards certified electronics recycler meets your federal requirements to employ environmentally sound practices with respect to disposition of electronic products. Use of these certified recyclers requires no further due diligence."

The EPA also notes on the Responsible Recycling Practices page of its Website: "EPA supports and will continue to push for further safe and protective recycling efforts and encourage improvements in best management practices for recyclers. There are existing recycling certification programs, such as R2 and e-Stewards that EPA believes advance environmentally safe practices and includes standards for use in third party certification of such efforts."

More information on the e-Stewards initiative is available at www.e-stewards.org.

**SUPERFUND**

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07/23/2010

**Democrats Target 'Polluters' In Upcoming Campaign, Legislative Efforts (*Inside EPA*)**

Democratic candidates and their environmentalist allies are stepping up their efforts to run against industry "polluters" -- especially oil companies -- as they struggle to maintain control of Congress in this year's mid-term elections, an approach that observers say underlies their efforts to curb greenhouse gases (GHGs), reinstate expired Superfund taxes and strictly regulate toxic chemicals.

But the Democratic messaging is alienating Republicans and appears to be doing little to bolster support for the legislative measures as Senate Democrats are still struggling to craft GHG legislation, prospects for Superfund taxes are dim and chemical safety legislation is barely moving.

The approach by Democrats and environmentalists has intensified in recent weeks amid growing public anger over the oil spill in the Gulf of Mexico, with President Obama repeatedly trying to tie Republicans to BP by highlighting Rep. Joe Barton's (R-TX) "apology" to BP CEO Tony Hayward for agreeing to an administration request for a $20 billion fund for victims of BP's spilll.

Similarly, at least 10 Democrats in competitive Senate elections and more than a dozen House Democrats facing tough races have released statements, advertisements or online videos attacking their opponents over the spill and broader ties to industry, according to a survey of campaign websites.

And the Democratic National Committee (DNC) has embraced the approach, recently launching the website BPRepublicans.com and bombarding reporters with copies of news articles and statements about the oil spill and GOP gaffes. Since Barton's apology June 17, the DNC has sent more than 140 statements referencing it to reporters."Whether it's in their opposition to raising the liability cap on reckless oil companies, or to an energy independence policy that will ensure we are never reliant on an oil company again, or to holding BP fully responsible, Republicans have proven that taking the side of big oil is a bedrock governing philosophy of the GOP," says a typical DNC statement, from a July 9 press release.

In the near term, the "polluter pays" messaging likely will focus most intensely on the broad energy and climate legislation that Democrats have been struggling since last year to move through the Senate, especially regarding its most controversial potential element -- a cap on GHG emissions, now expected to be limited to the utility sector if it is included in the bill at all (*see related story*).

Senate Majority Leader Harry Reid, speaking to reporters about the yet-to-be-unveiled bill July 13, said it would deal with "pollution" from utilities but would not allow himself to be pinned down on whether that meant including a GHG cap, a word he said was "not in my vocabulary." Asked what he meant by pollution, Reid said, "[W]hat does pollution mean? It means there's bad stuff in the air, okay?"

The administration has struck the same tone. A White House statement on a meeting between the president and Senate Democrats two weeks earlier said Obama stressed the need for "putting a price on pollution -- because when companies pollute, they should be responsible for the costs to the environment and their contribution to climate change."

**Some Democrats suggest the shift is designed to better communicate with voters** for whom "cap-and-trade" has become a dirty word after more than a year of attacks from Republicans, industry representatives and conservative think tanks decrying the plan as a job-killing energy tax. "I don't think they do understand cap-and-trade -- I don't think most of the Congress understands cap-and-trade -- but on the other hand the American people do understand phrases like polluter pays, and they do understand that

BP should pay the whole rate [to repair the damage from the oil spill] and that sort of thing," Sen. Jay Rockefeller (D-WV) told reporters in the Capitol July 13.

Sen. Benjamin Cardin (D-MD) said that BP could become a "poster child" for continuation of a "polluter pays" strategy. " I think that's part of our problem is to demonstrate that we are asking the polluters to pay, and by putting a price on carbon it's basically polluter pay," he said. "They see the oil in the gulf, and they can understand that. They don't see the carbon in the air."

Republicans sounded skeptical of the move, however. "I think it'd be good if on issues like this, the majority party would move away from messaging and campaigning and actually bring something to the floor we can pass," Sen. Bob Corker (R-TN) told *Inside EPA* July 13.

Sen. Lamar Alexander (R-TN) says Democrats are missing an opportunity to find common ground on energy and climate policy -- pursuing a narrower bill that would incentivize electric car development and expand the use of carbon-free nuclear energy, for example. Of their efforts to demonize BP and tie the GOP to industry he said, "Well, it doesn't sound like consensus building to me."

But some candidates and activists also have expanded the "polluter pays" message beyond BP to focus more broadly on industrial accountability and the need to ensure that polluters pay for environmental damage.

For example, Sierra Club Executive Director Carl Pope argued in a recent online column that the National Association of Homebuilders was a member of the "poison lobby" for challenging EPA regulations imposing stricter requirements on contractors working in homes that could contain lead paint.

The Safer Chemicals, Healthy Families Campaign -- which has been advocating for reform of the Toxic Substances Control Act (TSCA) -- took a similar approach, releasing a satirical animated online video purportedly from the "toxic chemicals lobby" arguing that industry was trying to subvert TSCA reform.

But prospects for TSCA reform this Congress are dimming. Democrats on the House Energy & Commerce Committee have delayed their planned introduction of TSCA reform legislation, though EPA toxics chief Steve Owens said earlier this year that it was "unlikely" Congress would move legislation this year.

Others have sought to use the message to reinstate the Superfund tax that companies pay to fund cleanups of abandoned contaminated sites. Rep. Frank Pallone (D-NJ), who is sponsoring legislation to reinstate the tax, welcomed a recent letter from EPA Administrator Lisa Jackson backing the taxes, saying he applauded "the renewed effort to make the polluters pay and not taxpayers." He added, "The disaster in the Gulf of Mexico shows that the government must hold oil and chemical companies accountable

for the pollution they create. I look forward to working the Obama administration to facilitate the reinstatement of Superfund tax."

Pallone recently acknowledged that prospects for the tax reinstatement are dim. He told a July 20 meeting of EPA union members on Capitol Hill that legislation to reinstate the taxes could see action in September or the "lame duck" session after the November election, though Pallone said, "I doubt it." -- *Nick Juliano*

**TOXICS**

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**Cleanup plans unveiled for plant (*Courier Post*)**

By JULIE SHANNON • Courier-Post Staff • July 23, 2010

PENNSAUKEN — The latest plans to address groundwater contamination at a former chemical plant here were unveiled by the Environmental Protection Agency at a public meeting Thursday night.

The plans are part of the latest phase aimed at cleaning up the Swope Oil & Chemical Company Superfund site on National Highway, off Route 130.

Since 1984, the EPA has removed tons of contaminated sludge and waste from the two-acre site and removed several tanks and buildings. The agency is now seeking input on three plans to alleviate contaminated groundwater.

The contamination mostly consists of volatile organic compounds, including chlorinated hydrocarbons. Area drinking water is from a public supply and is not affected by the contaimination.

Swope operated a chemical reclamation facility on the site from 1965 to 1979 and processed oils, paints and other chemical compounds.

The Swope site was cited by New Jersey in 1975 and 1979 before it ceased operation later that year.

The EPA is proposing three options for the site and is seeking public input.

The first is a process of adding bacteria to the groundwater to cause the organic compounds to
degrade faster. This will cost about $7 million and will take about 20 years.

An alternative would implement long-term monitoring of the compounds and installation of a
cap to prevent the contaminants from migrating. This will cost roughly $1 million and will take about 15 years.

The third option is to take no action at all.

Residents have the opportunity to comment as to how they think this contamination should be
resolved during a 30-day public comment period that ends August 12. The EPA along with the New Jersey Department of Environmental Protection will review all information during that period and decide which alternative to go with.

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07/23/2010

**Industry Seeks To Clarify EPA Call To Cut Confidential Chemical Claims (*Inside EPA*)**

Chemical industry groups are pushing EPA to clarify and possibly dial back its recent push to limit companies' ability to claim a host of product data as confidential business information (CBI), which is exempt from disclosure under the Toxic Substances Control Act (TSCA).

Industry officials charge that some of the stricter CBI approaches EPA is proposing could stall development of innovative -- and safer -- chemicals by creating disincentives for companies to invest in new technologies that could not be kept proprietary under CBI rules.

Industry also says EPA should wait until Congress addresses the issue before it pushes industry to cut down on trade secret claims. Even if Congress does not address the issue, there are are a number of approaches -- including more up-front substantiation -- that EPA could utilize in lieu of stricter CBI requirements and industry is calling on the agency to take comment on other approaches.

Some trade groups, including the American Chemistry Council (ACC) and the American Cleaning Institute (ACI), have already requested meetings with top agency officials to

discuss the issue. Other groups including the Society of Chemical Manufacturers & Affiliates are discussing the call with members and will formulate a response, but caution that industry is also tracking and responding to ongoing congressional developments on TSCA reform.

ACI head Ernie Rosenberg sent a July 6 letter to EPA requesting a meeting to discuss the issues surrounding CBI and the soap and detergent makers represented by the group. "An open dialogue between industry and the agency on these issues is critical to striking the appropriate balance with respect to the treatment of CBI," the letter says, adding a meeting could help industry "better understand EPA's goals and priorities for CBI reviews."

An ACC source says the group has also requested a meeting with the agency to "identify more clearly what the priorities are" as the request issued so far is "broad and general." The source says that each member company has different ways of keeping records, which could complicate the companies' response to EPA's efforts.

The groups are responding to efforts by EPA and others who charge that the agency's current CBI rules are too broad and barely enforced, allowing industry to claim a slew of data as CBI and prevent its disclosure to the public, hindering safety.

As part of the agency's effort to clamp down on CBI claims, EPA toxics chief Steve Owens recently sent letters to a number of key trade organizations reiterating an earlier call for them to voluntarily limit future CBI claims, review previous claims for ongoing relevance and notify EPA of any declassifications based on the review. Owens first issued the challenge to industry at the GlobalChem conference in Baltimore March 30.

"As a part of Administrator Lisa P. Jackson's commitment to increase transparency, EPA has asked companies to voluntarily declassify some of their" CBI, according to a new website launched by EPA last month to facilitate the declassification.

In addition to the voluntary approach, EPA is also proposing several policy changes to clamp down on CBI claims. Among other things, the agency has adopted a "new general practice" of barring industry from withholding chemical identities contained in health and safety studies if the name of the chemical is already available on the TSCA inventory of chemicals in commerce. The agency had previously allowed industry to claim the data as CBI when submitting health and safety studies to EPA as required by chemical reporting requirements contained in section 8(e) of TSCA, such as when the chemical is considered "new" and not yet listed on the inventory.

EPA also says it will now more closely scrutinize the CBI claims, require more upfront substantiation of CBI claims and raise the bar for industry to challenge denials of CBI claims by requiring them to do so in federal court.

**Many industry sources stress that they "don't disagree" with EPA's attempts to cut down** on the CBI claims, but raise concerns that paring back CBI claims could

hamper innovation on new chemicals, particularly substances that are considered to be "safer alternatives."

"[I]t is essential that transparency demands be balanced with the need to protect valuable proprietary information that would be of great interest to foreign and domestic competitors," the ACI letter says. "The protection of legitimate CBI claims allows companies to realize the fruits of their investments in innovations in areas such as green chemistry and sustainability . . . which are aligned with the overall EPA mission."

But industry questions broad rules that seek to limit the claims. "CBI is a chain of information," an industry source says. "It's not a bunch of discrete pieces of information." The source says even chemical name and company name are "critical information" that could allow a competitor to reverse-engineer a formula, which makes it hard for EPA to pursue a generic rule limiting certain types of CBI. "It has to be kept on a case-by-case basis," the source says.

Industry sources are urging EPA to consider and take comment on other ways to limit CBI claims, such as increasing substantiation requirements, imposing a fee to cover the costs of CBI or limiting the time that information can remain confidential, in lieu of general rules.

The issue of CBI is also expected to be a key sticking point in the legislative battle over TSCA as House Democrats prepare to unveil a reform proposal in the coming weeks, something that could impact how companies respond to the EPA request. A House draft bill released in April would have made the identity of chemical substances, health and safety studies, the presence of a chemical in children's products, and other key information ineligible for CBI protection.

The ACC said the proposed changes are "not feasible" and that draft "fails to strike a balance between the public right-to-know information . . . and industry's legitimate commercial intellectual property interests" in May 24 comments.

The industry source says the proposals in Congress extend CBI protections to protect and encourage "green chemistry" innovation, but questions how the concept of "green" chemicals would be defined and says even then investors may still be put off by the uncertainty.

The legislative discussion could also have an impact on how companies respond to the EPA request. "Any review and update of certain aspects of TSCA CBI provisions must be done in light of" attempts in Congress to revise TSCA, the ACI letter says. -- *Aaron Lovell*

07/23/2010

**EPA Faces Rash Of Data Quality Petitions Over Key Chemicals Issues (*Inside EPA*)**

EPA is facing a spate of petitions from the chemicals industry asking the agency to review and justify under the Data Quality Act (DQA) the science supporting recent agency risk assessments and management plans for key chemicals like methanol, arsenic and phthalates -- the first of what could be a number of petitions questioning agency decisions.

Recent petitions include a July 9 request for correction (RFC) from the Methanol Institute asking EPA to remove key documents relating to the agency's methanol risk assessment because of concerns over data from a controversial Italian lab; a June 14 RFC from the Organic Arsenical Products Task Force and Wood Preservative Science Council questioning the scientific literature used in EPA's arsenic risk assessment; and a May 10 petition from a leading chemical trade group raising issues with the scientific underpinnigs of the agency's chemical management plan for phthalates. *Relevant documents are available at InsideEPA.com.*

The DQA generally requires EPA and other federal agencies to ensure that scientific and other data used to develop policy stances are objective, reproducible and peer-reviewed. The law requires agencies to accept and respond to petitions to correct allegedly flawed data used in rulemakings and other decisions.

In addition to the chemicals petitions, industry and other groups have also filed petitions questioning data-based decisions about the insinuations in a lead safety advertising campaign and the greenhouse gas impacts of coal ash reuse.

The petitions could also receive a boost from a recent court decision potentially paving the way for judicial review of the claims (*Inside EPA*, July 16).

But absent judicial review, the pace of DQA petitions has slowed. Prior to the most recent RFCs, the last petition filed was one from the National Association of Manufacturers in 2009, which challenged the science behind EPA's nitrogen dioxide air quality standard.

According to the letter from the Methanol Institute, EPA in its Integrated Risk Information System (IRIS) assessment of methanol relied on a "flawed study" conducted by the Italy-based Ramazzini Institute. EPA has already put six high-profile studies, including methanol, on hiatus to further determine whether revisions are needed for the IRIS assessments that were based on studies done by the lab.

But the group says the draft assessment including the Ramazzini data violates "EPA's criteria for objectivity and utility of disseminated information," as set out in the agency's guidelines for data quality, and asks EPA to remove the draft study, a charge to external reviewers and supporting files from the agency's website, the IRIS website and the

public docket. "The further dissemination of such a flawed data is inappropriate and would be highly problematic for those that rely on the information," the group says.

The arsenic groups in their petition argue that the draft arsenic risk assessment violates the agency's data quality guidelines, particularly because of "EPA's astonishing insistence to over-rely on study data from Taiwan that are over 50 years old and lacking in relevant exposure data," according to the letter. The groups also say EPA has failed to consider dozens of studies published since 2007, and raise questions about hundreds of studies from 1999-2007 not considered in the assessment.

EPA's long-delayed arsenic IRIS assessment is currently undergoing review by the Science Advisory Board (SAB). The arsenic groups also raised many of the issues in the DQA petition with the SAB in public comments earlier this spring.

Industry is also raising DQA-related questions about EPA's chemical action plans, which seek to use existing authority under the Toxic Substances Control Act to better regulate chemicals of concern. To this end, the American Chemistry Council (ACC) recently filed a petition asking EPA to correct a number of "factual errors" in the agency's chemical action plan for phthalates, which was issued last December. The plans outline actions the agency plans to take, including rulemakings, to deal with chemicals of concern.

ACC says EPA did not distinguish between the three phthalates the Consumer Product Safety Commission Improvement Act banned in children's products and three phthalates subject to a provisional ban pending a new risk assessment. -- *Aaron Lovell*

07/23/2010

**Key Group Seeks To 'Challenge' NAS Plan For EPA To Weigh Low-Dose Risks (*Inside EPA*)**

A high-profile, industry-funded risk assessment institute is working to "challenge" recent recommendations from the National Academy of Sciences (NAS) that EPA should increase its use of controversial approaches for assessing low-dose risks, approaches that critics charge result in more-protective safety standards than may be scientifically justified.

The Health and Environmental Sciences Institute (HESI) project intends to "challenge the theory that high-dose testing reflects low-dose human exposure, and that linear low-dose extrapolation is a legitimate technique," in addition to providing a forum to discuss approaches to low-dose extrapolation in human health risk assessment and "address how an understanding of mode of action (MOA) will influence low-dose extrapolation," among other key issues, according to a presentation last month by the organization's executive director.

HESI is developing a project called Risk Assessment for the 21st Century: A Vision and a Plan, or Risk 21, that seeks to "initiate and stimulate a proactive and constructive dialog" between industry, government, academics and others to identify key new advancements in risk assessment.

Michael Holsapple, HESI's executive director described the project in remarks at a June 21 meeting on the future of chemical toxicity testing, hosted by the Johns Hopkins University and the Environmental Law Institute. HESI is a division of the International Life Science Institute that focuses on science and risk assessment and derives much of its funding from industry organizations, but also has ties to government and academia. *Relevant documents are available on InsideEPA.com*

HESI, whose membership includes a broad swath of companies, such as the Coca Cola Co., the Dow Chemical Co., ExxonMobil Biomedical Sciences and Procter & Gamble Co., will take into account recommendations in the NAS reports *Toxicity Testing In The 21st Century* and *Science & Decisions: Advancing Risk Assessment.*

Among the NAS recommendations is that EPA perform its noncancer risk assessments as it does its cancer assessments, and that it expand use of the linear default assumption. EPA's default, in the face of limited data about how a chemical causes cancer, is to use a linear method. But the method is controversial because it assumes no safe level of exposure to a chemical, making assessments particularly conservative in order to be health protective.

At a July 13-15 meeting, EPA advisers reviewing the agency's dioxin assessment suggested that EPA articulate its use of low-dose approaches as a policy matter rather than a scientific consensus (*see related story*).

A source with HESI says that the dose-response group seeks to make sure "the scientific foundation is there" for moving forward with the advances towards low-dose extrapolation in risk assessment, and will look to develop some sort of "decision logic" or framework based on questions about how to best incorporate dose-response data in risk assessment.

07/23/2010

**Despite Hurdles, Exiting Risk Chief Sees EPA Completing Key Assessments (*Inside EPA*)**

Peter Preuss, EPA's outgoing risk assessment chief who criticized Bush administration delays of several major risk assessments, says he expects the agency will complete several high-profile risk assessments now in peer review despite controversy surrounding the draft documents on arsenic, dioxin, formaldehyde and others.

"Everything should continue as is," he said July 14, adding that he has "every confidence" the assessments in peer review will be completed.

EPA research chief Paul Anastas announced July 14 that Preuss, the director of the agency's National Center for Environmental Assessment (NCEA), which oversees EPA's Integrated Risk Information System (IRIS) database, has been reassigned to head a new team within the agency's research office that will develop "innovative, sustainable solutions to environmental problems," according to Anastas' announcement.

Preuss said in the interview that he is leaving NCEA to head a new "internal think tank" intended to follow up on the work of the "Delta Team," which is recommending ways to reform EPA's research office. Preuss and the other EPA lab and center directors were temporarily re-assigned from their positions to the team beginning in late May. The team is tasked with creating action plans to implement Anastas' vision for the Office of Research & Development, which puts a high premium on "sustainable" approaches to environmental problems (*Inside EPA*, June 25).

Delta Team members had been scheduled to resume their permanent positions in August. But Preuss' new position, which is slated to begin Aug. 1, is permanent.

Becki Clark, Preuss' deputy, will serve as interim NCEA director, Anastas says in the memo. *The memo is available on InsideEPA.com.*

The long-time risk assessor leaves after battling Bush administration efforts that Preuss charged had stymied EPA risk assessments. In 2008, he called on the incoming Obama administration to "get rid of" the process the last administration created to review agency risk assessments (*Inside EPA*, Dec. 19, 2008).

News of Preuss' departure shocked current and former EPA staff, who lauded his resistance to the Bush administration's "attempts to inject politics into science," a former senior EPA staffer says. "Peter did an incredibly important job under the Bush administration," the source says.

But reaction among consultants, industry, and long-time IRIS observers were mixed. Some attributed the move to concerns about the direction of the IRIS program, which some, particularly those connected with industry, believe has become too conservative in its assessments. One industry source describes a "general relief and a sense that that change is long overdue," with Preuss' departure from NCEA. "Many high priority IRIS reviews are under significant criticism, [and] in the case of inorganic arsenic, the criticism is from within EPA as well."

NCEA's recently released draft IRIS assessments of arsenic, dioxin, formaldehyde and methanol have all come under harsh criticism from industry -- and other federal agencies -- for being too conservative. The draft assessment of arsenic also drew the concerns of some EPA regional offices, because the assessment considered hazardous levels of arsenic that occur naturally in some soils.

One toxicology consultant noted that Preuss' departure may allow policy changes by the agency's Risk Assessment Forum (RAF), a group of scientists from across the agency who draft risk assessment policy for EPA. The RAF is scheduled to hold an agency-wide workshop in October to discuss how the agency will respond to a series of recent reports from the National Academy of Sciences, each recommending key changes in risk assessment practice (*Inside EPA*, July 9). "There's been some tension between some members of the forum and NCEA," the source says. "This will be a chance for the forum to assert itself without Peter. It will be interesting to see if there aren't some shifts in tone."

Preuss' new role also leaves observers questioning whether the reassignment is intended to move Preuss aside, or put an effective leader in charge of Anastas' signature interest: sustainability. An industry source, for example, says Pruess is very effective in accomplishing objectives he is given, but the source also says the IRIS program is broken and needs to be completely overhauled. -- *Maria Hegstad*

Last modified: Thursday, July 22, 2010 11:39 AM CDT

**EPA won't get involved in CSX bridge dispute (*Bowling Green Daily News*)**

By ROBYN L. MINOR, The Daily News, rminor@bgdailynews.com/783-3249
The U.S. Environmental Protection Agency has declined to become involved with a citizen complaint regarding potential lead contamination from a CSX Transportation railroad bridge over the Barren River.

A letter from A. Stanley Meiburg, regional administrator for the EPA, said the agency is satisfied that Kentucky's Cabinet for Environmental Protection and CSX will take the appropriate action to "protect against harmful exposure to lead in the soil."

Meiburg, in his letter to Bowling Green resident David Garvin - who has been trying to get CSX to paint the rusty, flaking bridge - said CSX is preparing an interim action work plan for the state's review and approval.

Meiburg said that is likely to include removal of soil where lead exceeds EPA-approved levels.

Actually, that plan was just received by the state and does include some soil removal.

After mulling over Meiburg's letter for a day, Garvin said he believes it is a good step.

"We have gotten CSX's and U.S. EPA's attention," he said. "What started out as painting a Rust Belt image bridge has, in fact, uncovered a major national lead pollution problem on thousands of bridges across the Eastern United States."

Garvin said he plans to reply to Meiburg for his quick and personal response to the situation.

Garvin, in his initial complaint last month to the EPA, sent along a report from four separate testing labs. Many of the samples showed concentrations of lead above recommended levels for growing plants or playing in the area. Those lead levels ranged widely from 39 parts of lead per 1 million parts of soil to as high as 34,000 ppm. Water samples showed relatively low levels of lead contamination.

Tim Hubbard, the state's assistant director of the Division of Waste Management, said the case is now being handled by the state's Superfund Branch, not because potential cleanup money is available but because that is where the experts are who can handle this case.

Any cleanup would be CSX's responsibility, he said.

"At this point, we are working with CSX to get the situation as fully investigated as possible," Hubbard said. "They have already completed some investigation and are in the process of studying the ecological effects on aquatic life, and that's not quite ready. It is expected to be complete within the next few months.

"Once we get that information, coupled with the data we already have now, we will be able to make some decisions about what needs to be done."

The initial data show that some areas of lead contamination in the soil exceed the EPA's residential limits of 400 ppm, Hubbard said.

"The majority of the samples were less than the 400 ppm, but there were several hot spots that exceeded those limitations all the way up to 16,000 ppm," he said. "But when you are dealing with lead-based paint issues, all it takes is for a small flake of paint to be in that sample for the concentration to be very high.

"There is no practical way of going out with a hand lens ... to pull out flakes from the soil," he said. "So we would end up considering that area contaminated and look at removing it."

Hubbard said the state wants to make sure it knows the full extent of any contamination.

If it is determined that flakes of paint from the bridge are the source of the lead, Hubbard said, a cleanup at this point wouldn't preclude containment.

"I have not seen the bridge myself, yet," he said. "But I'm sure there might be some old paint still there, so we could look at controlling the source, which might mean removal or sealing it in some way."

CSX spokesman Bob Sullivan was traveling, so details of what has been done thus far were not yet available to him.

“CSX continues to work voluntarily with the Kentucky Department of Environmental Protection while continuing the sampling and assessment of samples from the area of the railroad bridge over the Barren River,” Sullivan said in an e-mail to the Daily News.

Actually, Hubbard said today that the state received CSX’s interim action plan and it includes soil removal in three areas on both the west and east abutments of the railroad bridge.

“They plan to start that work sometime in August and then submit a report to document that work to us,” Hubbard said. “They are continuing to finish up the assessment on the ecological effects and they will submit that.”

Once all the assessments are complete, Hubbard said, the state will determine what other cleanup actions are needed.

**WATER**
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**Residents tell EPA Pa. gas drilling poisons water (*Associated Press*)**

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

By MARC LEVY
The Associated Press
Thursday, July 22, 2010; 11:54 PM

CANONSBURG, Pa. -- People who make a living from a natural gas drilling technique that involves pumping chemical-laced water into the earth and others who believe it has poisoned them or their well water packed into a hotel ballroom in southwestern Pennsylvania on Thursday night to make an impression on federal researchers.

Residents of Hickory, about 15 miles southwest of Pittsburgh, called for intensive study of hydraulic fracturing, or fracking, and told a U.S. Environmental Protection Agency panel that their well water turned foul after drilling began nearby in the last few years.

Darrell Smitsky said five of his goats died mysteriously and, even though state regulators told him the water was safe, his own test showed sky-high levels of manganese and iron. When he blamed the drilling company, he said, it responded, "Can you prove it?"

Stephanie Hallowitch said her family's well water is no longer safe to even allow her children to run through the sprinklers.

"I urge the EPA to help my family and other families living near drilling to get answers to their questions," she said. The research, she continued, must be done "to protect other families before it is too late and they are in our situation."

In fracking, drilling crews pump millions of gallons of sand- and chemical-laced water deep into the earth to break up dense rock to free the natural gas. Some of that water returns as a briny, chemical- and metal-laden brew and is usually stored in open pits until it's trucked to treatment plants or underground injection wells.

The oil and gas industry steadfastly defends the fracking process as having been proven safe over many years and says it is a crucial tool if the country is going to be able to harvest its gas reserves. With many speakers calling for a moratorium on fracking or tough federal regulation, industry representatives contended that states are already doing that job.

The EPA has begun a new look at fracking as gas drillers swarm to the lucrative Marcellus Shale region and blast into other shale reserves around the country. The process is currently exempt from federal regulation, and instead states apply their own rules to it.

Shale drilling is being viewed as so lucrative that international exploration companies are investing billions of dollars in the pursuit.

James Erb, of the American Petroleum Institute, which represents major oil and gas producers, told the EPA that the group is aware of substantial public concern over fracking and that it supports the EPA's review.

API, he said, is confident that the sound application of fracking causes no significant risk to human health, drinking water sources or the environment.

Lou D'Amico, president of the Pennsylvania Independent Oil & Gas Association, made up of hundreds of businesses, said that no example exists of fracking having polluted ground water and that the EPA study should include a review of complaints lodged to state-level agencies and how they were investigated.

"The controversy is one based on media-generated public hysteria and perception, not science, fact or evidence," he said.

Thursday's hearing lasted five hours, with scores of speakers each getting two minutes at a microphone.

Canonsburg is at the heart of hundreds of Marcellus Shale wells that began to be drilled in earnest in 2008. Some geologists say the vast Marcellus Shale region primarily

beneath Pennsylvania, New York, West Virginia and Ohio could become the nation's largest natural gas field.

Already, about 1,500 Marcellus Shale wells have been drilled in Pennsylvania in barely two years, and thousands more are expected, transforming areas of the state. Numerous landowners are getting paid to lease their land for drilling or are receiving royalty checks from producing wells. Meanwhile, many industries such as steel pipe makers and haulers are seeing huge new demand from drilling companies.

But many landowners are coming forward to tell stories about spoiled well water.

The EPA's $1.9 million study is expected to yield preliminary results by the end of 2012, Fred Hauchman, director of the EPA's Office of Science Policy, told attendees at the outset.

Hauchman promised to reach out to experts and study a wide variety of water sources, and he said an advisory board of scientists has told the agency to focus on the impact on water quality and quantity.

**Economist defends method used to extract natural gas (*Pittsburgh Post Gazette*)**

Thursday, July 22, 2010
By Elwin Green, Pittsburgh Post-Gazette

Get John Felmy started on the subject of hydraulic fracturing, the process by which a mixture of water, sand and chemicals is blasted into rock formations to create fractures that release natural gas, and he responds with something that one does not typically associate with economists: passion.

In a phone interview, the chief economist for the American Petroleum Institute, a Washington, D.C.-based trade association for oil and natural gas producers, said claims that hydraulic fracturing may be responsible for consequences ranging from fish kills to explosions are "complete nonsense."

"The fracturing process in itself has never been found to have contaminated a water supply in over a million wells that have been fractured over the last six years," he said, speaking with rapid-fire intensity.

That intensity reflects the intensity of the attention that hydraulic fracturing has received recently. Sen. Bob Casey, D-Pa., has introduced legislation to regulate the practice, the House Subcommittee on Energy and Environment is examining it, and the Environmental Protection Agency has scheduled a public meeting this evening in Canonsburg about it, the third of four such forums being conducted as part of a study to be concluded in September.

Meanwhile, a new study has upped the estimate of jobs to be created by development in the Marcellus Shale, a geologic formation underlying much of Pennsylvania, and a new program to train workers has received nearly $5 million from the U.S. Department of Labor.

Mr. Casey joined with U.S. Representatives Diana DeGette, D-Colo., Maurice Hinchey, D-N.Y., and Jared Polis, D-Colo., last month to introduce the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act.

The senator said the act would repeal a provision of the 2005 energy bill that exempted hydraulic fracturing from the Safe Drinking Water Act. It would also require natural gas producers to publicly disclose the chemicals used in hydraulic fracturing.

Mr. Felmy said those chemicals are already disclosed in data sheets available at each well site, and that many companies also list them online; and that the FRAC Act threatens to slow down or even stop natural gas production in the Marcellus Shale.

"It is unbelievable to me" that a Pennsylvania senator would propose it, he said.

The House Subcommittee, chaired by Henry A. Waxman, D-Calif., sent a letter Monday to 10 energy producers, asking them to list all of the oil and gas wells for which they performed hydraulic fracturing, the total volumes of flowback and produced water recovered by state and year, and their company policies regarding on-site storage of flowback and produced water, among other information.

EQT Corp., headquartered Downtown, received the letter, and spokesman Kevin West said the company was in the process of gathering information to meet the requested Aug. 6 deadline.

"We think that any study that's based on the relevant facts and science will lead to the same conclusion that previous studies come to," Mr. West said, "which is that there is no negative impact on water resources from the use of hydraulic fracturing."

Mr. Felmy said state regulators are providing sufficient oversight of Marcellus Shale development, and fining or otherwise restraining companies when their practices have produced harmful results.

But he also argued that some complaints made by residents near drilling sites of such things as odors or bad-tasting water have nothing to do with gas wells.

"It could have already been there," he said. "In many cases ... it was already naturally occurring."

For many, the most important aspect of Marcellus Shale development has been job creation. A new program, Marcellus Shalenet, announced Wednesday that it has received nearly $5 million in federal funds to offer training for local workers through a

consortium led by Westmoreland County Community College and the Pennsylvania College of Technology.

Also Wednesday, the American Petroleum Institute released a new study asserting that the development of Marcellus Shale gas could create 100,000 jobs by 2020 under a "low development" scenario and more than 280,000 under a "high development" scenario.

With those economic stakes, Mr. Felmy said, "Every day that we don't move forward on these things is a day that a poor Pennsylvanian doesn't have a job, and that's wrong."

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Read more: http://www.post-gazette.com/pg/10203/1074466-28.stm#ixzz0uQ1YOuMX

**EPA Considers Expanding Use Of Conductivity As Water Quality Criteria (*Inside EPA*)**

EPA is beginning internal discussions about formalizing and expanding the use of electrical conductivity, a measure of salinity, as a water quality criteria beyond its use for mountaintop coal mines, a move that is already drawing concern from a broad range of industry groups, states and science advisers who say it is an inappropriate measure of impairment.

One EPA official says the agency's effort is aimed at encouraging states to adopt a numeric conductivity criteria as a measure for Clean Water Act (CWA) permits, rather than the more-flexible narrative criteria they currently use.

The agency earlier this year began using conductivity as a first-time measure in determining whether CWA permits for mountaintop mining operations are adequately protecting water quality and aquatic life.

But EPA's April 1 interim guidance that adopted this approach has drawn sharp rebukes from industry and state regulators who say conductivity is an inappropriate benchmark because it only indicates potential water quality impairments, while it is the actual chemical composition of dissolved solids within a waterbody that determine whether water is too toxic to support aquatic life or other functions.

While the guidance only applies to mountaintop mining operations, critics have raised concerns that it could be applied more broadly to other resource extraction and earth-moving activities, which have the potential to increase conductivity levels.

Now EPA officials say they are considering steps that could extend the approach more broadly and are defending its use for mountaintop operations.

"We recognize that the issue of what is or is not protective in terms of conductivity levels varies depending upon the source [of a discharge], the ions involved and geography," said Denise Keehner, who directs EPA's office of wetlands, oceans and watersheds, speaking at a July 20 Science Advisory Board (SAB) peer review of draft studies EPA relied on in crafting the guidance. "EPA will be considering whether there is a need for additional conductivity benchmarks, and whether we should issue more formal 304(a) guidance or criteria on conductivity."

Keener told *Inside EPA* following the session that the agency does not intend to create a single national conductivity benchmark. Rather, EPA is exploring opportunities to suggest 304(a) conductivity criteria on a regional basis, as the agency has previously done with nutrients.

She said that EPA believes conductivity is the best measure for CWA permits related to mountaintop mining because the mixture of chemical ions that create conductivity are similar throughout the Appalachian region, so measurements based on conductivity are more readily available and provide a convenient metric for comparing the effects of different types of mining. And while EPA officials recognize that conductivity is not a uniform measure of water quality, they say the agency is exploring ways to expand its use.

CWA section 304(a) requires EPA to periodically develop and publish ambient water quality criteria based on scientific assessments of effects on environmental or human health -- and then use those criteria when setting enforceable regulatory limits, such as water quality standards. The criteria do not in themselves establish new standards, but provide guidance to states to adopt their own criteria that meet CWA requirements. But section 304(a) guidance or criteria could have the effect of expanding the conductivity requirements to other sectors and regions because states' criteria would apply to any point source that contributes to conductivity.

Keehner told *Inside EPA* that efforts to implement 304(a) criteria come partially in response to concerns states have expressed over how to account for conductivity in permitting requirements.

Most states rely on narrative criteria for conductivity that describe how it should affect waterbody functions, rather than numeric limits that would bar permits for operations that exceed a particular conductivity measure.

In the April guidance, EPA says mining operations that cause conductivity to exceed 500 microsiemens per centimeter (uS/cm) generally would violate CWA requirements, while operations that would keep conductivity below 300 uS/cm would generally be acceptable.

State and industry sources have complained that those levels are too strict, because many waterbodies in the region demonstrate background conductivity levels in excess of those thresholds. Critics also argue that conductivity itself should not be used as a

measure of water quality, because it simply indicates whether more analysis is needed on whether the particular ions creating the conductivity are also causing elevated toxicity within the waterbodies.

Keehner acknowledged that there were many unanswered questions about whether conductivity could work as well as a criteria applied to sectors beyond mining, but she said its use in the guidance was appropriate because mountaintop mining operations generate unusually large volumes of waste material that is dumped into nearby streams and that the material has similar chemical characteristics. Others during the SAB discussion noted that conductivity is routinely measured during stream surveys, whereas analysis of the particular ions that constitute dissolved solids are more cumbersome and less common.

But even as EPA hints that it could expand its use of conductivity as a measure of pollution, states continue to complain that the agency is moving too quickly to establish a conductivity benchmark through its April mining guidance. States say the agency seems to be creating new requirements in permit reviews without first giving states the necessary tools to develop adequate criteria.

EPA recently released its review of Appalachian states' performance issuing National Pollutant Discharge Elimination System (NPDES) permits. The review noted, among other criticisms, that most states in the region did not have "applicable numeric water quality criteria that account for the effects associated with high levels of conductivity, total dissolved solids, and sulfates."

In comments to EPA on the review, Kentucky officials said it typically was not their job to develop such criteria. "To be fair to the delegated states, it should also be noted in the report that historically, due to a variety of reasons, the burden of scientific development of numeric water quality criterion has primarily fallen on USEPA," say the state comments. EPA in response says that whole effluent toxicity (WET) testing should be used where numeric criteria are unavailable.

West Virginia officials also bristled at EPA's aggressive new stance toward conductivity and other mining impacts in comments on the NPDES review, saying that the agency was aware of the potential impacts it is now targeting since at least 2003 but only began cracking down on them once President Obama entered office last year.

"Since USEPA's change in position on this point, there still remains considerable uncertainty as to the threshold level at which impacts to aquatic insects should be regarded as excursions from the standard," say West Virginia's comments to the agency. "While this uncertainty exists and with EPA's very recent change in interpretation, that West Virginia did not immediately adopt a permitting protocol to address protection of the narrative standard cannot be regarded as a failure to effectively implement the NPDES program." *Relevant documents are available on InsideEPA.com.*

07/23/2010

**EPA Takes First Step In Power Plant Cooling Water Cost-Benefit Analysis (*Inside EPA*)**

EPA is soliciting information on how much utility customers are willing to pay to prevent fish from being killed or injured by cooling water intake towers at power plants and other similarly regulated entities, an early step in the agency's effort to weigh the costs and benefits of cooling water intake regulations.

The question over whether and how EPA should conduct cost-benefit analysis for Clean Water Act rules, especially related to cooling water intakes, has been heavily litigated, with the Supreme Court ruling in 2009 that EPA has discretion to weigh the costs of strict standards for cooling water intakes, but is not required to do so.

Cooling water intake structures draw in water used to cool industrial operations and/or generate steam to drive turbines, but adult fish can become impinged, or trapped, on intake screens while fish eggs and larvae can become entrained, or drawn into the cooling water system.

Environmentalists and some states have long sought to require facilities to use closed-loop cooling systems that recycle water within the facility, arguing that it limits the amount of withdrawn water and the number of fish and aquatic organisms that are killed. But industry officials oppose use of closed-loop systems, charging it is costly and more energy intensive than other technologies, resulting in increased emissions and an energy penalty.

In a July 21 *Federal Register* notice, EPA says its information collection request (ICR) titled *Willingness to Pay Survey for Section 316(b) Existing Facilities Cooling Water Intake Structures: Instrument, Pre-test, and Implementation*, is designed to find out how much individuals and households are willing to pay to protect aquatic organisms. *The notice is available on InsideEPA.com.*

EPA says the ICR is designed to "ensure that the location, design, construction, and capacity of cooling water intake structures (CWIS) reflect the best technology available (BTA) to protect aquatic organisms from being killed or injured by impingement or entrainment."

The agency intends to survey households in five regions -- California, Great Lakes, Inland, Northeast and Southeast -- questioning around 2,000 households as to whether they would vote for policies that would increase cost of living in exchange for "specified multi-attribute changes in [a] impingement and entrainment losses of fish, [b] commercial fish sustainability, [c] long-term fish populations, and [d] condition of aquatic ecosystems." EPA says this "'choice modeling' framework allows respondents to state

their preferences by making a voting-type selection between two hypothetical multi-attribute regulatory options (and a third 'status quo' choice that rejects both options)."

The *Federal Register* notice says EPA's analysis will allow an estimation of the variation in willingness to pay across different types of households, in different areas. While it is virtually impossible to justify differences between the value to users and nonusers of a resource, the structure of the choice attribute questions will allow the analysis to separate value components related to the most common sources of use values -- effect on harvested recreational and commercial fish.

EPA also says that it will take particular care to avoid any possible double counting of values that might be derived from alternative valuation methods.

The agency's regulatory efforts will apply to large existing power plants, existing manufacturing plants, small power plants and new offshore oil and gas facilities.

EPA in 2007 suspended its phase II cooling water intake rule, applying to large existing power plants, when the U.S. Court of Appeals for the 2nd Circuit remanded portions of the rule to agency. The agency voluntarily remanded the entire rule following the high court's 2009 ruling *Entergy Corp., et al. v. Riverkeeper*.

Litigation over the phase III rule, which applies to existing manufacturers and small power plants, was stayed in the 5th Circuit pending the outcome of the *Entergy* ruling. EPA has asked the 5th Circuit to remand the existing facilities portion of the phase III rule to the agency, but the court has not yet made a decision. EPA says it anticipates combining the phase II and phase III rules into one regulation covering all existing facilities.

07/23/2010

**SAB Queries EPA Plan To Expand Use Of Conductivity As Water Measure (*Inside EPA*)**

Science Advisory Board (SAB) panelists are questioning EPA plans to expand its use of conductivity as a water quality benchmark beyond waters harmed by mountaintop coal mining in Appalachia, with some panelists noting that EPA needs to better justify its use in the region.

SAB panelists said they understood the practical value of relying on conductivity -- a measure of salinity -- for EPA to use in evaluating Clean Water Act (CWA) permits given to mine operators in Appalachia, but they noted that conductivity itself does not directly measure toxicity or other water quality impairments and hence may not demonstrate the proper cause-effect relationship between stressors and impacts to aquatic life.

The biggest shortcoming in using conductivity as a benchmark is that the measure itself is just an indicator of potential water quality harms. Conductivity measures are created by the presence of charged ions in a waterbody, but it is the ions themselves that are toxic, several SAB panelists noted during a July 21 meeting.

In the case of mountaintop mining, EPA says conductivity is an appropriate benchmark because mine discharges in Appalachia have similar ion concentrations -- heavy in sulfates and biocarbonates. SAB members noted that relationship was solid in the region at issue, but some suggested to the author of a draft EPA report on the issue that more effort be made to draw a connection between particular ion concentrations and impacts to aquatic life.

The SAB panel is reviewing two draft science reports EPA used in crafting its landmark guidance on CWA permitting for surface mining operations in Appalachia. The April 1 document, distributed to regional administrators overseeing Appalachian states, sets out a conductivity benchmark to be used in EPA reviews of CWA section 402 and 404 permits for mines in the region. EPA said mining operations that would cause stream conductivity to exceed 500 microsiemens per centimeter (uS/cm) would generally violate the law, while those with conductivity below 300 uS/cm would be adequately protective of aquatic life.

The lower threshold was derived from one of the draft reports, *Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams*, which posits a causal relationship between increased conductivity caused by mountaintop mining and the disappearance of mayfly populations in affected streams.

Questions about conductivity come as EPA is considering crafting water quality criteria for the measure, under section 304(a) of the Clean Water Act, which instructs the agency to conduct scientific analysis on factors that are inhibiting water quality and publish criteria that states could incorporate into their own water regulations. Denise Keehner, director of EPA's office of wetlands, oceans and watersheds, told the SAB panel July 20 that the agency was beginning to explore broadening the use of conductivity (*see related story*).

SAB panelists noted the report from which EPA is drawing the Appalachian conductivity benchmark had several distinctive features that may be difficult to replicate in other areas. It was compiled using massive water monitoring datasets compiled by the states of West Virginia and Kentucky, examined a region that was relatively geographically homogenous, and applied to mining operations that released chemically similar waste into waterways, making conductivity an effective surrogate for sulfate and biocarbonate pollution.

Conductivity could be an effective benchmark in other areas that share those characteristics, but, as panelist Thomas LaPoint noted, "It's going to take a big effort to find those kind of areas."

**Corps: Don't kill mall permit (*St. Petersburg Times*)**

Florida
July 23, 2010 Friday
PAN; Pg. 1PAN
BY LISA BUIE
Times Staff Writer

WESLEY CHAPEL - Revoking an environmental permit for the proposed Cypress Creek Town Center, which has been at the heart of a lawsuit between environmentalists and the Army Corps of Engineers, would be "disruptive" and is outside a judge's authority, the federal regulators argue.

The Corps, which was given 20 days last month to file a response to a federal ruling that it violated two of three federal laws as alleged by the Sierra Club, filed a brief this week saying that a judge should let the agency review the permit and make a decision on any corrections rather than force it to be revoked.

"A direction to the Corps to revoke the permit and order remediation could only be made based on the court's own conclusions with regard to the potential environmental impacts of the project and would thus necessarily involve a substitution of judgment for that of the agency," attorneys for the Corps wrote. As noted in case law, "such a procedure clearly runs the risk of propelling the court into the domain which Congress has set aside exclusively for the administrative agency."

The Corps also said ordering revocation would be premature because the agency could always change the requirements to force developers to do what is needed to comply with the law.

The Corps also noted that the current permit conditions prevent any damage to the creek and agency oversight is needed to maintain the stormwater management system.

Revoking the permit, "would be more disruptive than simply leaving the permit in place pending remand."

The Corps' response came after U.S. District Judge Royce C. Lamberth ordered it to revise its permit for the 500-acre Cypress Creek Town Center, finding the agency failed to ensure the protection of wetlands near the site at Interstate 75 and State Road 56.

Lamberth gave a harsh assessment of the Corps in a memorandum that accompanied the order, saying it failed to fulfill its legal duties and calling "it a familiar course of action when processing permit applications."

The judge wrote that the Corps failed to conduct an in-depth study that takes a "hard look" at potential environmental concerns and make a "convincing case" that there would not be significant environmental impacts. It also failed to consider the "cumulative effects" of proposed actions, he said.

The judge ordered the Corps to craft a remediation plan. The Sierra Club, which filed the legal challenge, would be able to offer its input. Then the judge will determine what conditions to impose on the project. The judge also asked the Corps to provide any arguments against granting injunctive relief to the Sierra Club.

The Corps said in its brief that the club failed to ask up front for any injunctive relief and therefore wasn't legally entitled to it. It also said there was no evidence the group was being harmed by the status quo.

Developers the Richard E. Jacobs Group of Cleveland and Sierra Properties, who are intervenors in the case, echoed that argument in a separate brief also filed this week. They said revoking the permit would be impractical because affected wetlands had already been filled and mitigated for.

Developers also argued that revoking the permit would jeopardize the proposed 1 million-square-foot project, which before the permit's suspension employed 150 workers.

"During full build out, up to 1,000 people will work at the site.

"When completed, (the mall) is expected to provide 4,000 jobs, and annual tax revenues of approximately $6 million for Pasco County and its schools," attorneys for the developers wrote. "The final judgment this Court enters in this case will affect not only the Corps and the Developers, but also Pasco County and its residents."

Developers have said in the past that they remain committed to the project and have spent $21 million widening part of State Road 54.

The project has been controversial from the start. Environmentalists raised concerns about pollution in a nearby creek that feeds the Hillsborough River. The river is a source of Tampa's drinking water.

The Corps granted the permit in 2007. The Sierra Club then sued the Corps. Then in February 2008, the Corps suspended the permit after muddy water began spilling into the creek. Work stopped for 18 months.

The developers then paid about $297,000 in fines for violating the federal **Clean Water Act.**

Work recently resumed after a settlement in that matter was reached. In the settlement, the Corps said the discharge was due to "human error" and not any flaw in the

developers' plans.

That prompted U.S. Rep. Kathy Castor, D-Tampa, to call for a review by the U.S. **Environmental Protection Agency.** The agency agreed with the Corps' findings.

Denise Layne of the Tampa Bay Sierra Club called the responses from the developers another example of "greed, greed, greed." She also took issue with the Corps' assertion that it can make things right.

"They're saying, 'Trust us,' We said you were wrong - two times," she said, referring to the granting and reinstating of the permit. "You can't trust government to take care of the environment. You just can't."

Layne also said that the group is not simply antimall.

"We're not out to make everybody miserable," she said. "We just want to protect a water source."

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Article published Jul 23, 2010

**Vermont activists want EPA to take lead on wastewater cleanup (*Rutland Herald*)**

By Louis Porter
Vermont Press Bureau
MONTPELIER — Saying the state is still not doing enough to enforce the Federal Clean Water Act, an environmental group renewed its push Wednesday for the U.S. Environmental Protection Agency to take over that job.

If the EPA agrees, and that decision may be some time off, it could have a significant effect on large farms, municipal wastewater plants and on the state's Agency of Natural Resources that now has that authority. If EPA does not act soon, his organization may file a federal lawsuit to force it to, said Chris Kilian, head of the environmental law nonprofit in Vermont

"The reality is the pollution problems are continuing," Kilian said. "There has really been no change in the intervening two years on the enforcement issues."

"We are not going to wait much longer," he added.

ANR Secretary Jonathan Wood said his agency is "getting used to CLF's continued allegations."

“This is really just a reiteration of previous allegations,” he said. “I think they have not been satisfied that EPA has not dealt with this, so they are making an additional request reminding EPA they need to deal with this.”

But Wood added that he is not sure his agency would object to the feds taking back Clean Water Act authority from the state, although such a process could be complicated and result in federal money for the program no longer going to the state.

“I don’t know if it would be good or bad for Vermont,” he said.

The specific objections in CLF’s complaint, a follow-up to a request first filed two years ago, relate to a number of areas, including whether the state is legally and properly enforcing water pollution from large farms, whether the state allows enough public participation in regulation of permits and whether the state has improperly allowed the Waterbury wastewater treatment plant to continue discharging too much phosphorous into the Winooski River and eventually into Lake Champlain.

But one line in the supplementary filing, based in part on ANR enforcement cases, sums up the environmental group’s objection.

“ANR continues to fail to adequately enforce the Clean Water Act,” according to the law foundation’s filing.

The result of EPA getting that enforcement program back from the state, either voluntarily or after a court case, could be a significant change in the regulation of some of those discharging pollution to Vermont waterways.

For instance large farms, now rarely, if ever, prosecuted by the state for water pollution, might see different enforcement. Cities and towns could see different standards required in their wastewater treatment plant permits.

“I don’t know what difference there would be with EPA in charge of that instead of us,” Wood said. “It could mean a significant amount of change in how water quality issues are dealt with.”

And that is what is necessary, Kilian said.

“They would take the program over and they would be implementing the program directly,” he said.

For instance, some sewage plants in other states, even in other New England states, are held to higher pollution standards than those in Vermont. The Waterbury plant, coincidentally the destination of wastewater from the Waterbury office complex that houses ANR, is allowed to put much more phosphorous into the water than facilities in Massachusetts, Kilian said. Large farms in other states are held to higher standards as well, diminishing how much runoff from manure or animal composting goes into

waterways, Kilian said.

The state is simply “blatantly and obviously not implementing the law,” Kilian added. “I don’t understand why that is given a minute’s leeway by U.S. EPA.”

But Wood said that was a misinterpretation of the state’s legal position.

“We are meeting the law and bringing people into compliance,” Wood added.

A spokesman for EPA’s Region One office in Boston declined to comment on the pending matter.

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**Sparrows Point cleanup begins (*Baltimore Sun*)**

Steel mill owner launches "interim" efforts to extract, neutralize toxic wastes in groundwater, larger cleanup still in dispute
By Timothy B. Wheeler, The Baltimore Sun
7:44 PM EDT, July 22, 2010This is what progress looks like in cleaning up one of the most polluted industrial sites in the Chesapeake Bay region: A lone pump labors in a rubble-strewn field at Sparrows Point, making soft gasping noises as it siphons a thin stream of oily waste from underground.

The pump is one of the first put in by steelmaker Severstal North America to tap the huge plume of contamination underlying the 2,300-acre peninsula in Baltimore's harbor, where the dirty business of making steel has been practiced for more than a century. Brown liquid pulses through a clear plastic pipe from the pump into a small black holding tank.

Not far away, a drilling rig is poking more holes in the ground in preparation for another cleanup effort expected to begin soon. Plans there are to inject air into a toxic "hot spot" of benzene-tainted groundwater and suck vapors out of the soil laden with the carcinogenic chemical.

"We're trying to attack the source of the contamination," says Russell Becker, environmental manager for Severstal's Sparrows Point operation, "and recover as much of it as possible."

For some, those efforts are progress. But for others, they're short of what's needed to protect residents living nearby as well as the fish and wildlife that frequent the surrounding waters.

Two weeks after environmental groups and some area residents sued Severstal, contending that it is harming the environment and threatening neighbors' health, Becker showed a Baltimore Sun reporter and photographer around the steel complex. While declining to discuss the lawsuit, he explained what Severstal has done and plans to do to fulfill a 13-year-old "consent decree" requiring the mill's owner to reduce air and water pollution and clean up contaminated soil and groundwater.

That 1997 cleanup order was agreed to by the Point's owner at the time, Bethlehem Steel Corp., which later went bankrupt. The complex struggled through two more owners before Severstal bought it in 2008. While some neighboring residents say cleanup efforts dragged during the turmoil, Becker maintained that Severstal is taking steps to run a cleaner plant.

"We're striving, we certainly are," he said. "The commitment is there. ... We've been aggressively identifying issues and getting systems in place."

The company has agreed to begin "interim" cleanups of the groundwater contamination beneath the southwestern corner of the peninsula. That's where the plant once "cooked" coal in huge ovens to produce the coke needed to make steel from iron ore.

Shut down in 1991, the coke ovens have since been demolished. But some of the waste byproducts, including benzene and naphthalene, were spilled or dumped there while the ovens still ran and now linger in the groundwater. Government officials say tests show the contamination is seeping into the Patapsco River and into tributaries such as Bear Creek. Dundalk residents on the other side of the creek boat, fish, crab and even swim in those waters within sight of the steel mill.

The company has begun pumping out a layer of oil that's floating on top of the water table 10 feet or so underground. It's a painstaking process. The "skimmer" pump, powered pneumatically with compressed nitrogen gas, manages to extract just 10 gallons to 12 gallons of the light oil every day. It has recovered a total of 750 gallons since it began operating in March, said Becker, but there are about 10,000 gallons down there. He said he hopes to add three more skimmer pumps by week's end.

Becker said he also expects to have equipment delivered that will pipe air into the ground, extract chemical-laden vapors and burn them off. Crews are drilling the air injection wells and hooking up a network of pipes to collect vapors from an acre-size patch of land. Becker says he won't know how much benzene this prototype operation will remove until it's running, but he hopes it gets 5 to 10 pounds an hour.

The company also plans to try similar measures along the waterfront. On the eastern side, though, the ground is fouled with naphthalene and thick coal tar. There, Becker said, the company will try "bioremediation" — cultivating bacteria that will "eat" the contaminants, rendering them nontoxic.

At the northwestern corner of the complex looms Greys landfill, where similar contaminants have seeped into groundwater, though at lower concentrations, according to Becker. Though coke oven wastes are no longer dumped there, the landfill still receives about 500 tons daily of iron-laden sludge from the mill's wastewater treatment plant, as well as sludge collected by its air pollution-control equipment.

Greys landfill and another one by the demolished coke oven area have no liners to keep contaminants from seeping into the groundwater.

The 100-foot-high hill rises above the tree line hugging Bear Creek, and neighbors on the far shore have complained of odors and dust. Becker said the company has taken steps to limit the odors, which he said probably resulted from disposal of old oil. It has also acted to minimize erosion, terracing the landfill's slopes and covering the horizontal "steps" with plastic to ward off rainfall.

Runoff is channeled now to a large holding pond, but when water levels rise in rainy periods, the impoundment drains into the creek untreated. Becker said the company hasn't tested that discharge to see whether it contains contaminants.

That's a concern for residents like Bill Pribyl, who lives on the creek across from the plant. He called the interim cleanup moves "a really good start," though he adds that he believes they should have begun up to a decade earlier. He said he'd like to see the runoff from the landfill collected and run through the mill's wastewater treatment plant.

Residents are torn by Severstal's bid to open a 60-acre landfill beside Greys. The new facility would be lined, but Becker says the company needs to keep using the oldlandfills until the replacement is readied — assuming that plan is approved by the Maryland Department of the Environment.

Becker points to other steps Severstal and its predecessors have taken to comply with the 1997 consent order, such as upgrading the mill's wastewater treatment plant and installing new air pollution controls.

But Pribyl, who is not part of the lawsuit, says it is "sad" that the company is disputing its responsibility to sample Bear Creek beyond Sparrows Point's shores for contamination. The company contends that it is not legally liable for anything outside the plant's boundaries as a result of the 2003 bankruptcy sale of the mill. Talks continue with the U.S. Environmental Protection Agency and the state over the dispute, which might wind up in court.

Jon Mueller, litigation director for the Chesapeake Bay Foundation, said the lack of action to investigate and deal with possible off-site contamination is a key focus of the lawsuit the group filed in concert with the Baltimore Harbor Waterkeeper and several area residents.

Samples of bottom sediment and water around the Point in the late 1990s found contamination, and more recent testing by private contractors and the Maryland Port Administration found the same.

"There's a diving platform out there, a swimming platform, about 400 feet from where one of the samples was taken in 1997," Mueller said. While most of the contaminants might be buried in sediment on the creek bottom, wading or swimming in such water could stir them up, exposing people.

Pribyl says he won't swim, crab or eat fish caught from his pier out of concern for what's in Bear Creek.

"We all dropped the ball — EPA, MDE, Severstal and all the owners before, and the community," he said.

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**Environmental groups back EPA plan for reduce nitrogen loads (*Baltimore Sun*)**

While law says price of wastewater facility upgrades can't be considered in effort to cut pollution, towns are forced to address bills that may triple
By JOSHUA CLARK
jclark@seacoastonline.com
July 23, 2010 2:00 AM
PORTSMOUTH — Representatives of environmental groups weighed in on the protection of the Great Bay estuary and costs associated with upgrading local wastewater treatment plants.

Tom Irwin, vice president and N.H. advocacy center director with the Conservation Law Foundation, and Joel Harrington, director of government relations with The Nature Conservancy, spoke with the Seacoast Media Group's editorial board Wednesday. The pair discussed several issues related to the estuary, including the federal government's mandate to reduce nitrogen discharged from wastewater treatment plants across the region.

Revised regulations of the N.H. Department of Environmental Sciences and U.S. Environmental Protection Agency will force 21 New Hampshire and Maine communities around the estuary to upgrade their wastewater treatment facilities, including Portsmouth, Newington, Exeter, Newmarket and Newfields. Each upgrade will cost millions of dollars.

When the EPA will issue new standards for acceptable quantities of released nitrogen remains unknown, as does the cost of any work to meet more strict regulations.

Portsmouth estimates the cost to upgrade its two plants from $63 million to more than $100 million. City ratepayers face an increase of two to three times their current rates based on those figures.

Irwin said the CLF's position is based on the federal Clean Water Act, which says the state and EPA must use the best available technology to control pollutants causing a body of water to be impaired; and cost may not be considered in the search for a solution.

Harrington said he believes the EPA will institute a phased approach to the upgrades, to mitigate immediate economic impact.

"I'm convinced that the EPA is going to come down with some order in the permits, but I don't think it's going to be a five-year requirement," he said. "I think it is going to be spread out because of the economic situation, and I think that pressure from our delegation is already under way."

Jamie Radice, communications director for U.S. Rep. Carol Shea-Porter, D-N.H., said the congresswoman is aware of the cost concerns.

"We are certainly going to work with the communities to be as helpful as we can be," said Radice. "There are federal resources that exist to help with these types of projects, like the Clean Water and Drinking Water Revolving Funds and the State and Tribal Assistance Grants. However, as is the case with so many things today, there is more need than there is money. The congresswoman is a staunch advocate in making investments in our communities as it creates jobs and it meets critical needs."

Harrington agreed, while he believes federal dollars should help defray the impact on local ratepayers, the availability of those funds is an issue. He referenced the State Revolving Loan Fund, to which the federal government supplies matching funds, that was unfunded in the last session of the N.H. Legislature.

"Towns like Portsmouth and Durham cannot go to that fund and get the money they need because the state does not have the match to give to the communities to do it," he said. "To me, this is the worst time to be under-funding the SRF program."

Irwin said cost should not override the need to upgrade the plants, but added he is willing to assist in working with the state's federal delegation.

"I've conveyed to the city (Portsmouth) more than once that we would be happy to work with them through the federal delegation to find federal dollars to help defray this cost," Irwin said. "I haven't got any response from that and I don't know if the city has been working independently to obtain federal dollars."

When asked if CLF would support delaying the upgrades until federal dollars are in place, Irwin said no; there is no clear indication of when federal money would become available.

"I'm not sure what arguing about cost right now does," he said. "We have to be proactive and have interim solutions right now in terms of land protection and restoration or bringing land use boards together and figuring out what can be done from here on out to limit this issue.

"The cost of inaction is we could be facing the situation they're facing in Chesapeake Bay, where for 15 or 20 years, multi-state (groups) and other efforts to save the bay have not been able to solve the problem, and it's had a huge economic impact."

Saving the Great Bay
Pick up the July 25 edition of Seacoast Sunday to read more about ideas on mitigating further damage to this precious resource.

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