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

Monday, February 18, 2013

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

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**EDITORIAL / OP-ED / COMMENTARY / LETTERS**
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**BP = Beyond Petro-safety (*Washington Times*)**

June 18, 2010 Friday
COMMENTARY; Pg. 1
BP = Beyond Petro-safety;
Enviro agenda undermined responsible oil exploration
By Brett M. Decker THE WASHINGTON TIMES

A lot of oil is being spilled in the Gulf, but almost as irresponsible is the ink that's been spilt incorrectly analyzing the disaster. What's largely being overlooked is how BP's hyperfocus on trendy but nonviable green energy alternatives caused this holocaust to wildlife and the environment.

Having read countless articles about the oil spill over the past month, there appears to be general agreement on four aspects of the crisis: (1) President Obama deserves his sinking approval ratings for exposing rank inexperience and poor leadership during the biggest test of his presidency (which is uncontestable); (2) everybody at BP should hang for being party to such an avoidable catastrophe; (3) the accident was the predictable outcome of greedy corporations de-emphasizing safety in favor of profits; and (4) the explosion of BP's Deepwater Horizon oil rig and the resultant calamity could have happened to any of BP's competitors in the oil business.

The last two assumptions are only partly true. Of course, accidents can happen to anybody, but it's wrong to water down BP's responsibility by broadly portraying this spill as an industry-wide problem. The fate of the Deepwater Horizon rig was the consequence of actions taken in pursuit of BP's corporate strategy to become known as the environmentally-friendly energy company. This agenda was drilled into public consciousness by a slick marketing campaign which rebranded BP to stand for "Beyond Petroleum." While few ever doubted that the sealion's share of corporate profits came from anything other than bubbling crude, the practical result of the green focus was diminished attention to the firm's dirty and risky main business. In a symbolic sign of how flower power was replacing gas-driven horsepower, BP's logo was even redesigned into the shape of a sunflower. Trail-blazing CEO John Browne became known as the "Sun King."

There was a dark side to the sunny new outlook of the British petroleum giant, which last year refined 2.3 million barrels of oil per day with annual sales and revenue of $239 billion. As the company dedicated ever-larger amounts of money to alternative energy

such as solar and wind projects, operating costs were slashed elsewhere, including significant cuts to safety procedures and maintenance of machinery.

While Mr. Browne concentrated on fighting purported global warming, BP facilities were struggling with safety problems. The trouble was compounded as BP led Big Oil's merger mania, acquiring Amoco and Arco and in the process becoming too big to handle. Shortly before the Sun King's abrupt resignation amidst a homosexual scandal in 2007, his mismanagement was at fault for massive oil spills in Alaska and a deadly explosion with nearly 200 casualties at a Texas refinery. Mr. Browne's successor, current CEO Tony Hayward, was appointed with the explicit mandate to clean up BP's precarious safety practices.

Which brings us to the blame game. Although Mr. Hayward deserves a dunce cap for his tone-deaf public pronouncements that consistently soft-peddled the seriousness of the Gulf leak, he is mostly culpable for being unwilling and incapable of implementing fundamental corporate change rapidly enough. If the man at the top isn't fully engaged, a culture of safety cannot be reinvented in a conglomerate of 80,000 employees. In the aftermath of previous mishaps, BP needed a reorientation toward sound engineering, which Mr. Hayward didn't push even though competitors such as Chevron, Exxon and Shell did. However, he wasn't the one who threw safety standards to the wind; John Browne was. Mr. Browne spent $200 million marketing his "Beyond Petroleum" vanity project while cutting vital inspections and upkeep regimens. All the dead fish, suffocating dolphins, oil-drenched birds, ruined habitat, greasy water, tarred beaches and tanking BP stock are the legacy of the Sun King's dishonest green propaganda.

Brett M. Decker is editorial page editor of The Washington Times.

**AIR**

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**Obama's greenhouse gas rules survive Senate vote (*Washington Post*)**

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

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

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

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

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

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

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

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

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

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

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

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

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

Senate Republican leader Mitch McConnell of Kentucky called the new regulations a "blatant power grab by the administration and the EPA." With a broad energy bill unlikely to pass this year, "the administration has shifted course and is now trying to get

done through the back door what they haven't been able to get done through the front door," he said.

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

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

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

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

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

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

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

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

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

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

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

The bill is S.J. Res. 26.
Online:
Congress:http://thomas.loc.gov.

Thursday June 17, 2010

**Full U.S. Senate to vote on Rockefeller's EPA bill (*Charleston Daily Mail*)**

by Ry Rivard
Daily Mail Capitol Reporter
WASHINGTON -- The full U.S. Senate will vote later this year on a plan to give coal-fired power plants a two-year break from federal regulators intent on cracking down on gas emissions, Diana Furchtgott-Roth: EPA killing jobs amidst recession
By: Diana Furchtgott-Roth
Examiner Columnist
June 18, 2010

As if the unemployment rate of 9.7 percent wasn't high enough, President Obama, in a nationwide address on the oil spill on Tuesday, called on Congress to pass climate change legislation. In addition, his Environmental Protection Agency will soon issue regulations to impose more stringent controls on air quality.

These requirements would come at substantial cost to producers and then passed on to consumers. Homes, cars, household goods, and energy would become more expensive and people would buy less, leading to higher unemployment

The Congressional Budget Office agrees. Last month it issued a report titled " How Policies to Reduce Greenhouse Gas Emissions Could Affect Employment," concluding that "job losses in the industries that shrink would lower employment more than job gains in other industries would increase employment, thereby raising the overall unemployment rate."

The climate change bill would set U.S. greenhouse gas emissions in 2013 at a level of 5 percent below their 2005 levels. Levels in 2020 would be 17 percent lower -- even as the economy has expanded. By 2050, emissions would have to be 80 percent below 2005 levels.

EPA plans standards for power plants, heavy industry, and transportation, and a "cap-and-trade" program beginning in 2013, under which allowances to emit greenhouse gases would be issued by EPA at a declining rate through 2050. When firms' emissions exceeded their allowance, they would have to purchase more from the government or other firms, a tax under another name, driving up costs that would be passed on to consumers. Or they could just move to Mexico.

Not only does the bill penalize American firms through higher costs of production, it causes jobs to be created abroad through required investments in wind turbines and solar panels, now manufactured primarily in China. But carbon-intensive sources of energy such as coal and oil, which are disfavored by the bill, are produced domestically and employ American workers.

The climate-change bill must be passed by Congress to become law. But, on its own, EPA is preparing new rules to be issued in coming weeks to require power plants, factories, and automobiles to reduce emissions, in order to lower permissible levels of ozone in the atmosphere.

EPA wants to lower the ozone standard from 0.075 parts per million set in 2008 to a range of 0.060 to 0.070 ppm in 2020, depending on the final regulation. Before 2008, the maximum level permitted was 0.084, set in 1997.

Already 322 of the 675 counties required to measure ozone-including the Washington metropolitan area -- are out of compliance. If the standard were raised to 0.070, 515 counties would be out of compliance. At 0.060, EPA estimates that 660 counties, almost every major population area, would be out of compliance. Counties would have to phase in the new rules in 2014 and be fully compliant by 2031.

EPA estimates that it would cost $19 billion to $90 billion a year for America to comply with the new ozone standard, resulting in annual health benefits, such as fewer cases of asthma and missed days of work and school, worth $13 billion to $100 billion.

But these savings in health care costs are murky. America's air has been gradually getting cleaner since 1980, as EPA's own data show, but the number of children with asthma has risen. The Centers for Disease Control and Prevention acknowledges that "the causes of asthma remain unclear" yet EPA forecasts 53,000 fewer asthma cases from ozone reductions.

The environmental tragedy in the Gulf does not justify the potential loss of millions of current and future American jobs. We should put new environmental regulations on hold until unemployment goes down.

*Examiner Columnist Diana Furchtgott-Roth, former chief economist at the U.S. Department of Labor, is a senior fellow at the Hudson Institute.*

Diana Furchtgott-Roth:

**EPA killing jobs amidst recession (*Washington Examiner*)**

By: Diana Furchtgott-Roth
Examiner Columnist
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Examiner Columnist Diana Furchtgott-Roth, former chief economist at the U.S. Department of Labor, is a senior fellow at the Hudson Institute.

June 17, 2010, 8:33AM

**Texas proposes changes to clean-air permit rules (*BusinessWeek*)**

By SARAH PORTLOCK
HOUSTON
Texas proposed changes Wednesday to its clean-air permitting process for petrochemical companies in an attempt to satisfy concerns about how the state complies with the federal Clean Air Act.

The announcement came one day after the U.S. Environmental Protection Agency ordered two companies, including Chevron Phillips, to apply directly to the federal government for operating permits and bypass Texas officials.

The proposed changes, outlined in a 65-page document, include rules that would not allow a company to use state rules to circumvent federal regulations. The changes also would add references to federal requirements and require companies to maintain stricter records and monitoring of equipment.

But Terry Clawson, a spokesman for the Texas Commission on Environmental Quality, said the announcement was not directly related to the EPA's actions this week.

"It's certainly an attempt to satisfy the EPA's concerns about the flex permits, but not necessarily in response to yesterday," he said Wednesday.

A spokesman for the regional EPA said the agency still is reviewing the state's flexible permit program. The EPA has threatened to take over Texas' air quality program, and has a court-ordered deadline of June 30 to act.

A public hearing on the proposals is scheduled for July 29 at the state agency's headquarters in Austin.

The debate between Texas and the EPA centers on the state's so-called flexible permits plan, which sets a general limit on how much pollution an entire facility can release. The program never was approved by the EPA, and the federal Clean Air Act requires permits to set limits on each of the dozens of individual pieces of equipment inside a plant.

The EPA has rejected nearly 40 operating permits issued by Texas late last year. After Texas failed to meet agency demands that the permits be fixed, it barred Texas from issuing an operating permit to a refinery last month and two companies this week, including the Chevron Phillips Cedar Bayou plant, east of Houston.

**EPA takes over Texas issued air permit for Collin County plant (*Examiner*)**

June 17, 9:32 AM · Caroline Calais - Dallas Environmental Policy Examiner
The conflict between the U.S Environmental Protection Agency (EPA) and Texas is heating up. On Tuesday the federal agency took over two state issued air permits, one for Garland Power and Light’s natural gas fired Ray Olinger plant on Lavon Lake in Collin County, and one for Chevron Phillips Chemical Co.’s Baytown plant. The plants now have to seek new permits from EPA by September 30, 2010 in order to continue operations.

“Washington's latest attempt to intrude on the state’s authority not only undermines Texas’ successful clean air programs, but it will cost the state tens of thousands of jobs,” said Governor Perry who is in China attending the 2010 World Expo in Shanghai.

The federal Clean Air Act requires major industrial plants to have federal operating permits but leave it up to the states to design their own systems. EPA has approval power over state permit programs and also the authority to object to individual permits.

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

"Under the Clean Air Act, the EPA was required to act on these rules within one year", said Texas Attorney General Greg Abbott who on Monday asked a federal court to intervene. "Yet the federal government waited more than a decade – three presidential administrations – to take action on and ultimately reject the qualified facilities rule".

Last month EPA took over the air permit for Flint Hills Resources refinery in Corpus Christi, and said it objected to 39 other major Texas permits.

"Our flexible permits are an integral part of the state's success in cleaning our air", said TCEQ Commissioner Carlos Rubinstein. "Overall state-wide ozone levels have declined 22 percent since 2000. Every area of the state, with exception of Dallas-Fort Worth, is meeting the current federal ozone standard. And Dallas-Fort Worth is only exceeding the standard by one part per billion".

Still, on Wednesday the Texas Commission on Environmental Quality approved proposed revisions to the state's flexible permit rules. The proposed changes include rules that would make it impossible for a company to use state rules to circumvent federal regulation.

"The State of Texas is making a good faith effort to meet the federal government's objections, even though our program does meet the requirements of the federal Clean Air Act", said TCEQ Commissioner Buddy Garcia. "It is entirely possible that if the state abandons the innovative flexible air permits, the progress we have made over the last 15 years will be all for nothing".

According to EPA Regional Administrator Al Armendariz the clean air progress in Texas has nothing to do with the flexible permits process and all to do with tighter federal vehicle standards and federally ordered smog plans for Dallas-Fort Worth and Houston.

**Chicago anti-asthma program receives big EPA honor (*Associated Press)***

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

3:06 AM CDT, June 18, 2010

CHICAGO
A community program fighting the high asthma rate in Chicago children has received a big federal government award.

The Sinai Urban Health Institute program is among five recipients of the 2010 National Environmental Leadership Award in asthma management. It's handed out by the U.S. Environmental Protection Agency.

Sinai's program focuses on Chicago's West Side, where 24 percent of kids have asthma. That's two to three times higher than the national average.

The program offers free in-home help in treating asthma and removing triggers like mold and insect and rodent droppings.

Sinai's Steve Whitman says the costs more than pay off by reducing emergency room visits and hospitalizations. He says the award is a big deal and something the program takes pride in.

06/18/2010

**Carper Expects Senate Panel Multipollutant Bill Markup This Month (*Inside EPA*)**

Sen. Thomas Carper (D-DE) says he is continuing to push his multipollutant emissions bill as a stand-alone measure and expects an environment panel markup on it later this month, while noting he could also move the measure as an attachment to pending climate and energy legislation.

Carper said on a June 10 teleconference that he is prepared to advance as a stand-alone bill his proposal to establish a cap-and-trade program to cut power plant nitrogen oxide (NOx) and sulfur dioxide (SO2) emissions and set a strict cap on mercury emissions. Carper said he expects to receive an economic analysis of the bill in the coming weeks and that the Senate Environment & Public Works Committee will vote on the measure in June.

The bill would provide a legislative replacement for the Bush EPA's remanded Clean Air Interstate Rule (CAIR) to create a utility trading program for NOx and SO2 emissions, and the vacated Clean Air Mercury Rule, a Bush-era plan to create a trading program for mercury emissions.

The Ozone Transport Commission, representing Mid-Atlantic and Northeast state air officials, recently asked Carper to tighten the NOx caps in his bill, which would currently set a cap of 1.39 million tons of NOx from 2012-2014. They want a lower limit of 900,000 tons during that period, in order to further cut NOx -- a precursor to ozone

formation -- and help them reduce ozone levels in order to comply with EPA's proposed stricter ozone air standard.

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

Carper also said that another option for moving his legislation is to attach it to a "comprehensive, economy-wide climate bill" such as the climate proposal from Sens. John Kerry (D-MA) and Joseph Lieberman (I-CT).

EPA, meanwhile, is expected to soon issue its long-awaited proposal to replace CAIR. The plan, known as the Clean Air Transport Rule, was sent to the White House Office of Management & Budget for review April 26. The agency's website says it anticipates publishing the plan in the Federal Register in July.

06/18/2010

**EPA Proposal To Audit Texas Air Permits Offers Few Liability Assurances (*Inside EPA*)**

EPA will offer only limited enforcement liability and no protection from citizen suits in a proposal for an audit of Texas' flexible air permits program as the agency moves forward with its plan to reject the state's permit program on the basis that it violates the Clean Air Act's new source review (NSR) permitting requirements.

But the proposal is drawing early criticisms. An environmentalist faults the voluntary nature of the third-party audit proposal and the potential for the program to waive enforcement for companies found to have skirted federal law. An industry source says facilities have little incentive to submit to the proposed case-by-case review because it does not offer enough of a liability waiver and maintains that the permit program has not allowed companies to violate the law.

Relevant documents are available on InsideEPA.com. See page 2 for details.

"We believe the Audit Program has the potential to result in beneficial reductions in the levels of air pollutants being emitted by flexible permit holders as well as providing industry a regulatory framework for continuing operations until independently federally-enforceable permitting authorizations can be obtained," according to a notice released in advance of its slated publication in the June 17 Federal Register. Flexible permits allow facilities to adopt plant-wide pollution caps and then make modifications without triggering NSR requirements.

The advance release of the proposal and a draft agreement for audit participants on the EPA Region VI website come as the state and two industry groups have filed suit over EPA's prior finding that a related "qualified facilities" permitting exemption program offered by the state is unlawful. The state of Texas, the Texas Oil & Gas Association and the Texas Association of Manufacturers have filed suit in the U.S. Court of Appeals for the 5th Circuit.

EPA on Sept. 23 proposed to disapprove the Texas flexible permit program, which the state submitted to EPA as an amendment to its state implementation plan, a blueprint for achieving federal air quality standards. EPA generally supports flexible permits but says that Texas' program allows applicants to circumvent NSR requirements, which include a control technology review.

EPA has not finalized its proposed finding that the program is illegal, but is widely expected to do so this month in accordance with consent decree deadlines in the case BCCA Appeal Group, et al. v. EPA, et al. in the U.S. District Court for the Northern District of Texas.

EPA's advance notice says the review of the contested permits will include contracting a third party to audit them to identify the federally enforceable emission limits; operating parameter requirements; and monitoring, reporting, and recordkeeping requirements for determining compliance for each unit covered by a flexible permit.

Auditors will provide recommendations on any compliance deficiencies, the audit participant would then have an opportunity to comment on the auditor's findings and propose alternative emission unit requrements, and the negotiated requirements would be codified in a consent agreement and final order, requiring that the new requirements be included in an amended Title V permit and appropriate federally enforceable non-Title V permits, such as NSR permits.

EPA is not ruling out the possibility of civil enforcement stemming from the review, but hints at some compliance benefits for industries. "Identification of noncompliance with NSR requirements through the Audit Program may require further discussion with EPA regarding a path forward for bringing that emission unit into permanent, consistent compliance with the [Clean Air Act] and appropriate resolution of civil penalties," according to the notice, but says further down, "It is important to emphasize that although participation in this Audit Program is voluntary, participants who successfully complete the program will receive appropriate covenants in resolution of non-compliance."

Environmentalists worry the agreement may allow facilities to avoid liability for past NSR responsibilities they have avoided by obtaining state flexible permits, and say the program should be required rather than voluntary. "That's kind of part of it, that it's voluntary, and you know some of EPA's enforcement activities could be waived in there," says one environmentalist. The source adds that another concern is the potential

confidentiality of material produced by the program, saying such material should be made available to the public.

But an industry source says the audit would do nothing to resolve liability concerns and therefore offers no incentive to participate. "Industry can't figure out why anybody would do this," says the source. "I mean, you don't get a release. You just get kind of a covenant not to sue you, but it doesn't protect you against citizen suits." -- Molly Davis

06/18/2010

**GOP, Industry Claims Administration Policies Hindering Biomass Growth (*Inside EPA*)**

Republicans and industry officials are criticizing the Obama administration for pursuing environmental policies that they claim will hinder growth in the biomass industry, despite what they say is the administration's stated support for promoting renewable energy.

Sen. Susan Collins (R-ME) June 10 said she would vote later that day in favor of a resolution to block EPA from regulating greenhouse gases (GHGs) under the Clean Air Act, arguing that the agency's GHG "tailoring" rule ignores the fact that biomass is carbon neutral. The final rule sets the threshold for triggering GHG permit limits for large facilities.

"Incredibly, the EPA proposes to ignore the carbon neutrality of biomass and place onerous permitting requirements on businesses such as Maine's biomass plants and paper mills, which use biomass to provide energy for their operations," Collins said in the statement. "This reverses years of EPA considering biomass carbon-neutral." In response, she vowed to support Sen. Lisa Murkowksi's (R-AK) ultimately defeated resolution to undo EPA's climate risk finding.

Meanwhile, the biomass industry is criticizing EPA's proposed strict air toxics standard for boilers, saying the regulation will impose costly controls on biomass that will deter investment in biomass -- something that industry officials argue is at odds with the Obama administration's support for biomass as a renewable energy resource.

EPA April 30 proposed a maximum achievable control technology that would limit air toxics emissions from boilers. The rule is part of a broader package issued the same day that also included an air toxics rule for incinerators, and a proposal to redefine what qualifies as waste combusted in incinerators.

Bob Cleaves, president and CEO of the Biomass Power Association, said during a June 8 teleconference the proposal would have substantial adverse economic impacts on the forest products industry, which stands to lose $7 billion in loss revenues as a result of the rule, even as the administration voices support for the development of biomass as a resource in the promotion of cleaner energy resources.

For example, the Commerce Department is actively pursing an export policy to support the sale of U.S. biomass power technologies in global markets, Cleaves said, but he claimed such technologies would no longer be domestically produced if the EPA proposal is finalized. It would be nearly impossible for biomass power plants to meet the standard, forcing existing plants to close and scuttling plans for other power stations, he argued.

06/18/2010

**Environmentalists Petition EPA Seeking First-Time Coal Mine Emission Rules (*Inside EPA*)**

Environmentalists in a just-filed petition for rulemaking are urging EPA to set first-time strict emission limits for coal mines, claiming EPA must address the harmful global warming effects of methane and health risks from other pollutants released by mining.

"It's time to finally hold coal mines accountable to our health, safety and environment," said Jeremy Nichols, climate and energy program director for WildEarth Guardians, in a statement to accompany the petition filed June 16. Other groups supporting the petition are Sierra Club, the Center for Biological Diversity, and the Environmental Integrity Project, all represented by law firm Earthjustice.

The groups say EPA has a duty to add coal mines for the first time as a sector subject to new source performance standards (NSPS) under section 111 of the Clean Air Act, citing what they say are mines' major emissions of methane, particulate matter and ozone-forming nitrogen oxide (NOx).

Listing mines as an NSPS sector would then require EPA to establish federal standards for new and modified sources to regulate coal mines' emissions, the petition says. The groups also ask EPA to establish federal emission standards to cut methane from existing sources within the newly listed stationary source category of coal mines that they want EPA to create. *The petition is available on InsideEPA.com. See page 2 for details*.

The environmentalists request a response from the agency within 180 days. An EPA spokesman says it is too soon for the agency to comment on the petition.

The petition says while much attention has been focused on efforts to control the global warming damage caused by carbon dioxide, methane is a much more potent global warming gas, and environmentalists say the coal mining industry is a major source of methane emissions. EPA will next January begin regulating greenhouse gases (GHGs), including methane, from established stationary pollution source categories with its GHG "tailoring" air permit rule.

Methane is also "a major health and safety risk," given its potential to cause explosions in mines, the groups argue. They cite previous EPA statements that methane emissions are more easily mitigated than emissions of other GHGs, and claim that technology is available now to either combust coal mine methane or collect it for beneficial use as fuel.

Other regulated pollutants associated with coal mines, including particulates, NOx and volatile organic compounds are also cause for concern, the petitioners warn.

**ARSENIC**

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06/18/2010

**Delay In SAB Report On EPA Arsenic Risk Study May Boost Industry Critics (*Inside EPA*)**

EPA's Science Advisory Board (SAB) has delayed completion of its report reviewing EPA's controversial arsenic cancer risk study citing insufficient time to discuss the report and other problems, a potential boost for industry critics of the study who are pushing to delay its finalization given concerns that EPA's cancer risk number is too strict.

The decision to postpone SAB's final recommendations on the arsenic Integrated Risk Information System (IRIS) review comes after industry made an 11th-hour pitch for a meeting with top EPA officials prior to the SAB meeting to call for delaying the study review due to concerns industry has with the assessment and the review's validity. Industry has also filed a Data Quality Act (DQA) challenge saying deficiencies in the study undermine its objectivity and validity.

SAB members held a June 16 call to review a draft report by an SAB workgroup review of the arsenic study, but industry claims the review is too narrow in scope and fails to address their key concerns.

On the call, SAB Chair Deborah Swackhamer said that the arsenic workgroup's draft report is "clearly not at a point where we are able to [conclude] the disposition of this report." She asked the group to revise the report before the full SAB considers it again. Swackhamer did not indicate when the SAB will reconsider the report.

The workgroup's report was generally positive of the arsenic assessment based on the narrow charge questions EPA tasked it with reviewing about the study. Prior to the teleconference the full SAB had been expected to endorse the workgroup's findings. But the decision by the full SAB to delay a final report on the assessment could bolster industry's claims about inadequacies and limitations of the workgroup's review. Under

the IRIS assessment process, EPA revises its assessment based on peer review recommendations -- such as those from SAB -- before publishing a final assessment.

The assessment includes an estimate of cancer potency some 17 times stricter than EPA's existing arsenic risk number.Industry representatives told SAB members on the conference call that if finalized, the assessment will result in needlessly strict regulation that impacted industry and water utilities will spend millions of dollars trying to meet. Swackhamer and another SAB member, Judith Meyer, questioned SAB member and workgroup chair Elaine Faustman why the group did not address questions outside of the charge questions that EPA provided -- a question that echoes industry criticism over the review. "I heard some of the public comments and I felt they had merit," Meyer said. "I don't understand why the committee didn't go beyond the specific charge questions."

But Faustman replied that it was her understanding that the workgroup's role was only to address the charge as supplied by EPA. "My understanding is that is what we were doing," she said. "My understanding is that the way we constituted the group matches those charge questions."

Swackhamer agreed, but noted that the group has "the purview to make statements beyond the charge" in its report. "I'm not saying you should or shouldn't have" exceeded the charge, she said. "My question is, did you discuss it? . . . It's critical you put that context into the report, especially given the comments and criticism we've received."

Industry representatives reiterated their concerns on the conference call that the SAB workgroup's review of the arsenic document was limited by narrow agency charge questions, rushed and not conducted by reviewers with the necessary expertise. And they raised additional concerns because comments they submitted to EPA were not provided to SAB workgroup members before they began their two-day review April 6-7 in Washington, DC.

An EPA spokesman tells Inside EPA that the agency is trying to organize a meeting between industry and EPA. "[W]e are working to schedule a meeting with the appropriate agency officials as quickly as possible," the spokesman said after industry sent EPA an e-mail June 14 seeking a meeting with key EPA officials over the study. Relevant documents are available on InsideEPA.com. See page 2 for details.

Industry is also seeking to contest the arsenic assessment through a DQA petition, sent to EPA June 14, in part raising its concern over the SAB review process. The Organic Arsenical Products Task Force and the Wood Preservative Science Council argue that unless EPA corrects key deficiencies in the assessment and SAB's review of it, DQA's "objectives of objectivity and utility will be severely compromised." -- Maria Hegstad

**BP SPILL**
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**Experts see how-not-to book emerging from gulf oil spill cleanup (*Washington Post*)**

By David A. Fahrenthold and Joel Achenbach
Washington Post Staff Writer
Friday, June 18, 2010

The fight against the gulf oil spill is already writing lessons for future cleanups. Unfortunately for the gulf coast, outside experts say, many are lessons in what not to do

Since the Deepwater Horizon rig exploded April 20, outsiders watching the cleanup say, the federal government and BP have made key mistakes that delayed or distracted the effort to stop the spill. Some were probably inevitable: BP engineers and government officials were forced to improvise in the face of mounting disaster.

But other missteps -- seen with the calm and clarity of hindsight -- look as if they could have been avoided.

Officials used "dispersants" to break up the oil. But some experts think that those chemicals caused much of the oil to remain below the water's surface, out of reach of standard cleanup techniques. The first attempt to place a "dome" over the well failed because of a well-known problem called hydrate crystals. The government and BP repeatedly under-estimated the oil's flow, and BP was not ready to capture all of the oil being siphoned up from the well.

In all, it appears that the mistakes have made it harder to fight what President Obama has called a "war" on the oil.

"There have been days where we've actually recovered more oil through containment and recovery than what came out. I think there are probably days that we didn't," Coast Guard Admiral Thad W. Allen said Thursday, when asked whether the war on the oil was being won. "I don't think I could come up with a combination of win and loss days."

BP spokesman Toby Odone said Thursday that his company faced a daunting problem: a huge leak involving broken machinery at the crushing depth of 5,000 feet. But he said his company's response had been shaped by an official plan.

"We didn't know what state the blowout preventer was in, what state the well was in, what state the riser was in, so there's been a lot of learning," Odone said. "We've learned. I don't know if we've made mistakes. I think we've tried things and we've learned from that."

In response to a question about mistakes, Allen said in a statement Thursday night, "We have marshaled the largest response in our nation's history, and we have continued to adapt and evolve this response at every turn."

So far, statistics of the cleanup effort indicate, at best, mixed success. A flotilla of vessels have skimmed 21.9 million gallons of oily water from the gulf, and 5.2 million gallons have been burned.

BP has siphoned 202,000 barrels (8.5 million gallons) to the surface using a "cap" over the leak. That rate increased Wednesday, when a second specialized ship arrived to help with the task. Also, on Thursday Allen said a relief well, being drilled to plug the well far beneath the sea floor, was ahead of schedule.

But the oil is still spreading faster than it can be cleaned from beaches and marshes. On Thursday, the Coast Guard said oil was on about 72 miles across the Gulf Coast, up from 68 on Sunday.

"I would give them a C-plus or B-minus, especially at the beginning. I think it's getting better now. I think they fell into the trap of following standard steps -- the usual procedure you would follow to deal with a situation like this -- and the situation was not quite usual," said Tadeusz Patzek, a professor of petroleum engineering at the University of Texas. "They used up precious time doing things that were not successful."

One of the most-criticized decisions was to use dispersants under the surface of the gulf.

The point, according to the federal government and BP, is to break the oil into smaller droplets, to promote consumption by oil-eating microbes. This week, federal officials said they stand by the decision, although they have directed BP to limit use of the undersea dispersants to 25 percent of what it was originally.

But biologists and petroleum engineers say that by keeping sunken oil below the surface, dispersants have made the country's arsenal against oil spills -- skimmer boats, controlled burns, containment boom -- less effective.

And scientists worry that under the surface, the oil may cause unseen harm to species as varied as plankton and whales. One new survey, by James H. Cowan Jr. of Louisiana State University, indicated a 300-foot-thick "cloud" of oil, 35 miles away from the leak.

William K. Reilly, the former head of the Environmental Protection Agency and the co-chairman of Obama's commission on the spill, said he was troubled by how little is known about the dispersants' effects on the environment.

"I suspect that a lot of the pressure to use dispersants is cosmetic," Reilly said, meaning that they help keep the oil out of sight. He said that he had not allowed them to be used after the Exxon Valdez spill in 1989. "When the salmon fry came out of the hatcheries, they swam under the oil -- which was on the surface -- rather than through the oil."

In addition, outsiders have said BP and the government greatly misjudged the amount of oil flowing from the well. Eight days after the explosion, they produced a combined estimate of 5,000 barrels (210,000 gallons) a day. When outsiders said this appeared too low, the Coast Guard answered that it was already responding to a worst-case scenario.

Now, latest government estimate is that the flow is more like 35,000 to 60,000 barrels (1.47 million to 2.52 million gallons) a day. And when the cleanup effort began using the new "cap" to siphon oil and gas away, it became obvious that there was more of it than BP's ships could take. Vessels are being brought in from other parts of the world and are expected to arrive by the end of June.

"They seriously underestimated the nature of the blowout and the rate of the well," said Nansen Saleri, chief executive of Quantum Reservoir Impact, an oil technology consulting firm. "Of course, they don't have the processing and handling capacity at present."

Another misstep occurred early in the crisis, when BP tried to lower a containment dome onto the collapsed riser pipe. Within moments of being lowered over the pipe, hydrates formed and clogged the pipe leading from the top of the dome.

BP has acknowledged that its engineers were surprised by the amount of hydrates that formed.

"We're all kind of Monday morning quarterbacking here," said Bruce Bullock of Southern Methodist University. But he said the dome effort was clearly "a mistake. The hydrate problem at that depth and that temperature has been so obvious for so long, that it shouldn't have been underestimated."

06/18/2010

**Long-Sought Gulf Projects May Find New Life In Spill Damages Settlement (*Inside EPA*)**

Gulf state lawmakers and environmentalists are urging the Obama administration to implement some long-sought projects to restore the Gulf coast as part of an eventual natural resource damage (NRD) settlement the administration could negotiate with BP in response to the ongoing oil spill in the Gulf of Mexico.

President Obama hinted at such a sweeping approach during his June 15 Oval Office speech on the oil spill, announcing that he would appoint Navy Secretary Ray Mabus to develop a long-term restoration plan for the Gulf. "The plan will be designed by states, local communities, tribes, fishermen, businesses, conservationists and other Gulf residents. And BP will pay for the impact this spill has had on the region," Obama said.

It's unclear how closely tied the plan will be to an eventual settlement and how far a settlement could go to achieving restoration goals beyond repairing damage done by the spill, and the administration is remaining mum on its broader plans. But legal experts say the administration has broad leeway in future settlement negotiations with BP, clearing the way for environmentalists who are pushing the administration to implement recommendations contained in a March working paper released by a White House Council on Environmental Quality (CEQ) working group, "Roadmap for Restoring Ecosystem Resiliency and Sustainability." *Relevant documents are available on InsideEPA.com. See page 2 for details.*

Supporters say the document should serve as a template for an eventual restoration plan. The roadmap outlines several ongoing projects and broad issue areas that need to be better coordinated in Gulf restoration efforts, including promoting the beneficial use of dredged material, focusing on ecosystem services provided by the Gulf and coastal wetlands and better coordinating activities among numerous state and federal agencies involved, including EPA, the Army Corps of Engineers and the Minerals Management Service.

In addition, several lawmakers are pushing for government reforms they say have long been needed to speed coastal restoration projects beyond what could be included in an NRD settlement.

Sen. Mary Landrieu (D-LA) June 15 sent President Obama a letter highlighting a coastal restoration white paper she drafted in April, prior to the well blowout that sparked the ongoing disaster, after a series of meetings with local stakeholders and experts, and encouraged him to implement its recommendations as the administration and BP work to restore the damage done by the spill.

Landrieu's proposal focuses on streamlining the oversight and implementation of federal programs by creating a single entity to consolidate the activities of myriad federal programs and agencies. The new entity essentially would act as a unified authority for Gulf restoration projects but would act with input from other agencies, including EPA, the Army Corps, the Fish & Wildlife Service and National Oceanic and Atmospheric Administration (NOAA), a Senate source says.

In the wake of the spill, Sen. Roger Wicker (R-MS) and others have also stepped up their long-pending efforts to create a new EPA office overseeing the Gulf. The lawmakers recently offered their bill, S.1311 as an amendment to a supplemental appropriations bill, but the amendment was not considered on the Senate floor.

And Landrieu called for a dedicated funding stream to finance the projects. "The conclusion we reached is that we must have an immediate and dedicated stream of revenue for the restoration of the coast and establishment of a new model for governance, planning, and applied science," Landrieu wrote.

**Environmentalists echoed calls for the administration to set aside restoration funds, at least** in the short-term, calling for the administration to carve out $5 billion from the pending escrow fund -- which is designed to cover economic damages -- for environmental restoration, specifically in the affected wetlands and marshes that have been devastated by the spill.

In a June 15 letter to the White House, the Audubon Society, Environmental Defense Fund and National Wildlife Federation urged the president to reserve a minimum of $5 billion from the escrow account for environmental restoration, calling it a "down payment" on mitigating the environmental impacts of the spill. The move could allow restoration efforts to move forward with the funds available rather than force trustees to go through the formal NRD claims process, which could take years.

"We believe a minimum $5 billion of the proposed $20 billion escrow fund should be set aside to support the immediate launch of large-scale restoration efforts," the letter reads. "Additional funds will be required once Natural Resource Damage Assessments have been completed and the full extent of the spill damage is known, but a down payment of a minimum of $5 billion will help this fragile ecosystem start to heal and rebuild, in much the way that affected families and businesses do."

Under the Oil Pollution Act of 1990 (OPA) resource trustees and responsible parties craft and implement a plan aimed at restoring affected ecosystems to the baseline condition they were in prior to an oil spill; alternatively, the two sides could agree to an out-of-court settlement that trustees could use to perform their own restoration projects.

In response to the current spill, the natural resource damage assessment (NRDA) is being coordinated among at least two federal agencies and five states, stretching the abilities of short-staffed agencies struggling with impacts to environments -- especially the deep sea -- for which there is little or no baseline data. Furthermore, in the case of the coastal ecosysterm, even baseline conditions are "laughable," as one congressional aide puts it, providing a catalyst for even farther reaching restoration.

"Quite frankly, you're dealing with a compromised system," says a Louisiana academic source who has been tracking the NRDA process, referring to the long-running harms that have faced the Gulf, including wetland erosion and the dead zones caused by nutrient runoff from the Mississippi River.

The source says environmentalists are urging the administration to use the CEQ roadmap as a blueprint for an eventual NRD settlement with BP, under which the company would pay a substantial portion of the costs for long-sought projects called for in that document and elsewhere. The source says OPA gives resource trustees

sufficient flexibility to pursue such an approach but that crafting a long-term plan through an NRD settlement will test the abilities of state and federal agencies -- because different personnel typically deal with NRD issues than have been working on long-running restoration efforts, creating potential "stove-piping" issues.

Implementing broad restoration "involves some pretty quick and clear policy decisions, and the marshaling of a fair amount of talent, and the development and sharing of information in a way that we've never seen. . . . So I don't think it's going to be possible to have these six trustees and the responsible party in the room and come up with something that's going to fly," the source says.

**Obama's declaration that BP would pay for oil spill damages in the context of the broader** effort Mabus is spearheading indicated that the administration plans to tie that effort to the ongoing NRD process, the source says. But the president did not provide details on how or where that coordination would happen, "which is a particularly important question because normally when you get into that NRD stuff the Navy's not an issue," the source adds.

There also are many lingering questions over how much of the restoration BP could be forced to pay for and what additional resources federal and state governments would be able to commit to long-term projects on the coast. "He promised beyond what I think BP is willing to commit to," says one academic source tracking the NRD process. "They're going to put a bunch of cash on the table at some point [as part of an NRD settlement], but it's not going to be the financing plan for the rebirth of the Gulf South."

Another legal expert agrees that a settlement-funded long-term restoration plan is a potential outcome that the government would have authority to pursue under OPA. But the source cautions that any detailed negotiations between BP and resource trustees over a settlement are unlikely to happen for several months or even years because resources are still being damaged by oil that continues to leak from the undersea well.

Requests for comment to the White House and NOAA, the lead federal resource trustee, were not returned by press time. -- *Nick Juliano*

06/18/2010

**Spill Stymies Industry Bid To Limit States' Use Of Private Lawyers For NRD (*Inside EPA*)**

The massive BP oil spill in the Gulf of Mexico is setting back long-running industry efforts to limit cash-strapped states' use of private attorneys to pursue environmental and other damages cases on a contingency fee basis.

In the most recent action, state lawmakers in Louisiana -- the only one of the four Gulf states currently barred from using private attorneys on a contingency fee basis -- are

considering legislation requested by Attorney General Buddy Caldwell (D) repealing the ban. The state Senate earlier this month approved the bill and it is now awaiting action in the House. The bill is available on InsideEPA.com. See page 2 for details.

The U.S. Chamber of Commerce -- which has long led efforts to block the use of such litigation arrangements -- is crafting a letter to Gov. Bobby Jindal (R) urging him to oppose it. "This bill would overturn [the ban] and allow the Attorney General to use outside counsel, not just for this instance but in all instances," a spokesman for the chamber's Institute for Legal Reform says. "The state trial bar has been working to repeal this for quite a few years, and they're using [the BP oil spill] as an excuse to overturn" the state ban.

The state's attorney general's office has already hired Alan Kanner, a plaintiffs' lawyer who has long pursued environmental damages cases on behalf of states and tribes, on an hourly-fee basis, but that could change if the state ban on use of contingency fee arrangements is repealed by the legislature.

The Chamber spokesman says the group is also working with the National Association of Attorneys General (NAAG) to develop a more comprehensive national "best practices" framework for states to follow when hiring private attorneys to take cases on a contingency basis.

But a NAAG spokeswoman says the group has not reached any affirmative conclusions about what best practices to adopt, if any, although a Best Practices Working Group is examining the issue.

Led by the Chamber, industry groups have for years fought state efforts -- with mixed success -- to use private attorneys on a contingency-fee basis to pursue environmental and other damages cases. Industry charges that use of contingency fee arrangements creates incentives for the private attorneys to pursue big settlements since they stand to benefit personally.

And they say private attorneys are often the catalyst for state enforcement actions, playing a key role in "setting priorities for state law enforcement efforts and heavily influencing the prosecutorial discretion calls that should be made by duly elected or appointed state officials," according to a 2005 research paper -- Bounty Hunters on the Prowl: The Troubling Alliance Of State Attorneys General and Plaintiffs' Lawyers -- published on the Institute's web site. The paper was written by John Beisner, Jessica Davidson Miller and Terrell McSweeny -- attorneys with the law firm O'Melveny & Myers LLP.

But Kanner said in a 2003 interview with Inside EPA that the practice is necessary due to trustees' limited prosecutorial resources compared to responsible parties, saying there is "a huge amount of under-enforcement" by states.

The issue heated up in the wake of successful efforts by a host of state attorneys general to use private lawyers to pursue damages from tobacco companies -- damages that many of the lawyers shared in due to their contingency fee arrangements with the states.

Some state courts -- such as New Jersey's -- have since allowed regulators to use private attorneys to pursue natural resource damages (NRD) under state law, but a federal appellate court has indicated that states cannot use private attorneys to pursue environmental damages under federal law.

In New Jersey, the state's AG's office in 2004 successfully repelled an industry challenge in state court that claimed its contingency fee arrangement with Kanner to pursue environmental damages cases for groundwater contamination was illegal, but the New Jersey Superior Court decision stipulated that the AG's office needs court approval for settlements and claims that exceeded $2 million.

However, a federal appellate court ruled in 2005 that New Mexico would not likely be able to use private attorneys to pursue damages for groundwater contamination because the purpose of damages claims under federal Superfund law is to "restore, replace or acquire the equivalent" damaged resources -- an approach that is also included in the Oil Pollution Act.

With the BP oil spill now causing massive damage in the Gulf, states are preparing to bring damages cases. But years of budget cuts and limited resources may hamper those efforts -- possibly making it difficult for the states to pursue damages cases without the help of private attorneys.

Among the four Gulf states that are facing pollution from the BP spill, Mississippi and Alabama have long allowed their attorneys general to use contingency arrangements. While Alabama does not limit contingent fees for private attorneys engaged by the state, legislative approval of such arrangements is required, according to the paper on the Institute's website. Similarly, Mississippi law grants the state's attorney general authority to use special counsel "on a fee or salary basis," which is "reasonable compensation," the paper says.

In April, the Florida State Legislature passed and Gov. Charlie Crist (I) signed a law allowing contingency fees as long as the attorney general makes a written determination that such an arrangement is cost-effective and in the public interest. The law is scheduled to take effect July 1.

While the bill allows the use of contingency fee arrangements, it was welcomed by the the institute's president, Lisa Rickard, who praised it as a model for other states. "This law will shines a much-needed light on the process that Florida attorneys general must follow when they hire private plaintiffs' law firms under a contingency fee arrangement to sue on behalf of the state," she said in an April 14 statement.

The offices of attorneys general for Mississippi, Alabama and Florida did not return calls for comment on whether they intended to pursue private counsel for their forthcoming litigation relating to the Gulf oil spill by press time.

In Louisiana, the state Senate June 7 passed SB 713, that would overturn the standing prohibition on retaining private counsel for the prosecution of state cases and allow the state to retain counsel on a contingency basis. The bill has been referred to the lower house for consideration. -- John Heltman

06/18/2010

**House Lawmakers May Broaden Negligence Definition In Oil Liability Law (*Inside EPA*)**

House lawmakers are considering revising federal oil spill liability law to establish a first-time statutory definition of "gross negligence" and "willful misconduct" to include a company's initial response to a spill as well as any potential malfeasance that may have preceded the incident.

The move would dramatically increase the liability of potential responsible parties by expanding the conditions for lifting the current liability cap, and the plan could be included in impending legislation to respond to the ongoing Gulf of Mexico spill, which a key committee is crafting with expected input from the Department of Justice (DOJ).

Efforts to broaden the definition of those terms and hold BP to its promise to pay for the cleanup and restoration of the Gulf ecosystem and economy highlight concerns among environmentalists and Democratic lawmakers that BP is not moving quickly enough to pay damages and that it may try to dodge responsibility for the full costs of the spill.

Rep. James Oberstar (D-WI), who chairs the House Transportation & Infrastructure Committee, said during a recent hearing that he was reaching out to DOJ for help defining gross negligence and willful misconduct, which appear in the Oil Pollution Act of 1990 (OPA) as a mechanism to waive a $75 million cap on economic damages and a $500 million cap on natural resource damages that companies would otherwise face following a spill. The caps also can be waived if a responsible company violated an applicable "safety, construction or operating regulation," according to the act.

Senate Majority Leader Harry Reid, joined by most Democrats, sent a letter to BP June 14 requesting the company set aside $20 billion to cover its potential damage costs related the spill, noting that although the company has pledged to pay legitimate claims related to the spill regardless of the liability caps, "history has taught us that corporations often fail to live up to their initial promises." A copy of the letter is available on InsideEPA.com. See page 2 for details.

President Obama announced June 16 that BP has agreed to contribute $20 billion over the next four years to an independently administered fund from which damage claims will be paid, although he emphasized that the amount of the fund is not a cap on the company's liability for the spill.

House Speaker Nancy Pelosi (D-CA) said June 11 that she is collecting input from several committee chairs on components of one or more oil spill-related bills she hopes to bring to the floor later this summer. Pelosi said she supports completely eliminating the liability caps.

Legal experts say the government should have little trouble making the case that there should be no caps because of gross negligence or willful misconduct by BP -- whose well in the Gulf has been leaking oil for nearly two months following an April 20 explosion. But lawmakers worry that the company could challenge such a determination in court, delaying repayment of damage claims and leaving open the possibility that a judge would side with the company.

"I would certainly hope that the legislation being drafted would try to establish at least a legal threshold of what would constitute this," Rep. Gene Taylor (D-MS) said at the June 9 transportation committee hearing, questioning Associate Attorney General Thomas Perrelli.

Perrelli acknowledged that it would be left to a judge to interpret "gross negligence" and "willful misconduct" as they are defined in OPA, but he said the terms are interpreted in several different statutes, "so I think there is an established case law."

06/18/2010

**Lawmakers Eye Legislative Options To Strengthen Oil Cleanup Research (*Inside EPA*)**

House lawmakers are weighing legislative measures to strengthen the federal oil pollution cleanup program in the wake of the BP spill in the Gulf of Mexico, including increased funding for the program, limiting the agencies currently involved to EPA and other key agencies, and possibly setting a "worst-case scenario" standard for future research.

"The lack of an effective response to this [BP] spill highlights the need for a more reliable and standardized approach to response and remediation," House Science & Technology Committee Chairman Bart Gordon (D-TN) told a June 9 hearing before the panel's Energy and Environment Subcommittee. "We need to eliminate the guesswork and go into spills knowing which tools are most effective in certain conditions."

The House might take up a revised version of H.R. 2693, the Federal Oil Spill Research Act, introduced in 2009 by Rep. Lynn Woolsey (D-CA) in response to a 58,000-gallon oil spill in the San Francisco Bay in 2007 after House Speaker Nancy Pelosi (D-CA) backed the measure. The bill is available on InsideEPA.com. See page 2 for details.

Woolsey's bill currently streamlines the current approach to federal oil pollution research, eliminating the 15-17 agencies involved and replacing it with a new research committee, to be headed by the National Oceanic & Atmospheric Administration (NOAA), with membership from EPA and the Coast Guard.

Woolsey told the June 9 hearing that she believes the most significant measure in the bill is language streamlining the inter-agency structure overseeing oil pollution research, noting that the 15-17 agencies currently involved in the $28 million research program was confusing. "I mean, who was in -- who's in charge?" she said, "because we have to coordinate federal research and development, we have to coordinate the cleanup and the prevention, there is so much that, I think, was left unanswered." "Every team needs a captain," she said.

But agency officials testifying at the hearing suggested that the Coast Guard was better equipped to serve as the lead agency. "The reality is it's a complex issue," Coast Guard Captain Anthony Lloyd told the committee, adding that oil spill response requires a "whole of government" approach towards both preparedness and response, "so it flows well to use a team-based approach but to have a lot of initiative moving forward."

Similarly, Douglas Helton of NOAA's Office of Response and Restoration said that NOAA lacks the resources to coordinate a first response to an oil spill or even direct research efforts, and that retaining the existing structure of the committee is important. "My agency can certainly contribute with the effects on -- to fish and wildlife and the water column, but we don't have the skills to do the -- design double-hold tankers and to design better safety systems."

In addition to Woolsey's bill, Rep. Ed Markey (D-MA), chairman of the Energy & Commerce Committee's energy and environment subcommittee, said June 9 that he plans to introduce legislation that will create an oil industry-financed fund to cover future spill cleanup and research. "I think that we have to pass legislation -- and I'm going to introduce this legislation -- that will create a fund, a fund for research into modern safety technologies, not technologies that are 30 years old, but 21st Century technologies that match up with 21st Century risks that are assumed when you go out 50 miles deep in the ocean and drill down five miles," he told MSNBC's "The Rachel Maddow Show."

Markey said the research needs to be funded "with oil-company money" to be used by independent researchers to develop technologies "to make sure this does not happen again." He said the new technology focus was necessary because a briefing before his subcommittee had been told by witnesses that the oil industry's probabilistic risk assessment of deepwater drilling found a zero chance of a catastrophic accident like the one in the Gulf occurring.

In the wake of the BP spill, lawmakers are concerned that the federal spill research program authorized by the Oil Pollution Act (OPA) of 1990 has not developed adequate technologies to prevent and clean up spills from new drilling operations in deep water and has a confusing structure with 15-17 agencies involved.

At the June 9 hearing before the Energy and Environment Subcommittee, lawmakers expressed frustration that witnesses from EPA, the Coast Guard, NOAA and Minerals Management Service (MMS) continued to defend the OPA research program despite their inability to contain or address the BP spill.

Lawmakers and the witnesses at the hearing also suggested several options for prioritizing future research. Rep. Kathleen Dahlkemper (D-PA) -- referencing the $500 million pledged by BP to establish an independent research and development fund -- asked witnesses for suggestions as to what sort of cleanup technology and improved deepwater solutions the money should be directed towards.

Albert Venosa, of EPA's Office of Research & Development, said EPA has also asked Congress for additional research funds to develop "green chemistry" approaches for manufacturing less toxic alternatives to the controversial dispersants being dumped into the Gulf.

06/18/2010

**EPA Defends Approval Of Handling Gulf Oil Spill Waste As Non-Hazardous (*Inside EPA*)**

EPA is defending its decision to allow waste from the Gulf Coast oil spill -- including oil-soaked cloths and other material -- to be disposed of in landfills as solid waste rather than hazardous waste subject to strict disposal controls, saying the agency has a stringent plan to ensure against adverse impacts, particularly on equity communities near disposal sites.

On a June 15 National Environmental Justice Advisory Committee (NEJAC) teleconference about the spill, EPA waste chief Mathy Stanislaus defended the agency's waste disposal plan in response to concerns from NEJAC members and others. These critics fear that disposing of oil-soaked waste and oily water in solid waste landfills means the material could eventually leach out and provide another source of water and land contamination in the Gulf region.

The Coast Guard, in consultation with EPA and the states, has approved waste management plans for recovered oil and waste from the BP oil spill, and EPA made the

plans available on its website for review. The plans are available on InsideEPA.com. See page 2 for details.

Stanislaus, head of EPA's Office of Solid Waste & Emergency Response, told NEJAC that EPA carefully approved plans to ensure spill waste will be properly disposed in "appropriate, permitted landfills."

On the call, Stanislaus also said that EPA required extensive sampling ahead of its approval to dispose of the material as solid waste. "No samples indicated the waste is hazardous, so it is being handled as solid waste and being disposed of in appropriate, permitted landfills," he said, adding that the agency worked with the Gulf coast states to develop the plans, and that the states have signed off on them, as has the Coast Guard.

Concerns over the impact of the waste disposal come after the New York Times reported June 15 that about 250 tons of oily trash and more than 175,000 gallons of liquid waste have been sent to landfills, along with more than 11,000 cubic yards of other solid waste from the cleanup in Louisiana alone, prompting residents' concerns about toxic leaching.The Times quoted former Bush EPA acting administrator and waste chief Marianne Horinko as saying the affected communities are "properly concerned" about the waste, adding that the toxicity of oil waste is "concentration-dependent," and if there is a sufficient concentration, "it will exhibit the characteristics of toxicity."

On the NEJAC call, Vernice Miller-Travis asked EPA for its response to the concerns. Stanislaus said EPA asked for a list of every potential landfill that can receive such waste and, with the help of its regional offices, reviewed the facilities' compliance history and potential environmental justice impacts of the disposal plans before allowing a landfill to be placed on the list.

Additionally, he said EPA has required the waste to first be trucked to staging areas, which he described as "interim areas to do characterizations" and that from there the waste will be taken "to the proper facility."

Stanislaus added, "We've asked for air monitoring and oversight planning" for the transport of the waste, noting that the agency makes the air monitoring data public via its oil spill response website. "And in terms of any specific issues communities have in terms of impact," EPA wants to know so it can investigate, Stanislaus told NEJAC members on the call. "We have visited landfills and staging areas to ensure they operate in the safest way possible."

However, William Subra of the Louisiana Environmental Action Network said during a public comment period on the call that there have already been incidents of the waste being sent to unapproved landfills.

A source familiar with the waste management aspect of the cleanup adds that BP has asked its contractors to recycle and recover as much waste as possible, so that smaller amounts have to be placed in landfills.

The plans take into consideration a review of federal, state and local rules, planning for waste characterization, and BP's proposed location for waste management activities, EPA says on its website. The plans also list licensed transporters, approved treatment and disposal facilities and staging areas; outline periodic monitoring requirements and quality assurance provisions; and outline community outreach plans.

"Given the unprecedented aspects of the BP oil spill, these plans may be updated as necessary to minimize any unforeseen environmental and human health impacts. EPA will post any updates to the plan," EPA says on its website.

Meanwhile, NEJAC members on the call agreed to have a July meeting in the region to assess progress on equity issues. The advisory panel is also drafting a letter to the agency to recommend that EPA work closely with community organizations and seek funding for them to conduct more on-the-ground work in response to the spill.

The letter will also ask Stanislaus for additional information about how the waste from the cleanup is being handled after some NEJAC members expressed dissatisfaction with his responses. -- Dawn Reeves

**BUDGET**

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06/18/2010

**OMB Order Requires EPA To Identify FY12 Cuts To Discretionary Programs (*Inside EPA*)**

EPA will have to identity the least effective 5 percent of discretionary programs that could be slashed in fiscal year 2012 and specify how it would implement an overall 5 percent budget cut, in order to meet the requirements of a White House Office of Management & Budget (OMB) guidance on crafting FY12 budgets.

The mandate to review discretionary programs for possible budget cuts could bolster states who have previously urged the agency to focus resources on mandatory programs and weigh cuts to contractor funding. It might also provide fresh ammunition for environmentalists in favor of trimming funding for voluntary EPA programs.

OMB Director Peter Orszag unveiled the guidance in a June 8 memorandum to agencies and a speech the same day in Washington, DC. President Obama is "firmly committed" to a freeze on overall non-security funding through FY13 and the FY12

budget will be prepared within those limitations, the memo says. The budget restrictions are designed to help Obama meet his goal of reducing the deficit in half by the end of his first term, the memo says.

EPA is a non-security agency and therefore is subject to the overall cap on its budget for FY12, which is still under development and due for submission to OMB Sept. 13. Orszag's memo will also require EPA to review the effectiveness of its discretionary, non-mandatory, programs and recommend cuts to some of them. *Relevant documents are available on InsideEPA.com. See page 2 for details.*

"We are asking each agency to develop a list of their bottom 5 percent performing discretionary programs, as measured by their impact in furthering the agency's mission," Orszag said in his speech.

"In addition, to ensure that we can meet the President's absolute insistence on a freeze for non-security agencies while funding priority areas, we are asking non-security agencies to specify how they would reduce their budgets by 5 percent which will give us the ability to achieve the overall non-security freeze even while meeting inevitable new needs and priorities," according to a copy of Orszag's remarks as prepared for delivery.

EPA is asking Congress for $10.02 billion in discretionary budget authority for FY11, compared to $10.5 billion requested in FY10 -- the first budget of the Obama administration -- and a request for $7.1 billion in FY09, the last fiscal year of the Bush administration. EPA's FY11 appropriations legislation is still pending in Congress.

A 5 percent cut to the agency's proposed $10.02 billion budget would be roughly $500 million. That cut could not include reductions in mandatory spending in appropriations bills, reclassifications of existing discretionary spending to mandatory, or enactment of new user fees to offset existing spending, Orszag wrote in his memo. The cuts should also not affect any presidential initiatives included in the FY12 budget, the memo warns.

One state official says it is difficult to measure the effectiveness of many EPA programs, but says Orszag's order is "not a fruitless exercise" because there are bound to be areas where costs can be cut.

The source says that states facing budget constraints have had to cut staff and cease aid programs, but believes that "neither one of these is something EPA will do" in proposing budget cuts.

The Bush EPA pursued budget cuts that heavily targeted its clean water and drinking water state revolving loan funds and state grant programs, including funds for air programs. The state source says that while states "wouldn't be surprised" that they could face some budget cuts as part of the overall 5 percent cut in agency spending, if the entire 5 percent is made up in cuts to state funding, EPA "will have a fight on their hands."

In a related development, the Environmental Council of the States (ECOS) June 14 proposed a major funding boost to more than $2.4 billion in FY12 for categorical grants under EPA's state and tribal assistance grant program (*see related story*).

EPA should consider contracts with outside parties as a possible source of funding cuts, the state source adds. Orszag in his speech said the administration is vying to save $40 billion in contracting by 2011.

06/18/2010

**EPA Says No PSD Fee System Available Despite Major GHG Permit Burden (*Inside EPA*)**

EPA is warning that state regulators may ultimately face a 100-fold increase in the number of prevention of significant deterioration (PSD) permits they will need to issue under its emerging greenhouse gas (GHGs) regulatory program, which it says will impose major administrative costs for which no "mitigating fee structure currently exists."

Additionally, EPA says earlier estimates by state regulators of the personnel and financial resources they will need to meet the burden of regulating GHGs likely represent "a significant understatement of the potential impacts on permitting authorities." However, it is not clear whether the agency believes that to be true only in the absence of its recently finalized "tailoring" rule, which limits GHG regulation to large, stationary emitters -- a rule many industry critics argue is highly vulnerable to a legal challenge.

While the agency notes regulators can use existing fee mechanisms for Title V operating permits to recoup the costs associated with the "huge burden" of expanding its permitting program to cover GHGs, the agency says there is no fee mechanism in place to address PSD permits, which are issued to new or expanded facilities.

A state source says EPA's finding "underscores the importance of EPA ensuring that the $25 million that is in the FY 2011 budget [for permitting authorities] be appropriated," and argues that "states should have an opportunity to obtain more money through their permitting program." But, "we are fully prepared to take on this new responsibility."

EPA's prediction of the permitting burden state regulators will face is included in a Regulatory Impact Analysis the agency released alongside its final "tailoring" rule, which was published June 3 in the Federal Register. Relevant documents are available on InsideEPA.com. See page 2 for details.

While the air law establishes regulatory thresholds of 100/250 tons per year (tpy) for regulated pollutants, the tailoring rule raises that threshold for GHGs to 75,000 tpy for PSD permits -- which set air pollution limits for new facilities or those that undergo major

modifications -- and 100,000 tpy for Title V operating permits. The impact analysis presents the agency's official assessment of the social costs and benefits of the rule.

EPA says state regulators will save approximately $21 billion in administrative costs thanks to the higher permitting thresholds in the tailoring rule; without the rule, EPA says regulators would have been required to process roughly two million additional Title V operating permits annually, which would have been a "huge burden to these agencies." At the same time, though, EPA notes "the economic consequences to permitting authorities of this [Title V] permitting program are offset in the fee structure these authorities are allowed to charge sources obtaining Title V permits."

While the tailoring rule postpones the burden of regulating small emitters, which EPA says "cannot feasibly be met" for at least another 5 years, many observers expect the rule will eventually be overturned by a federal court because it alters the air law regulatory thresholds established by Congress, which would lead to the permitting of thousands of additional sources of GHGs. EPA has also indicated it could lower the GHG regulatory threshold in the future.

Additionally, EPA's analysis notes that, unlike with Title V permits, no fee structure currently exists for PSD permitting, meaning regulators will need to cover their costs by relying on "current revenue sources" -- revenue sources some regulators have complained may not be available due to state budget freezes.

The agency's findings are the latest evidence of the huge resource burdens state and federal regulators are facing as they move to begin regulating GHGs in the coming years. For example, some EPA union officials and the Government Accountability Office have warned the agency lacks the resources necessary to meet the burdens that will be imposed by climate regulations and other initiatives. Top agency officials, however, are rejecting calls for EPA to conduct a sweeping analysis of its workforce needs.

Concerns have also been raised by some state officials that EPA's Air Facility System -- a database of permitting information concerning stationary sources regulated under the air law -- could be overwhelmed by the increased workload posed by climate rules. State regulators have also warned they may have difficulties attaining the staff and financial resources they will need to issue permits for GHGs.

The National Association of Clean Air Agencies (NACAA) in a survey of state regulators conducted last year found the average permitting authority would need an additional dozen full-time employees and $1.1 million in new funding as a result of GHG regulation, assuming a 10-fold increase in the number of PSD permits that would need to be issued. The average time to add those employees would be two years, the survey found, though "approximately 25 percent of respondents indicated that a hiring freeze is in place and would not allow them to add new staff at this point."

The survey also found that if states were unable to add new staff or obtain additional funding, the average PSD permit -- which sets air pollution limits for facilities undergoing

significant alterations -- would take a "a little less than 3 years" to be issued, "approximately three times the average current processing time." Respondents to the survey on average said they issue eight PSD permits a year.

In its analysis of the tailoring rule, however, EPA says the burden imposed on states as a result of regulating GHGs may be much larger than assumed. "Rather than the 10-fold increase in permits postulated in NACAA's survey, EPA estimates the increase would more likely be 100-fold," the analysis states, "making these estimates a significant understatement of the potential impacts on permitting authorities." A spokeswoman for EPA suggests the language refers to the burden regulators would face in the absence of the tailoring rule.

The state source downplays the significance of EPA's assessment, declaring the analysis and NACAA's own survey to both be "directionally correct" in finding the burden of regulating GHGs "would be far more significant than what the agency developed initially."

In addition to estimating the burden of issuing PSD permits, the EPA analysis also predicts potential savings, estimating that raising the regulatory threshold for GHGs under the air law will result in $193.6 billion in "regulatory relief benefits" from January 2011 to July 2013. And while there "will be some costs to society during this time from the potential loss of GHG emission reductions from small sources that could occur," the analysis says EPA was "not able to quantify or monetize these potential foregone emission reductions." -- Charles Davis

**CLIMATE CHANGE**

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06/18/2010

**Senators Refute Climate Bill Costs While Obama Open To Alternative Plans (*Inside EPA*)**

Proponents of a pending Senate climate bill are citing new analyses of the legislation from EPA and outside groups as showing that the bill would cut short-term energy costs, impose minimal long-term costs on households, and create thousands of jobs, even as President Obama suggests he could support efficiency mandates and other plans rather than cap-and-trade to cut greenhouse gas (GHG) emissions.

EPA released its analysis of the draft bill by Sens. John Kerry (D-MA) and Joseph Lieberman (I-CT) June 15, predicting that the legislation would modestly decrease overall household consumption -- by $76 to $146 annually between now and 2050. The analysis does not calculate benefits from reducing GHGs, though the agency in broad

terms states that failing to curb emissions could have significant, negative economic effects.

Kerry touted the EPA analysis as additional support for his and Lieberman's proposal in advance of a scheduled June 17 meeting of Senate Democrats to discuss a way forward on energy policy amid lingering skepticism within the caucus. The analysis is available on InsideEPA.com. See page 2 for details.

Release of the analysis came hours before President Obama's speech on the Gulf oil spill, in which he urged Congress to pass broad climate and energy legislation but stopped short of endorsing cap-and-trade to cut GHGs or advocating carbon limits. Obama said he is "happy to look at other ideas and approaches from either party" on clean energy legislation, including renewable electricity standards and energy efficiency mandates.

"All of these approaches have merit, and deserve a fair hearing in the months ahead. But the one approach I will not accept is inaction," Obama said. He said the House-passed cap-and-trade climate bill is "strong and comprehensive . . . a bill that finally makes clean energy the profitable kind of energy for America's businesses."

But the president also noted "there are costs associated with this transition" and said he wants to hear from both political parties on legislative options "as long they seriously tackle our addiction to fossil fuels."

The president's openness to alternative measures could complicate environmentalists' long-running push for cap-and-trade as the key approach for reducing GHGs. The Kerry-Lieberman bill includes a mix of measures for reducing GHGs from a number of sectors, including carbon limits and some GHG emissions trading.

Prior to the speech, climate bill proponents had hoped the president's remarks would bolster efforts to adopt measures aimed at reducing GHGs and the nation's dependence on petroleum. The Sierra Club in a June 15 statement said while it welcomed the president's call for a "fundamental" change in energy policy, but said that Obama "now needs to lay out the specifics" for what he wants to see in climate and energy legislation.

Sierra Club cited ongoing discussions over the Kerry-Lieberman bill as an important sign of steps towards a clean energy economy. Critics of the measure have raised concerns about the costs of mandating reductions in GHG emissions, but EPA's just-released analysis is being touted by the bill's proponents as allaying those cost fears.

At a June 15 press conference, Kerry added that in the short term -- between now and 2030 -- the analysis predicts a decrease, not an increase, in household energy costs. Yet, while the EPA report provides some new ammunition for backers of tough action on climate change, it does not include estimates of jobs gained or lost -- an issue which EPA's models typically do not analyze. EPA also lists a number of uncertainties that

affect its analysis, including the availability of cost-lowering international offsets, and the extent that carbon capture and sequestration and nuclear power technologies expected to reduce emissions are both politically and technologically feasible.

The lack of explicit numbers on jobs is at least part of the reason that Kerry and Lieberman are also citing additional analysis from outside groups to tout their measure, including a new analysis from the ClimateWorks Foundation, which supports reduced carbon emissions, predicting that the legislation would generate as many as 540,000 jobs annually through 2030. During the press conference, Kerry noted that according to that separate analysis of the Kerry-Lieberman legislation, it would decrease consumer utility bills by $35 annually through 2020.

Kerry said at the press conference that several industry CEOs from companies including Honeywell and General Electric will attend a June 17 luncheon with lawmakers, prior to the Democratic caucus meeting, to make a pitch for action on climate change as a way to establish domestic markets for clean technologies.

Sources say that at the caucus meeting, Senate energy committee Chairman Jeff Bingaman (D-NM) will make a pitch for using an energy bill without a carbon price, approved by his panel, as a starting point for debate.

At that same caucus meeting, Sen. Maria Cantwell (D-WA) is expected to make a pitch for alternative "cap-and-dividend" climate change legislation she is backing with Sen. Susan Collins (R-ME). Collins told reporters June 15 that she believes the most viable option for Democrats seeking to move legislation would be to start with Bingaman's bill and provide opportunities to add carbon-related proposals during floor debate.

Sen. Byron Dorgan (D-ND), who has long said he is open to action on climate change but believes senators should start with the energy committee measure, told reporters June 15 he does not believe there are 60 votes for a broad climate change package. He called expected Gulf oil spill provisions the "front wheel drive" to propel an energy bill.

Lieberman at the press conference with Kerry sought to rebut such arguments, noting Democrats have brought proposals in the past to the floor without 60 votes, including health reform.

**ENERGY**

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**Climate bill faces long odds, despite Obama speech (*Washington Post*)**

WASHINGTON -- A climate and energy bill being pushed in the Senate faces bleak prospects, despite President Barack Obama's call for a "clean energy" future that lessens dependence on oil and other fossil fuels.

A day after the president's Oval Office speech, Senate Minority Leader Mitch McConnell, R-Ky., reiterated that his party remains unanimous in its opposition to what he called a national energy tax.

Even one of the bill's likely supporters said the measure does not have enough votes to pass.

"You know, it would take 60 votes in the Senate to do that," said Sen. Byron Dorgan, D-N.D. "I doubt very much whether those 60 votes exist right now."

In an appearance Wednesday on Fox News, McConnell said Obama and congressional Democrats were "holding the Gulf hostage to a national energy tax" they have long been seeking.

"They call it a climate bill. What it is is a national energy tax," McConnell said.

The climate bill, sponsored by Sens. John Kerry, D-Mass., and Joe Lieberman, I-Conn., would tax carbon dioxide emissions produced by coal-fired power plants and other large polluters, as a way to reduce pollution blamed for global warming. Dubbed the American Power Act, the measure aims to cut emissions of carbon dioxide and other heat-trapping greenhouse gases by 17 percent by 2020 and by more than 80 percent by 2050.

The bill would cost American households an average of $79 to $146 per year, the Environmental Protection Agency said in an analysis this week.

Some liberal commentators and environmental groups criticized Obama for failing to endorse a cap on carbon emissions in his speech Tuesday night.

White House spokesman Ben LaBolt said Obama's speech reiterated his call for comprehensive energy and climate legislation to break the nation's dependence on fossil fuels. The president will be reach out next week to senators on both sides of the aisle to chart a path forward, LaBolt said.

"We're open to good ideas from all sources and will be working with senators on a comprehensive proposal," LaBolt said Wednesday. "The tragedy in the Gulf underscores the need to move quickly, and the president is committed to finding the votes for comprehensive energy legislation this year."

Senate Majority Leader Harry Reid emphasized that he will need Republican support for the legislation, which Democrats hope to bring to the Senate floor next month.

"This legislation can only be passed if Republicans decide to work with us and demonstrate that they share our serious commitment to building a 21st-century energy strategy for America," Reid said in a statement.

Those votes may not be easy to find. The bill's sole Republican backer, Sen. Lindsey Graham of South Carolina, withdrew his support last month, saying it is impossible to pass the legislation in the current political climate.

An indication of the bill's prospects came Tuesday as the Senate killed an attempt to repeal lucrative tax breaks enjoyed by the oil and gas industry.

The move by Sen. Bernie Sanders, I-Vt., would have raised $35 billion over 10 years by limiting the ability of oil companies to write off drilling expenses and eliminating other tax deductions for domestic production of oil and gas.

Despite the industry's current political problems caused by the massive oil spill in the Gulf of Mexico, the measure was defeated 61-35. Twenty-one Democrats joined 39 Republicans in opposing the measure. Among those voting no was Lieberman, the co-sponsor of the climate bill.

**ENFORCEMENT**

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06/18/2010

**IG Report Cites Key Challenges To EPA Enforcement Of Equity Guidelines (*Inside EPA*)**

EPA's acting Inspector General (IG) in a new report finds no agency wrongdoing in a number of environmental justice complaints filed against EPA Region IV, while concluding that enforcing federal equity guidelines and combating discrimination is "difficult" because of limited criminal and civil law on environmental justice issues.

The June 14 report -- long sought by equity advocates -- may complicate EPA Administrator Lisa Jackson's push to make equity a key factor in policy decisions, because the IG concludes that enforcement of equity guidelines is limited by pertinent criminal statutes and civil rights legislation that "have not been fully developed." The report is available on InsideEPA.com. See page 2 for details.

But one environmental justice advocate says that the report should not undermine ongoing calls for EPA to issue guidance on incorporating equity as a key consideration at the beginning of the policy process behind rulemakings, permitting, and other issues. "We don't need analysis after the fact, after people have been harmed. We need to

integrate environmental justice into decisionmaking and have that analysis inform decisionmaking," the source says.

The source claims that such guidance could address several allegations reviewed by the IG, including claims of a lack of equity analysis for shipping coal ash to an equity community in Alabama. The source says that EPA failed to conduct an assessment of the environmental justice impacts of shipping the waste before it occurred.

EPA officials have said the agency will soon unveil guidance for how agency officials should consider environmental justice throughout EPA's regulatory process and on how to conduct equity analyses for rulemakings, a key agency official says, as part of a sweeping plan to elevate equity as a major factor in policy decisions.

The plan could help to assuage activists' fears that early steps by the Obama EPA to incorporate equity into agency decisions set a high bar for when the agency will take actions to limit disproportionate impacts to poor and minority communities, despite EPA Administrator Lisa Jackson's high-profile commitment to the issue.

But the just-issued IG report highlights the limitations of guidance on environmental justice, primarily that guidelines are unenforceable compared to civil or criminal legislation on the issue.

Executive Order 12898 directs federal agencies to make achieving equity part of its mission to the greatest extent practicable and permitted by law. The IG report notes that the order is designed only to improve the internal management of the executive branch and does not create any right enforceable against the United States. "Consequently there are no enforcement provisions for environmental justice guidelines," the IG concludes.

The review found no evidence that EPA contracts, assistance agreements, or programs were involved in the complaints, or that any EPA employee committed any actionable offense. Still, the IG said "some of the programmatic issues raised may merit further review" and have been forwarded to the IG's Office of Programs Evaluation.

The June 14 IG report addresses 16 equity complaints filed against Region IV in October, and the IG found that just five complaints warranted further review. Of those complaints the IG closed each one for varying reasons, though in at least two instances it exonerated EPA from any wrongdoing by finding that a state environmental agency was responsible for the decision being challenged in the complaint and EPA had no formal role.

The report cites past "inconsistency" in determining environmental justice communities across EPA regions and programs, but nevertheless finds no instance of EPA wrongdoing in Region IV.

Environmentalists on Oct. 27 filed 16 complaints over EPA actions in the region, with a request that the IG conduct an investigation. The IG then reviewed the allegations to determine whether it had investigation jurisdiction, and determined that five of the 16 allegations warranted further review.

EPA ultimately closed the case on all five allegations, finding no agency wrongdoing. The environmental justice advocate says that complainants may ask the Department of Justice to intervene and review the complaints, claiming that they involve violations of federal civil rights and environmental laws.

One complaint alleged that Region IV officials did not appropriately consider the equity concerns and potential health hazards associated with the disposal in a Perry County, AL, landfill of coal waste from the Tennessee Valley Authority ash spill that occurred in December 2008. But the IG said the requirements and procedures for permitting solid waste disposal are the responsibility of Alabama's Department of Environmental Management (ADEM), and EPA was not involved in the process and does not retain separate authority for the program.

"Our evaluation of this allegation disclosed no wrongdoing by EPA employees, and we discovered no other viable criminal, civil, or administrative violations" the IG said, closing the complaint.

Another allegation claimed that the Olin Corporation in Alabama violated environmental laws by misrepresenting the amount of mercury stored at its facility and saying that mercury was not leaching into and contaminating soil and ground water. "It was further alleged that EPA and ADEM are complicit in the misrepresentation," the IG said. A full investigation was opened by the IG into the allegation, and seven claims within that one allegation were determined to be unfounded. An eighth claim about the site, regarding the ownership interest in certain property, was not within the IG's jurisdiction and therefore the investigation was closed, according to the report.

Another complaint alleged that the site of a faith-based institution in Columbus, MS, had been contaminated by creosote from the Kerr-McGee Corporation, that false data was submitted regarding the contamination, and that an unknown substance was illegally disposed of near the site.

The IG determined that the contaminated areas are undergoing remediation and that current engineering controls are designed to minimize the potential for human exposure. Kerr-McGee has also offered the faith-based institution a $4.5 million settlement. "While we noted conflicting sampling results, we found that the alleged falsified data were never submitted to EPA, negating any [IG] investigative jurisdiction."

The IG referred the allegation of unauthorized disposal of an unknown substance to EPA's criminal investigation division, but says no EPA employee was involved in that allegation.

A fourth allegation claimed that EPA advised an African American family in Dickson, TN, that its well water was safe to drink while advising white families that the water was unsafe and contaminated with trichloroethlyene from a landfill in Dickson County, TN. An attorney for the complainant was concerned that an EPA IG investigation might harm ongoing civil actions over the claim and therefore did not provide any information to the IG to support the allegation. "Accordingly, this complaint was closed," the report says.

The fifth complaint alleged that chemicals leached into groundwater from the site of a former precision-weapons manufacturing facility in Tallevast, FL, and that residents did not learn of the contamination from either the manufacturer or a governmental entity for approximately three years.

In evaluating the complaint, the IG determined that the Florida Department of Environmental Protection would assume responsibility for the site. "According, there is no [IG] investigative jurisdiction because EPA is not involved at the site." The IG referred all information to Florida for an investigation.

**FUEL**

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**US decision on ethanol blend put off until fall (*Associated Press*)**

**Story also appeared: *Washington Post, State, Argus Leader, Lexington Herald, Palm Beach Post, Idaho Statesman, Fort Worth Star, Los Angeles Times, Anchorage Daily News***

By MARY CLARE JALONICK and MATTHEW DALY
The Associated Press
Friday, June 18, 2010; 12:35 AM

WASHINGTON -- The Environmental Protection Agency says it will wait until this fall to decide whether U.S. car engines can handle higher concentrations of ethanol in gasoline.

The agency had been expected to decide by this month whether to increase the maximum blend from 10 to 15 percent.

The EPA said Thursday that initial tests "look good" and should be completed by the end of September. A decision will come after the Energy Department completes the testing of the higher blend on vehicles built after 2007.

The ethanol industry has maintained that there is sufficient evidence to show that a 15 percent ethanol blend in motor fuel will not harm the performance of car engines. But

the refining industry, small engine manufacturers and some environmental groups have argued against an increase.

Agriculture Secretary Tom Vilsack said the announcement is good news for ethanol producers and that the EPA is taking "a significant step forward" by discussing their timeline.

"With this green light, USDA is surging ahead on our work to provide support to feedstock producers, biofuel refiners and infrastructure installers, such as blender pumps, to ensure that all the pieces of the ethanol supply chain are ready to supply the market demand," Vilsack said.

The EPA has indicated in the past that it will raise the blend, saying a congressional mandate for increased ethanol use can't be achieved without allowing higher blends of the renewable fuel, most of which comes from corn. Congress has required refiners to blend 12.9 billion gallons (50 billion liters) of biofuels in 2010, of which 12 billion gallons would be ethanol. The mandate soars to 36 billion gallons (135 billion liters), mostly ethanol, by 2022.

Ethanol groups immediately expressed disappointment with the delay. Tom Buis, president of Growth Energy, the ethanol group that filed the original petition for the increase, used the oil spill in the Gulf of Mexico as an argument in a letter to President Barack Obama on Thursday.

"With fossil fuels getting dirtier, costlier and riskier to extract, as we are witnessing with the epic catastrophe in the Gulf of Mexico, now is the time we should move on expanding the production and consumption of clean, renewable fuels like ethanol," he said.

The Renewable Fuels Association, another ethanol industry group, criticized the decision to give priority to testing cars manufactured since 2007. The EPA said it is also testing some vehicles built before 2007 but will make a decision after the newer vehicle testing is completed.

The group also argued that the EPA should at least increase the blend to 12 percent in the interim.

Opponents to increasing the blend ceiling include manufactures of smaller engines - used in everything from lawn mowers to boats - because they say those engines are not designed for higher concentrations of the renewable fuel.

This is the second time the EPA has announced a delay of its decision on the blend. The agency pushed the decision to June last December, saying further testing was needed.

**Continental introduces fuel-saving, all-season ProContact with EcoPlus technology (*Washington Times*)**

8:05 p.m., Thursday, June 17, 2010

FORT MILL, SC Continental Tire introduces its most innovative new tire line to-date, the ProContact with EcoPlus Technology. This premium all-season tire was developed to deliver improved fuel economy and treadwear, reduce harmful CO2 emissions and surpass the competition. What's even more impressive is that this tire provides these benefits without sacrificing performance, especially wet braking.

"Today's consumer is very interested in how to save money and be more energy and environmentally friendly," said Bill Caldwell, vice president of sales and marketing, Continental Tire. "Our objective was to create a tire that responds to this need without compromising other performances, like wet braking and mileage, that are the typical tradeoffs of other 'eco' tires. Our technical team has managed to overcome these tradeoffs, and the result of their efforts is the new ProContact with EcoPlus Technology."

Engineered using the industry's most advanced technologies, the ProContact with EcoPlus Technology goes beyond other premium touring tires and makes groundbreaking advances in rolling resistance, which saves fuel and helps reduce driving costs.

The U.S. Environmental Protection Agency estimates that each gallon of gas saved also means that 19.4 fewer pounds of toxic CO2 emissions are released into the Earth's atmosphere, so every gallon of gasoline saved helps reduce fuel costs, and in turn, helps to reduce our nation's dependence on oil.

Continental is committed to finding "real world" environmental solutions, and not all tires are created equal in this regard, Caldwell added. For example, fuel efficiency can vary by as much as 50 percent - for just one vehicle type. The ProContact with EcoPlus Technology is engineered to provide better mileage and braking, while reducing emissions. The hallmark of the ProContact with EcoPlus Technology is delivering greater fuel economy compared to a leading competitor's standard touring tire. In the past, reducing rolling resistance meant sacrificing wet traction and treadwear. Not so with the ProContact with EcoPlus Technology - Continental engineers have been able to deliver wet traction and lowered rolling resistance - without compromising either characteristic. The ProContact with EcoPlus Technology is built to deliver excellent wet traction and remarkable treadwear. In fact, the ProContact with EcoPlus Technology has proven to deliver more controlled braking and significantly shorter stopping distances.

EcoPlus Technology consists of two main components, Tg-F Polymers and Plus Silane. The Tg-F polymers are temperature-activated functional polymers that increase compound bonding, improving the wear and fuel efficiency of the tire. The second

component of the EcoPlus Technology is called +Silane, an additive that works to enhance the tire's grip on slippery roads to reduce stopping distances. These technologies work together to enhance the driving experience for a long tire life when conditions are normal, plus provide excellent wet braking on slippery roads.

The ProContact with EcoPlus Technology is backed by some of the strongest warranty programs and service contracts in the industry, including a 72-Month Manufacturer's Workmanship Warranty - with 12 Months Free Replacement; 12 months of Road Hazard Coverage and a 60-day Customer Satisfaction Warranty.

The ProContact with EcoPlus Technology comes with a segment-leading 80,000-mile limited tread wear warranty. Available in a T-speed rating with a UTQG rating of 600 AB, this tire is available in a variety of 15" to 18" sizes to fit a wide range of vehicles for fuel-conscious consumers.

06/18/2010

**Ethanol Industry Warns Of Challenge If EPA Issues Limited E15 Approval (*Inside EPA*)**

Ethanol industry officials are warning that they are ready to challenge EPA's data if the agency as expected grants an industry request to raise the cap on ethanol in gasoline from 10 percent (E10) to E15 but limits the approval to model year 2001 or newer vehicles, saying such a limited approval might be "scientifically unjustified."

Robert Dinneen, president and CEO of the Renewable Fuels Association, said in a June 15 speech that he expects EPA will approve Growth Energy's request to allow E15 for sale. EPA is waiting on data from the Energy Department on the possible effects higher blends may have on catalytic converters. Dinneen said he is "confident the results will demonstrate the efficacy" of E15, according to his remarks at a fuel ethanol workshop in St. Louis, MO.

But EPA has long been expected to issue a limited approval of E15 that would narrow its sale to model year 2001 or newer vehicles, which have engines that are equipped to handle the fuel. Critics of higher ethanol blends have warned that they can cause engine damage and possibly increase emissions of ozone precursors.

Dinneen in his remarks criticized a limited approval as excluding "an enormous amount" of the nation's gasoline market that would create "unnecessary and unjustified confusion for retailers and drivers alike. EPA has not one scintilla of data to justify excluding 50 percent of the existing motor vehicle fleet from E15." *Relevant documents are available on InsideEPA.com. See page 2 for details.*

If EPA approves a limited use of E15, "Such a ruling will require continued analysis of the testing upon which EPA relied to understand why such a decision was made, and if scientifically unjustified, to challenge it," Dinneen said, but did not elaborate on whether industry would file a lawsuit or administrative challenge.

Dinneen also said that few retailers would be willing to offer higher ethanol blends if doing so requires additional infrastructure investment or creates confusion over possible liability from gasoline pump mislabeling and misfueling. EPA has already announced plans to develop a pump label to prevent misfueling of vehicles not authorized to use E15 fuel, and to provide manufacturer certification to sell E15.

Even before "a drop of E15" can be sold, some fuel regulations will need to be amended at the state and federal level, Dinneen said. For example, RFA sent a May 14 letter to EPA Administrator Lisa Jackson urging her to amend the so-called Reid Vapor Pressure (RVP) measure for tracking the volatility of fuel. RFA says that the RVP only covers ethanol blends up to E10 and would have have to be extended to E15.

In his speech June 15, Dinneen said the RVP issue is "not something sexy that lends itself readily to an advertising campaign" but is "the type of technical issue that must be resolved before any E15 can be found in the marketplace."

Dinneen also said there is a need to secure waivers and certifications from local fire marshals to allow higher blends to be sold in legacy equipment and said RFA is "leading an effort to do that" with Growth Energy, the American Coalition for Ethanol (ACE) and the National Corn Growers Association.

06/18/2010

**Report On Disputed Laboratory Prompts EPA Withdrawal Of Key Risk Studies (*Inside EPA*)**

EPA is "holding" pending risk assessments for four widely used chemicals -- and reviewing two already final assessments -- after a review by federal environmental health officials raised questions about the methods and results from a controversial Italian laboratory whose studies EPA has relied on in the assessments.

The agency's announcement backs long-standing calls from industry officials who have urged the agency to delay at least one of the pending risk assessments -- for the fuel additive methanol -- given similar concerns with studies by the Ramazzini Institute in Italy.

EPA announced June 15 that its draft assessments of methanol, the fuel additives m*ethyl tertiary butyl ether* (MTBE) and e*thyl tert-butyl ether* (ETBE), and the plastic ingredient acrylonitrile, will be held pending EPA's further review of Ramazzini Institute studies used in the assessments. The agency says it is also "reviewing" its finalized

assessments of vinyl chloride and 1,1 dichloroethylene -- published on the IRIS website in 2000 and 2002 respectively -- "to determine what action is needed to assure their scientific integrity."

"Out of an abundance of caution and to ensure the agency's chemical assessments are grounded in the soundest possible science, EPA undertook a thorough review of all ongoing and previous chemical assessments to determine which, if any, relied substantially on cancer testing from the Ramazzini Institute," the agency said.

The announcement follows a June 11 report from the National Toxicology Program (NTP) that raised questions about the results and methods of Ramazzini's studies on methanol's carcinogenicity and found a lower incidence of lymphoma or leukemia in Ramazzini's test rats exposed to methanol than what Ramazzini scientists had found.

"In general, the NTP pathologists diagnosed fewer neoplasms and more inflammatory lesions in the rats from the methyl alcohol [methanol] study," the report says. *The report is available on InsideEPA.com. See page 2 for details*.

A "high degree of autolysis," or the disintegration of cells by enzymes occurring after death, "occasionally precluded" the NTP scientists' diagnoses, according to the report. "The presence of inflammatory lesions in several tissues is consistent with chronic infection, which we understand is commonly observed in aging rats in the lifespan studies carried out by RI. In addition, the practice of allowing animals to die spontaneously can lead to significant autolyses of some tissues," the report says, recommending that the Ramazzini lab "take steps to minimize these factors in the conduct of future studies."

The finding appears to lend credence to industry's strenuous protests that the lab's use of lifetime studies may exaggerate the carcinogenic effects of chemicals.

The Ramazzini Institute's studies have long been controversial -- and their use in EPA assessments protested by industry -- because their protocols vary from those frequently used in American labs. In the cases of methanol, MTBE, ETBE, and formaldehyde, industry disputed Ramazzini's findings that exposure to those chemicals lead to cancer in the lab animals.

EPA's recently released draft assessment of formaldehyde dodged the controversy by refraining from referencing any of the several Ramazzini studies published on the chemical.

The NTP pathology review was only a partial review process, and the report cautions that its findings are "not sufficient to support or refute the overall conclusions" of the Ramazzini studies.

NTP recommends that Ramazzini convene a "working group review" with pathologists to settle the disputes about the accuracy of the data, according to an NTP source. The

source said it wasn't known whether Ramazzini would abide by the recommendation, leaving the affected IRIS assessments in limbo.

Although NTP only conducted a limited review of Ramazzini's methanol study, the program's findings still back industry concerns about the study. But industry groups -- who had urged NTP to conduct a full pathology working group review of Ramazzini -- say the NTP should now go back and do a more complete review.

"Clearly, from the NTP review of just a few of the Ramazzini methanol study's tissue slides, the results reported by the laboratory do not reflect an accurate diagnosis of the slides," the Methanol Institute's Gregory Dolan says in a June 15 statement. "This NTP report confirms the Methanol Institute's belief that before the Ramazzini study on methanol is proposed for use in any health assessment, a full 'pathology working group' review is absolutely necessary."

Meanwhile, EPA indicates that it is continuing to review its IRIS assessments "to determine if any other assessments are significantly impacted." And the agency announced that an Aug. 23 Science Advisory Board meeting scheduled to peer review meeting the draft methanol assessment has also been postponed.

**GENERAL**

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06/18/2010

**Agency Civil Rights Office Shuffle Replaces Director With Ex-Interim Head (*Inside EPA*)**

Karen Higginbotham, the embattled director of EPA's Office of Civil Rights (OCR), is leaving her post to work elsewhere in the agency and will be replaced in the interim by former acting OCR director Rafael DeLeon while the agency conducts a national search for a new head of the office, which is often under fire from civil rights activists.

In a June 16 memo, an EPA official said effective June 28 Higginbotham will join the Office of Administration & Resources Management as director of the executive resources division responsible for Senior Executive Service pay and other issues. "My thanks to Karen for her many years of dedicated service in OCR," EPA's Diane Thompson wrote.

DeLeon, director of the Office of Cooperative Environmental Management (OCEM), will serve as acting OCR director for up to six months, according to Thompson's memo. "Rafael's prior legal and programmatic experience in the civil rights and [equal employment] field will serve as an important source of experience and institutional knowledge as we initiate the process to recruit a permanent director," according to the memo.

Civil rights activists had called for Higginbotham to be removed after from an appeals court ruling last fall found a "consistent pattern of delay" by EPA in responding to Title VI complaints. And EPA sources have warned that the personnel disputes are hampering Jackson's effort to overhaul the office and speed up complaints processing as part of her broader commitment to equity issues.

In a separate complaint, an OCR assistant director claimed that Higginbotham removed her due to a "false accusation." The employee, Susan Morris, sent letters of complaint to Sens. Mark Warner (D-VA) and Jim Webb (D-VA) (*Inside EPA*, Feb. 19) and asked the U.S. Office of Special Counsel to investigate.

Meanwhile, DeLeon's appointment as interim director is not without controversy, with one EPA source claiming that his past tenure at OCR was a "difficult time" with its own personnel issues. He headed OCR for six months during the Clinton administration.

After leaving OCR in the late 1990s, DeLeon served as the director of the Office of General Counsel's then-new Office of Civil Rights Law and later as director of EPA's Office of Human Resources before moving to the administrator's office to run OCEM in 2005.

**GRANTS**

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06/18/2010

**ECOS Cites Burden Of EPA Rules In Push For Major FY12 Grants Increase (*Inside EPA*)**

The Environmental Council of the States (ECOS) is urging EPA to boost categorical grants funding to states to almost $2.5 billion in fiscal year 2012 -- a roughly 100 percent increase over President Obama's FY11 requested amount of $1.25 billion for the grants -- which states say is vital to help them implement a slew of new EPA waste, air and other rules.

ECOS June 14 released its budget priorities proposal for EPA's FY12 budget, which is due for submission to the White House Office of Management & Budget by September. ECOS, which represents state environmental officials, says states need just over $2 billion in categorical program grants to cover inflation and to implement new rules, guidance and initiatives. A copy of the proposal is available on InsideEPA.com. See page 2 for details.

The proposal highlights a number of major EPA rules that states say will be resource-intensive, including the agency's proposed first-time waste rules for coal combustion

waste disposal; its replacement for the Clean Air Interstate Rule air pollution cap-and-trade program; and stricter national ambient air standards.

States also face cost burdens from new or revised guidelines for existing rules -- for example Clean Water Act enforcement -- and ongoing resource needs to implement a slew of existing regulations.

"Unfortunately, EPA's new rules, guidelines and revised rules are appearing at the worst possible time from a budgetary point of view. State budgets have declined significantly during 2009 and 2010, and every sign is that this will continue into 2011 and beyond," according to ECOS' document, which the group submitted to EPA.

To address the concerns about the cost of rules, ECOS says there needs to be a major boost to the categorical grants section of EPA's state and tribal assistance grants account, which includes the congressionally mandated programs that have been largely delegated to the states. ECOS says its request focuses on core programs including the categorical grants budgets for air, wastewater, drinking water, pesticides and waste programs.

ECOS asks for $2.477 billion in FY12 categorical grants funding, which it says is a 98.7 percent increase over Obama's $1.246 billion requested amount for FY11. The categorical grants covered by ECOS' request were funded at $1.116 billion through the agency's FY10 appropriations law, according to the document.

ECOS requests funding boosts for several grants programs that represent significant increases over Obama's FY11 request. For example, ECOS asks for $775 million in state and local air quality management funding, a 150 percent increase over the president's FY11 requested amount of roughly $309 million.

State and local air programs have been "underfunded for many years," ECOS says. The group says the funding increase for the grants is crucial to implement several EPA air rules, including proposed stricter national ambient air quality standards; a "tailoring" rule establishing thresholds for triggering first-time greenhouse gas limits in air permits; and new rules to reduce hazardous air pollutants from various industrial facilities.

ECOS similarly seeks major boosts in funding for water programs, including a 96 percent increase in Clean Water Act section 106 funding to $540 million compared to the president's FY11 request of $274 million. Section 106 authorizes funding for states' water pollution control efforts, including enforcement.

Other grants increases that ECOS is seeking include $28 million for pesticides enforcement -- a 48 percent increase over the president's $19 million request for FY11 -- and an 89 percent increase for public water system supervision, the principal source of federal funding for state drinking water programs to administer federal drinking water rules. ECOS seeks $200 million in FY12 compared to the president's FY11 request of $105 million.

**HAZARDOUS WASTE**
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**State samples air, water near Calif. toxic dump (*Associated Press*)**

**Story also appeared: *Lexington Herald, Denver Post, Atlanta Journal Constitution, Idaho Statesman, Miami Herald, States News, Press Enterprise, Anchorage Daily, Palm Beach Post, Buffalo News, Fort North Star Telegram***

By GARANCE BURKE (AP)
KETTLEMAN CITY, Calif. — Grieving parents testified Thursday before California legislators about a rash of infant deaths and birth defects in an impoverished farm town next to the biggest hazardous waste landfill in the West.

"How many more children will have to be born with these conditions for them to listen to us?" asked Magdalena Romero, whose daughter, America, died a few months after she was born with a cleft palate and other health problems. "Our children are dying, and we don't know why. For such a small town, it's just too big of a coincidence."

Residents in this small, rural town have blamed the toxic waste dump for at least 11 birth defects since 2007, but state waste management officials have said there is no evidence linking the central California landfill to the deformities.

Members of the state Latino Legislative Caucus organized the hearing to get the latest from state and federal regulators who are probing what may have caused the grouping of cleft palates and heart problems. Environmental officials on Thursday also started taking samples of the air, water and soil and going door-to-door to talk with families to assess community exposure.

The hearing comes nearly five months after Gov. Arnold Schwarzenegger ordered the California Department of Public Health and the state Environmental Protection Agency to conduct a full investigation, including interviews with residents and reviews of medical records.

The Kettleman Hills Facility is a major employer in the largely Spanish-speaking community of 1,500 people along Interstate 5, the busy artery linking Northern and Southern California. The town is crisscrossed by high-tension power lines; pesticides and chemical fertilizers are routinely sprayed on nearby fields and some local drinking water sources are contaminated.

Company officials won approval to expand the 1,600-acre facility this year from the Kings County Board of Supervisors despite opposition from hundreds of residents, who accused officials of ignoring complaints from those without political clout.

The expansion permit is on hold while state health and state and federal environmental investigations continue.

"We're not here to judge anyone, we're not here to crucify," said Assemblyman Tony Mendoza, D-Norwalk, the caucus' co-chair. "We're here to get to the bottom of this, we're here to get to the truth and I think the families are here for the same reason."

Last month, the U.S. Environmental Protection Agency warned the company to use an independent laboratory to analyze the site's chemical content. It said Waste Management's in-house tests of zinc and cadmium levels were unreliable.

In April, the federal agency cited the facility for violating the law by improperly disposing of PCBs, or polychlorinated biphenyls, which are chemicals banned long ago that are linked to cancer and other health effects.

The company said it has since cleaned up a storage building and the adjacent soil area.

In February, state health officials said they had discovered no common cause for the birth abnormalities and facial defects among children in Kettleman City.

Public health officials have finished interviewing six mothers whose children were born with birth defects and continue to analyze broader survey results, said Kevin Reilly, chief deputy director of the health department.

**MINING**

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06/18/2010

**Ruling Rejects EPA Primacy Claim Over Permitting On Key Tribal Lands (*Inside EPA*)**

A key federal appellate court has rejected EPA's claim that it has primary permitting authority over uranium mining on property near tribal lands, limiting the federal government's reach over the controversial mining practice in major uranium producing states as well as a host of other resource extraction activities.

The U.S. Court of Appeals for the 10th Circuit's June 16 en banc ruling in Hydro Resources, Inc. (HRI) v. EPA, et al., sides with industry arguments that the site of the

uranium mine in question in the suit is not located in tribal land because it falls outside the Navajo Nation's boundaries in New Mexico.

Previously, a three-judge panel of the 10th Circuit backed EPA's call for a hybrid judicial test to determine what is tribal land. States and industry said that New Mexico -- which surrounds the tribal area -- has jurisdiction over the mining company land and that the earlier ruling interferes with state rights to oversee environmental and mining programs, unfairly limiting and confusing state jurisdiction and affecting beneficial programs.

The 10th Circuit in its en banc ruling says, "Having now heard the case anew, we find ourselves compelled to vacate EPA's final land status determination" because EPA's interpretation of the tests to determine whether an area is Indian land does not follow the rationale in a 1998 Supreme Court decision and the plain meaning of section 1151(b) of the Safe Drinking Water Act (SDWA). The federal drinking water law authorizes the permitting of in-situ leach mining, a technique used to extract uranium. The ruling is available on InsideEPA.com. See page 2 for details.

At issue in the HRI case is a 2007 EPA "land status determination" that found the land where the mining company planned to construct an in-situ uranium leach mine was "Indian land" as defined by section 1151 of SDWA and therefore subject to EPA permitting requirements.

The appellate court's ruling last year held the federal government has jurisdiction because the land falls within the "geographic bounds" of the Church Rock Chapter of the Navajo Nation, a "dependent" Indian community which is considered "Indian land" under section 1151 and subject to federal jurisdiction, even though the land falls outside the Navajo Nation's boundaries. The three-judge panel said the Church Rock Chapter is a culturally and economically cohesive community, falls within geographic boundaries, and is not a separate "mini-society" -- all findings necessary for determining the land is "Indian Country" subject to federal jurisdiction

The three-judge panel relied on the so-called Watchman/Venetie test, a hybrid approach put forward in a 1998 Supreme Court case, Alaska v. Native Village of Venetie Tribal Government, as well as portions of a 10th Circuit test that stems from the appellate court's 1995 ruling in Pittsburg & Midway Coal Mining Co. v. Watchman.

But after rehearing the case before the full 10th Circuit, the appellate court has sided with industry that the land in question is not an Indian land. "EPA argued . . . that we should cast our gaze beyond the particular land in question," the ruling says. "In the Agency's view, because some sufficiently significant (though unspecified) percentage of neighboring lands -- what EPA calls 'the community of reference' -- is Indian country, HRI's land must be considered Indian country, too," the ruling says. EPA's analysis presupposes "that every piece of land is part of some community of reference," but the court rejects that argument, the ruling says.

While the ruling pertains to a dispute over a proposed in-situ mine for uranium, other practices regulated by the Underground Injection Control program will also be at issue, including carbon storage -- a practice that is considered essential to address looming rules to control greenhouse gases.

The ruling is especially significant because it was issued by the court which oversees Oklahoma, Wyoming, Kansas, Colorado, Utah and New Mexico, all of which are important energy and mineral-producing states but which also have large and uneven swaths of tribal lands.

**TOXICS**

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06/18/2010

**Oil Spill Inquiry Could Expand Jurisdiction For Key Chemical Safety Board (*Inside EPA*)**

At the request of House energy committee Chairman Henry Waxman (D-CA), the Chemical Safety & Hazard Investigation Board (CSB) is expected to investigate the ongoing BP oil spill, which would expand the board's jurisdiction over marine accidents that until now have been overseen by the National Transportation Safety Board (NTSB).

A CSB investigation could also provide key data to prosecutors investigating BP for possible criminal violations of environmental laws and those seeking to debar BP -- one of the largest private suppliers of jet fuel to the military -- from continuing its role as a federal contractor. And it could prompt a crucial test for EPA and other enforcement officials over the legal privilege extended to CSB investigative material -- an issue that has marred relations between CSB and EPA.

Waxman, together with investigations subcommittee Chairman Bart Stupak (D-MI), the chair of the committee's panel on oversight and investigations, called on CSB Chair John Bresland to initiate a CSB investigation in a June 8 letter. Relevant documents are available on InsideEPA.com. See page 2 for details.

At press time, CSB had not announced whether it would investigate the oil spill, but Bresland expressed in a June 8 statement his "desire that the CSB do everything it can to facilitate the request." A CSB spokesman told Inside EPA that resource constraints are a major factor in deciding whether to accept the request.

Until now, NTSB has generally had sole authority to conduct investigations into marine-based chemical releases such as oil spills. But an NTSB spokesman says the Deepwater Horizon accident "occurred outside of the territorial sea statute (12 miles off

the coast) which is the out of [NTSB's] jurisdiction." And a House source says CSB "has the subject matter expertise and institutional background to conduct this investigation."

As a result, this could clear the way for the CSB -- which was established under the 1990 amendments to the Clean Air Act -- to broaden its jurisdiction beyond the land-based releases it has investigated so far, even though CSB's authorizing statute bars it from investigating marine spills. "The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate," according to CSB's statutory authority, outlined in 42 U.S.C § 7412.

A former CSB official says that an investigation of the Deepwater Horizon spill would be new territory for either investigative body, but especially for CSB, which has generally focused on land-based petroleum industry releases,

including a major spill from a BP oil pipeline in Alaska in 2006 and a fatal 2005 explosion at a BP refinery in Texas City, TX, which left 15 dead and resulted in criminal pleas from BP officials under environmental laws.

An EPA official says the choice may be deliberate as CSB has "been trying to get themselves moving up in the hierarchy of agencies I guess, and this would be one way to boost their status. I don't know if that was what Waxman intended in bringing them into this."

The former CSB official says that such a move could be a highly effective oversight reorganization, since CSB has authority to make recommendations on the Minerals Management Service (MMS) and other regulatory agencies, and one that echoes moves made by the British government after a 1988 spill in the North Sea.

In that case, responsibility for health and safety oversight for the energy industry was "ripped" from the British government's energy department and placed within the Health and Safety Executive, thereby ensuring that health and safety was not brushed "under the rug," says the former CSB official. The source adds that carving out the new marine drilling oversight jurisdiction for CSB would be far more sweeping than recent announcements by Interior Department (DOI) Secretary Ken Salazar to reorganize MMS, because the MMS reforms would still leave both leasing and off-shore environmental protection under DOI control.

"I would see that as being a minimal reorganization," the source says. "It is still under the same number one guy, Salazar. . . . That is not the British approach to it. They did not give a single head of a government agency oversight of both functions, and this is the other reason why it is so important that, in addition to getting an ad hoc commission established by the president, in my mind we need to establish the permanent jurisdictional responsibility for offshore oil safety and environmental responsibilities."

BP did not respond to a request for comment at press time.

Waxman and Stupak's letter to CSB appears to be aimed in part at providing data that could determine whether BP is criminally liable for the spill and whether the company continues to be eligible for federal contracts -- including BP's $2.1 billion contract for supplying the Defense Department with fuel.

According to Public Citizen, which is calling for BP to be stripped of both existing federal contracts and barred from future contracts, federal regulations authorize suspension of a federal contractor based upon evidence that the contractor has committed an "offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor," as well as for "any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor." The regulations also authorize debarment of a contractor for these same reasons.

Waxman's letter asks the board to determine whether it can "draw any parallels between the root causes of the April 20 oil rig explosion and the causes of the 2005 BP Texas City refinery explosion." And Waxman asks that the same team that investigated the Texas City refinery accident also investigate the Gulf spill.

Similarly, in its June 7 letter to policymakers calling for BP to be debarred, Public Citizen argues that BP's criminal convictions in the Texas City refinery case "should have led the government to deem the company and its wholly-owned subsidiaries lacking in the "business integrity or business honesty" required of a government contractor.

"The company's ongoing role in the Gulf of Mexico oil disaster has further displayed an alarming level of irresponsibility that require the suspension and debarment and termination of contracts held by BP and its subsidiaries." The group's letter cites press reports indicating that EPA is already considering debarring BP from government contracts because the spill undermined company claims that it had changed its practices since the Texas City explosion.

Sources also say that any CSB finding of a similarity between the two accidents could also help establish criminal liability under several major environmental laws, where prosecutors are required to show "knowing endangerment" of employees or the public. "It would have to do with the thought processes of the decisionmaking people related to the Deepwater Horizon Operation as being similar to the thought process used by the decisionmaking people at Texas City," says an EPA official, "and at Texas City they reduced maintenance in order to save money."

Any investigation by CSB could also prompt a key test over the privilege extended to CSB investigative material and the extent to which CSB would have to share that data with the ongoing federal criminal and civil investigation into the BP spill.

CSB investigative material has generally been withheld from federal prosecutors in an effort to ensure that the board can thoroughly determine the cause of chemical releases and provide comprehensive recommendations to address any problems. But this

approach has marred its relations with EPA. During the Clinton administration, the agency declined to provide funds to establish CSB in part due to concerns from enforcement officials, who feared they would be deprived of important information.

The EPA source argues that any investigative material obtained by CSB on the BP spill should be shared with prosecutors. Although CSB, unlike the Department of Justice, investigates for the purpose of finding cause, rather than establishing fault, information gathered during a CSB investigation should be more accessible to federal prosecutors than would be the same information gathered by NTSB, the EPA official says, adding that the CSB investigation poses a key question of balancing interests between justice and fact-finding.

"I think the real key is any privilege that may be attached to CSB investigations and whether it's appropriate," says the EPA official. "I mean there's an interest of justice here not to make those investigations confidential."

The agency source says that congressional leaders, when deciding which body should conduct the investigation, must balance the interest of enforcement versus the interest of finding out what caused the event. "It's important that the criminal investigators have access to every important piece of information to determine who is at fault," the official says.

The former CSB official, however, says it is a critical aspect of an effective oversight system to investigate "not for the purposes of establishing criminality but of establishing circumstances around the event," as CSB would do. -- Molly Davis

06/18/2010

**Industry Looks To GOP Gains In House For 'Moderate' TSCA Reform Bill (*Inside EPA*)**

As House Democrats push ahead with a pending bill to reform the Toxic Substances Control Act (TSCA), industry officials say Republican gains in the November election -- including a possible takeover of the House -- could have a "moderating influence" on the legislation that some claim is a "non-starter" for industry in its current form.

Groups on both sides of the debate are ramping up efforts to influence the bill, with the Society of Chemical Manufacturers & Affiliates hosting a June 15-16 fly-in to visit more than 50 congressional offices to pitch their preferred approach to TSCA reform to lawmakers including House energy panel ranking member Joe Barton (R-TX). Activists meanwhile launched a new web initiative to encourage the public to lobby Congress for TSCA reform.

Many in industry are pointing to potential GOP gains in the House in November's mid-term elections as one way to influence the legislation and address their concerns. A

Republican House takeover, or significant GOP gains, could make it harder for Democrats to pass TSCA reform without moderating it to win sufficient votes from the GOP.

But sources caution that even with GOP gains, industry must "be smart enough to support a good alternative" to the draft bill that would still be able to win the support of the GOP and moderate Democrats. The industry fly-ins also include meetings with key Democrats, including energy panel member Rep. Gene Green (TX).

House Energy Commerce & Committee Chairman Henry Waxman (D-CA) and Rep. Bobby Rush (D-IL) floated the draft bill, which was set for introduction and markup sometime before the summer recess. But the Gulf of Mexico oil spill and subsequent congressional focus on that disaster may have complicated the timing of the legislation. An energy panel spokesperson says "next steps in the legislative process will be made in due course."

In comments to Energy & Commerce leadership, chemical makers and downstream industries have questioned the draft's approach to expedited action on chemicals, registration of new chemicals, regulation of articles and mixtures, and more strict confidential business information (CBI) rules (Inside EPA, June 4).

While activist groups are largely supportive of the House draft with some changes, industry has so far been more critical of the approach taken in the House draft and a similar Senate bill introduced by Sen. Frank Lautenberg (D-NJ), which is yet to receive an Environment & Public Works Committee hearing.

If Republicans make large gains in the House following the November elections, one industry source says that even while it might help them moderate some text of the bill, industry will have to avoid pushing for special provisions for specific industry sectors and support a "moderate bill only focused on identified problems" with TSCA, such as those outlined in past reports by the Government Accountability Office and others.

But even with more GOP members of Congress, one legal source questions how much the actual bill would change, particularly taking into account the steep learning curve for staffers on toxics issues.

And other sources note that the draft House bill has not been formally introduced and the final version of the legislation could be altered to address some of the concerns already raised by industry in the groups' recent comments and also during stakeholder meetings held on Capitol Hill in April and May.

A second legal source who has worked with industry says the stakeholder process has been useful in getting industry to think about the bill and to define the dynamic between industry, activist groups and other key players. "I think [the House process] has had a lot of utility for eventually getting a bill," the source says.

Industry sources also say there could be some use for House Democrats to begin work on a formal bill as a marker for the next session, particularly if the Democrats retain control of the chamber. "They may perceive it as a benefit," the industry source says. "They may perceive it as creating momentum."

The industry sources also say that to date there has been little action from moderate House Democrats, who could also play a key role in crafting TSCA reform legislation. The second legal source says a moderate Democrat could take the lead on hotly contested issues in the bill, such as CBI. "None of the moderates have been engaged on the subject," according to the second legal source. But the source says Waxman is "smart about negotiation" and could work with moderate energy committee members in an effort to convince Barton to support a bill.

Other stakeholder groups could be waking up to the impacts of a reauthorized TSCA and becoming engaged in the issue, sources say. The industry source also says there could be increased reaction from non-chemical industry sectors, particularly manufacturers who may be impacted by some of the proposed changes to chemicals law.

The definition of a mixture under the draft bill is expanded to include mixtures in articles, which could further stretch TSCA authority, sources say. Even if coverage of articles is dropped from the legislation once it is introduced, the bill could still have an impact on the ability of automotive and aerospace companies to use new materials, like coatings and adhesives, the source says. "They're going to come out of the woodwork on this."

Meanwhile, the Environmental Defense Fund (EDF) -- a member of the key Safer Chemicals, Healthy Families coalition that advocates TSCA reform -- launched a new web initiative June 15, titled "I Am Not a Guinea Pig," to encourage the public to lobby Congress for TSCA reform. EDF launched the effort alongside the coalition and other members, including the Autism Society, the Learning Disabilities Association of America and Moms Rising.

"Chemicals should meet a standard of safety for all people, and especially vulnerable populations like children and pregnant women," Andy Igrejas, director of the coalition said in a statement. "That can only happen when Congress hears from fed-up Americans tired of being treated like Guinea pigs." -- Aaron Lovell

06/18/2010

**Researcher Defends Controversial Methods Behind Stalled EPA Risk Studies (*Inside EPA)***

A researcher at the Italian lab that performed a series of controversial cancer studies EPA used in several now-delayed risk assessments recently defended its approach,

saying its method of exposing rats to chemicals over their natural lives, rather then just two years as American labs do, is intended to better emulate human exposure to chemicals.

We are trying to "reproduce the human exposure model. Humans are not sacrificed after two-thirds of their lifespan. That is the model we are trying to [emulate] in this lab," Morando Soffritti, the Ramazzini Institute's scientific director, said in an interview with Inside EPA before the agency's June 15 announcement that it was delaying six risk assessments due to concerns about the Institute's data and methods.

The agency said in its June 15 announcement that it was delaying four pending risk assessments -- for methanol, the fuel additives methyl tertiary butyl ether (MTBE) and ethyl tert-butyl ether (ETBE), and the plastic ingredient acrylonitrile -- pending EPA's further review of Ramazzini Institute studies used in the assessments. The agency says it is also "reviewing" its finalized assessments of vinyl chloride and 1,1 dichloroethylene -- published on the IRIS website in 2000 and 2002 respectively -- "to determine what action is needed to assure their scientific integrity."

The agency's announcement, which marked a reversal from some past agency statements, was prompted by a preliminary report from the National Toxicology Program (NTP), which conducted a limited pathology review of Ramazzini's tissue slides from rats exposed to methanol and found a lower incidence of leukemias and lymphomas than did the original researchers (see related story).

EPA's announcement was lauded by industry, which has urged the agency not to rely on Ramazzini data in its recently released Integrated Risk Information System (IRIS) assessments of methanol and the fuel additives ETBE and MTBE. Industry representatives argued that Ramazzini's methods allow for confounding factors that overstate the cancer risks of the chemicals.

But in an April 1 phone interview with Inside EPA, Soffritti described the NTP pathology review as "further evidence of the very close collaboration built over the years" between the two institutions.

"The NTP and Ramazzini Institute are the two principle institutions on the world level that conduct this kind of study," Soffritti said. The goals are to "avoid repetition of what are very very costly studies and to make the methodology as similar as possible. In articles recently, the [NTP site visit] has been portrayed as a control or check, to validate. This is not a pathology working group. This is the third or fourth time NTP is coming for a collegial meeting; it is a normal part of our procedure working together. It is not a reaction to the [EPA IRIS] methanol review."

Ramazzini's methods are unique in part because they perform lifetime studies, allowing their lab rats to live out their natural lives after exposure to the studied chemical. In most of the chronic lab animal studies that EPA relies on for its IRIS assessments, the animals are sacrificed after no more than two years.

In a phone interview with Inside EPA, Soffritti explained that queries about Ramazzini's reasoning for the lifetime studies are the "number one question we receive from abroad."

He said the lab's methods are intended "to reproduce the human situation as much as possible. [In humans] the majority of the mortality from cancer [occurs] in the last one-third of the lifespan, after 60 or 65 years of age. This is also true in rodents, after 110 weeks of age. So the studies are as sensitive as possible."

Soffritti added that Ramazzini's methods also better simulate human exposure to low doses of chemicals. "We are talking about chemicals or environmental agents to which the majority of people may be exposed at very low doses or to agents potentially not very strong to produce a tumor in a short time."

The Ramazzini model practiced at the lab for the past 35 years includes studies beginning during fetal life, using large groups of animals of both sexes and studying them throughout their lives, Soffritti said. He added that Ramazzini is "not alone in believing in the lifetime model," noting that an NTP scientist wrote a 2008 commentary for the journal Environmental Health Perspectives suggesting the need to consider "extend[ing] the timing and duration of exposures used in the rodent bioassay" beyond the usual two years.

Soffritti explained that the same reasoning of emulating human exposure is behind the lab's decision not to use the pathogen-free facilities industry often favors. Industry has argued that Ramazzini's decision not to maintain a pathogen-free facility and use a pathogen-free rat strain allows other factors to confound its results. "Humans are exposed to carcinogens and microorganisms and are not maintained in a pathogen-free facility," Soffritti said. "[Like] people, our rats are not living under a bell of glass."

In part because of this practice, the Methanol Institute, an association representing manufacturers and users of methanol, has argued that Soffritti's methanol bioassay were confounded with a lung infection, known as mycoplasma pulmonis. They argue that this infection is misdiagnosed in Ramazzini studies as lung cancers. In recent years, industry consultant George Cruzan and EPA scientists have authored several papers with competing explanations for the infection or lack thereof in the Ramazzini rats' lungs. Some industry sources have even suggested that the location of Ramazzini's lab, housed in a renaissance castle completed in 1480, could exacerbate respiratory infections.

"There is no evidence mycoplasma has an effect on the incidence of tumors -- no proof related to the incidence of the tumors," Soffritti said. "There is no evidence our animals suffer from this infection. If we look at survival curves at 104 weeks (when treatment ends) between animals treated and not treated, the survival rate is the same at about 40 percent. This is something we would not see if the animals were infected."

Soffritti acknowledges that when animals die in the lab, there is evidence of bronchitis or lung infections, which he said is a factor of their old age. "Any physician knows in the last stages of life [humans are] frequently subject to pulmonary infection," Soffritti said. "This is also true when a rodent lives out its natural lifespan."

NTP's June 11 report indicates that when its pathologists reviewed some of the lung tissues from Ramazzini's methanol study, they "were in general agreement with the occurrence of inflammation of the lung, but diagnosed it more frequently than was recorded in the original evaluation by RI." According to the report, the NTP team "occasionally diagnosed 'leukemia' or 'lymphoma' of the lung, but at a lower frequency than the original [Ramazzini] findings."

Ramazzini's rats are monitored both visually and manually three times a day, Soffritti said April 1, with researchers looking for both morbidity and mortality. Any animals with respiratory infections are separated from other animals, but Soffritti said these are usually resolved within a few days. Following recommendations from NTP, which has collaborated with Ramazzini before in efforts to harmonize the two institutions' pathology reporting, Ramazzini modified its procedures for the health checks.

Starting in 2001, the rats and mice in Ramazzini's colony "have periodical bacteria samples taken in addition to the visual and manual checks. They do not reveal particular microbiological infection," Soffritti said.

However, this practice was introduced after the Ramazzini methanol study that EPA included in its risk assessment was performed. The Annals of the New York Academy of Sciences published that study in 2002, with Soffritti as the lead author.

"At the time of the methanol study, the health checks were done visually and manually, but not microbiologically. That was introduced later. The visual and manual checks worked well, as they still do," Soffritti said, adding that the microbiological sampling "was one of the suggested procedures [NTP] brought to us."

In their public comments on EPA's IRIS assessment of methanol, industry urged the agency to base its risk estimates not on the Soffritti study, but instead on a pair of Japanese studies using both mice and rats. Those studies, industry argued, showed little evidence of carcinogenicity.

But Soffritti said these studies are "totally inadequate because the duration of the experiment was too short." He added that his methanol study and those of the Japanese New Energy and Industrial Technology Development Organization (NEDO) could not be compared, in part because of the difference in study duration, but also because a different strain of rat was used and because the animals were exposed to methanol by inhalation instead of ingestion. "These [NEDO] studies were never published in peer-reviewed scientific journals," Soffritti said. "In the highest-level dose group, there was evidence of early effects. Had the rodents been allowed to live they

may have seen the carcinogenic effects in the lungs. But because the rats were sacrificed at two years, we'll never know."

Some EPA sources have also downplayed the NEDO studies, with one source noting that one NEDO study on methanol had shown statistically significant evidence of cancer in lab animals.

Soffritti also noted that the NEDO studies were industry-funded. The Ramazzini Institute is not. Soffritti explains that it has two sources of funding: private citizens' donations and funding from the Italian government as well as local government for individual projects. "Because we're totally independent it allows us to conduct some of the research that we do," Soffritti said. -- Maria Hegstad

06/18/2010

**Bush-Era Formaldehyde Model Complicates EPA Bid For Strict Cancer Limit (*Inside EPA*)**

EPA's effort to set a strict cancer risk estimate for formaldehyde could be complicated by the agency's decision to jettison a significantly weaker industry-funded risk model that has won endorsements from a National Academy of Sciences (NAS) panel and that the Bush EPA used to limit regulation of formaldehyde from stationary sources.

Industry groups and other federal agencies are questioning the agency's decision to drop the model but the agency is already strongly defending its decision, charging that it is so sensitive to small data changes that it is not conservative enough to protect human health.

EPA June 2 unveiled a draft risk estimate of formaldehyde that for the first time finds a causal link between formaldehyde exposure and several types of cancer. The draft assessment, for EPA's Integrated Risk Information System (IRIS) database, proposes an upper bound lifetime unit risk estimate of 1.1x10-4 per microgram per cubic meter.

But the study dropped use of a model crafted by scientists at the Chemical Industry Institute of Toxicology (CIIT) in 1999 that produced a risk estimate more than 10,000 times weaker than EPA's new draft estimate of cancer potency.

EPA and industry sources anticipate that the agency's new, more-stringent assessment will lead to significantly tougher controls on sources of formaldehyde emissions. These sources include natural gas turbines, which the Bush EPA's air office chose not to regulate based on the CIIT model.

EPA is revising the plywood rule, after it was vacated by the U.S. Court of Appeals for the District of Columbia Circuit for including unlawful risk-based off-ramps for facilities that could prove they emitted low levels of air toxics.

EPA's most recent regulatory agenda, issued earlier this spring, indicates that the agency will propose an air toxics standard for plywood and composite wood products in late 2011. The agenda indicates that officials anticipate final action on a decision regarding natural gas turbines in November 2012 -- but that EPA "is waiting until the completion of the final Integrated Risk Information System (IRIS) assessment for formaldehyde before taking final action."

EPA sources said last year that updated data from the National Cancer Institute led EPA's research office conducting the IRIS assessment to believe the CIIT model provided a cancer estimate that was far too weak. ORD reached "the conclusion that the number we used for delisting [the natural gas turbines from the turbine MACT] was probably 10,000 times too low," one source said.

But in comments on a draft version of EPA's assessment, NASA points to a 2007 report from the National Academy of Sciences National Research Council (NRC), which endorses use of the CIIT model. Conducted for the Navy, the report considers risks that several chemicals, including formaldehyde, present to submariners. Like the Navy, NASA's chief concern with formaldehyde is that its employees may be exposed to it in enclosed spaces, a NASA source says.

"EPA does not apply the models suggested by the NRC 2007 report or internal EPA models utilized by the Agency's Office of Air and Radiation. Given the large body of research on formaldehyde, NASA questions why EPA's IRIS draft does not clearly detail the applicability of these established models and scientific understanding in the development of the IRIS draft," according to NASA's undated comments on an earlier draft of the assessment. "EPA needs to clarify and support transparency in the development of IRIS draft risk assessments, especially when alternative approaches to established models are applied."

Seconding NASA, OMB urges EPA to address charge questions to the new NAS panel reviewing the draft assessment to consider "EPA's decision to rely upon the re-implemented Subramanian 2007 model," in its cancer risk estimates. EPA scientist Ravi Subramanian and colleagues published several articles critiquing the CIIT model, and their revised model was used instead in the draft assessment's inhalation cancer risk estimation.

06/18/2010

**Bills' Novel 'Hot Spots' Provisions Seek To Restore TSCA's Backstop Role (*Inside EPA*)**

House and Senate legislation to reform Toxic Substances Control Act (TSCA) includes a novel provision requiring EPA to address chemical "hot spots" in disproportionately affected communities, an effort that one activist says could restore TSCA's role as a backstop statute that covers chemical exposure throughout the lifecycle.

The "hot spots" provision would focus on ongoing problems from industrial plants, waste dumps and diesel refueling stations, rather than the legacy contamination issues covered by other statutes, such as Superfund law, and would help TSCA fulfill its role as a statute that protects against chemical exposures throughout the lifecycle and across media, the environmentalist says.

"TSCA was supposed to be one of the few integrating statutes," the source says. The provision "restores some of the original promise to do that."

Environmental justice (EJ) advocates are also supporting the provision as one of several measures in the bill intended to address their concerns that risk assessment of chemicals, which the bills generally require, does not take into account the disproportionate effects impacting certain disadvantaged communities.

But others are questioning the feasibility of the measure, saying that as currently written, the bill language provides EPA with too much discretion to be effective. It would take a "very progressive [EPA] administrator" to provide needed results to affected communities, one EJ source says.

The source notes that as currently drafted, the bill would preclude EPA from addressing exposures from lead and mercury -- two major sources of toxic exposure -- and another source says it could keep EPA from considering harmful exposures in rural areas, such as exposures from concentrated feeding operations.

Under section 39 of the House discussion draft, released in April by Reps. Henry Waxman (D-CA) and Bobby Rush (D-IL), EPA would identify "localities" within the United States subject to "disproportionate exposure," which are defined in the draft as "a residential population exposure to 1 or more toxic chemical substances and mixtures at levels that are significantly greater than the average exposure in the United States," as identified by EPA in accordance with criteria laid out in the bill.

In the determination, EPA can draw on data from the National Air Toxics Assessment Database to help identify the "hot spots," as well as information generated under the Safe Drinking Water Act, Solid Waste Disposal Act, Comprehensive Environmental Response, Compensation & Liability Act and the Emergency Planning & Community Right-to-Know Act.

EPA would then publish a list of affected communities and develop an action plan for each site to reduce the exposure, including the chemical exposures to be cut and the percentage-based reduction goals, as well as a time line for the reductions, according to the bill. The agency is also required to report to Congress on the progress towards the

reductions. A Senate bill, introduced by Sen. Frank Lautenberg (D-NJ) in April, includes a comparable provision.

The Safer Chemicals, Healthy Families coalition, a key group of environmental and public health groups, is voicing support for the measure. "Right now these 'hot spots' are basically lost in the sauce because EPA focuses on the 'average' person," Andy Igrejas, national director of the coalition, writes in a April 29 blog post on the group's website. "But for the same reason you've never met anyone with 2.5 children, that system leaves out millions of people who live in communities . . . where just getting to 'average' exposure would be a huge improvement."

Environmental justice groups, which are playing a key role in the TSCA reform debate, have long supported an effort to deal with "hot spot" communities, which are often in poorer areas. A source with WE ACT for Environmental Justice says provisions protecting disproportionately affected areas had not been fully considered in previous attempts at TSCA reform, and the source calls the provision "a very strong first step."

"It's not only about putting communities on the list, but making sure there is an action plan for EPA to deal with them," the source says. Asked if there was any way the provision could be strengthened, the source says, "We might have said, "Let's give you the list of communities.'"

But others question how much relief disproportionately affected communities would get from the provision because it gives "way too much discretion" to the agency about the action plans and which chemical would be targeted. The first EJ source points out that Congress does not mandate exposure reduction levels, timelines or priority chemicals in the draft bill.

"How will EPA decide which of the thousands of chemicals produced at more than 1 million pounds per year they are going to look for?" the source says, pointing out that chemicals like lead and mercury are not geographically specific. For example, "mercury is a huge exposure problem with very few 'hot spots' mattering," because exposure through food consumption is the major public health threat, which is not specific to geography, the source says.

Another informed source says that certain facilities, like concentrated animal feeding operations, could be a concern to a community, but would not be covered under the provision as drafted. The source also questions that the databases EPA would use to develop the list of affected localities will not necessarily provide the right information to make the determination.

The source further questions the lack of definitions in the bill. For example, the source points out that a "locality," as defined by the draft, could have a number of different definitions with different implications. According to the bill, the definition of locality could include "a county, city, town, neighborhood, census tract, zip code, or other commonly understood political or geographical subdivision."

Industry comments also raise "concerns all the way around" with the provision, particularly the amount of work EPA would be required to complete in the suggested time frame. "EPA would have 120 days to identify all places nationwide that face significantly greater than average exposure to 'toxic' chemical substances, 6 more months to list them and one more year to develop the 'action plans' to fix them," according to May 28 comments on the draft from the Society of Chemical Manufacturers & Affiliates (SOCMA). "We are curious to know whether this is something EPA actually wants to (or believes it could) do."

Similarly, May 24 comments from the American Chemistry Council (ACC) also question the "unrealistic timeframes" set forth in the draft bill, among more overarching issues. "There is an irrefutable presumption within this section that mere exposure has health consequences, in and of itself, requiring agency action plans to reduce the exposure without any connection or identification that there is a potential health or environmental risk associated with that exposure," the comments say.

The informed source points out that the provision also does not include any measure to ensure against the redlining of localities focused on in the bill, a concern echoed by SOCMA. "It is also fair to say that communities won't want to be called hot spots," the group's comments say.

A number of industry groups also raise questions about the lack of opportunity to comment on determinations made under the bill. For example, "There is no opportunity for public comment on the criteria by which EPA will define 'disproportionate exposure' and identify those localities so defined," according to the ACC comments.

An April memo, released by law firm Bergeson & Campbell, comparing the House draft and Senate bill also points out that the Lautenberg bill would consider EPA's requirement to publish and update the list of localities as a non-discretionary duty, and therefore judicially reviewable. Under the Senate bill, other actions in the provision, including identifying or listing a locality on the list, would not be subject to judicial review. -- Aaron Lovell

06/18/2010

**Downstream Users Eye Greater Chemical Data Disclosure In TSCA Reform (*Inside EPA*)**

Downstream chemical users and activists are seeking greater disclosure of chemicals as a key part of Toxic Substances Control Act (TSCA) reform, saying that more data on how substances move along the supply chain and better disclosure of chemical ingredients could help downstream users transition to "safer" substances.

The Business-NGO Working Group For Safer Chemicals and Sustainable Materials held a June 3 meeting in Washington, DC, to discuss the role of downstream users in the TSCA reform debate. Downstream users are those further down the supply chain from chemical makers and refiners, and the coalition includes pro-TSCA reform groups and users that have developed internal programs to better address chemical safety.

A coalition source says the group supports many provisions in draft House legislation to overhaul TSCA that would, among other things, require a minimum data set for all chemicals within five years and not allowing chemical identities to be claimed as confidential business information in health and safety studies.

But the source says the draft House bill released in April by Reps. Henry Waxman (D-CA) and Bobby Rush (D-IL) does not include language about how information about chemicals moves up and down the supply chain and says better disclosure about the chemical ingredients in products would be useful for companies and organizations trying to move towards safer chemicals, perhaps by requiring a "chemical ingredient form" to better inform downstream users of the makeup of the chemicals they use.

In the absence of a revised TSCA that mandates greater disclosure on chemicals, many companies are using material safety data sheets to make decisions about chemicals, something the sheets are not designed to do, the source says. "How do you create a mechanism for doing that in TSCA?" the source says.

In a presentation at the June 3 meeting, Bob Sussman, senior policy counsel to EPA Administrator Lisa Jackson, said that downstream users, as companies operating where the public comes into contact with many chemicals issues, were "in a critical position to influence the discussion" about TSCA reform.

The downstream users' group also wants to ensure that the bill harmonizes any provisions on expedited action to address chemicals' risks with other chemical regimes -- such as the European Union's Registration, Evaluation, Authorisation and Restriction of Chemicals program -- to avoid differing compliance requirements.

The group also supports the provision supporting the move towards safer alternatives, but says the definition of "alternative" could be broadened to incorporate moves to "design out" the use of a chemical or towards safer processes, rather than simply switching to a safer substance.

In a June 3 statement, Andy Igrejas, campaign director for the activist Safer Chemicals, Healthy Families coalition, which advocates for TSCA reform, said reform could benefit the companies by providing more information about chemicals and "leveling the playing field for innovative downstream users" by taking expedited action on chemicals of concern, as well as helping bring "safer" chemicals to the market.

**WATER**
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**EPA moves to tighten water safety regulations (*Associated Press*)**

**Story also appeared: *Boston Globe***

WASHINGTON — The Environmental Protection Agency is seeking to tighten rules protecting the safety of water in public systems.

A new rule proposed Thursday would call on water suppliers to make repairs whenever testing indicates the possibility of contamination. For example, that could mean when tests detect even harmless microbes, which could suggest a broken water main or other pathway that also might allow dangerous germs into the system.

Currently, water systems are required to do periodic tests and to make repairs if hazardous microbes are discovered.

No effective date has been set for the new rule, which will be open to public comment for 60 days.

06/18/2010

**EPA Seeks To Strengthen Adequacy Of Clean Water Compliance Schedules (*Inside EPA*)**

EPA is moving to strengthen the adequacy of compliance schedules contained in state clean water permits, putting new pressure on industry to comply with strict permit limits -- even as activists are challenging the legality of such schedules.

In the latest action, EPA Region III May 27 sent letters objecting to 13 draft permits for West Virginia mining operations that seek to extend the deadlines for the mines to comply with strict state selenium limits, a move sources say could be a test of the amount of time EPA will allow compliance deadlines to be extended. EPA in the past has also urged California to tighten its compliance schedule policies to ensure they comply with the law.

But even as EPA clamps down on the adequacy of state-issued compliance schedules, activists are challenging the broader legality of compliance schedules in a lawsuit against an EPA-issued permit in New Mexico. While EPA and environmental groups are currently in settlement talks that could bypass a novel legal precedent on the issue, activists argue that the agency is statutorily barred from approving extensions to established compliance schedules that occur after July 1, 1977, although states allow extensions for compliance schedules and EPA frequently approves them.

EPA's actions on state-issued compliance schedules may indicate what the agency will require before new permitting in impaired waters can go forward, sources say. In some cases, possibly including the West Virginia mines, EPA's stance may allow compliance schedules to expire, allowing activists to file lawsuits against the facilities for permit violations.

One industry source says EPA's objection to the draft West Virginia permits will be a test of the amount of time states are allowed to give industry to meet strict permit limits, which could potentially impact the length of compliance schedules for any water standard for any industry sector. "I think EPA is taking a legal position on the issue of whether compliance schedules can be extended indefinitely," the source says.

One informed source agrees. Many states abuse compliance schedules and use them as a way to avoid complying with water limits, but the Region III letters show EPA is willing to intervene, the source says. "Compliance schedules are abused by states and this is a great step that EPA has taken in reeling in the way that states use them," the source says.

EPA, states, environmentalists and industry have long disagreed about the use of compliance schedules in clean water permits, which give facilities additional time to meet limits in their National Pollutant Discharge Elimination System Permits (NPDES) rather than requiring immediate compliance.

EPA policy allows their use if they are consistent with state law. And further boosting the use of the schedules, the U.S. Court of Appeals for the 9th Circuit in Friends of Pinto Creek, et al. v. EPA ruled in 2007 that compliance schedules for discharges in impaired waters are required before new sources in the waters can be permitted. Industry sources say the ruling effectively blocked new permits in impaired waters.

But activists are challenging EPA's use of the schedules. In a case before EPA's Environmental Appeals Board, In re: Los Alamos National Laboratory, the Western Environmental Law Center argues that EPA lacks authority to issue compliance schedules in the permit for the New Mexico Lab because they say the water act bars EPA from issuing compliance schedules after 1977. EPA and environmentalists are in settlement talks, and any agreement could allow the agency to sidestep a legal test on whether the schedules are legally allowed (Inside EPA, Jan. 22)

Activists also argue that states often abuse the schedules as a way to avoid enforcing strict water quality limits.

In the West Virginia case, EPA Region III's recent letters regarding the state's mines, addressed to the state Department of Environmental Protection (DEP), object to draft modifications to the permits that would give the mines until mid-2012 to comply with the state's standard for selenium, rather than the current deadline set for April 5, 2010. Relevant documents are available on InsideEPA.com. See page 2 for details.

Many of the mines at issue in the Region III letters have had since 2004 or 2005 to come into compliance with the standard, according to the letters. The mines' original compliance schedules were set to expire in 2007, but DEP extended them until 2010, the informed source says.

"EPA acknowledges the challenges of building treatment for selenium," a naturally occurring element that is harmful to humans and aquatic life, but says that the mines have had a number of years to meet the standard and have proven no "unexpected intervening event" that would prevent the mines from meeting the standard, according to the letters. The region notes that the mines have not installed controls on some points of discharge and says out that ongoing tests have shown experimental technology used at other points of discharge is not consistently effective.

In a letter regarding the Mingo Logan Coal Company Left Fork No. 2 Mine in West Virgina, EPA notes that selenium discharge rates have actually increased. "While the permittee submits some data to show a decreasing trend in selenium discharges from outlet no. 1, when the data is corrected for flow, the data shows an increasing trend on selenium discharges," the region says.

Mingo Logan has already come under scrutiny by the Obama EPA, which took the rare step of proposing to veto a permit that had already been issued to another of the company's mines in West Virginia due to concerns about its possible adverse environmental impacts. Industry is challenging the proposed veto, saying it could undermine industry's "faith" in the water permitting process (Inside EPA, June 11).

In the case of the West Virginia mines, EPA's objection to the extensions could allow the compliance schedules to expire, allowing activists to file suits against the mines, the informed source says.

Environmental groups have already filed three suits against West Virginia mines that had compliance schedules for selenium that expired earlier.

In response to a request for comment on whether the letters could be a test of the amount of time states are allowed to meet permit limits, an EPA Region III spokeswoman says, "EPA is enforcing the Clean Water Act, we are seeking compliance with NPDES permits that were to come into compliance for selenium at least three years ago."

Regarding the length of compliance schedules, the spokeswoman cites the NPDES rules that provide that compliance schedules must lead to compliance with water quality based effluent limitations "as soon as possible." If the schedules are longer than one year, the schedule must set interim requirements, the spokeswoman says.

The letters are not the first time EPA has cracked down on states' compliance schedules. For example, EPA Region IX in 2007 conducted an audit of California's

compliance schedules in response to a settlement agreement with environmentalists. The audit of 12 randomly selected permits with compliance schedules found that some or all of them fell short on a number of legal requirements.

None of the 12 permits adequately explained why the state allowed a compliance schedule rather than immediate compliance with the permit limit and none of the permits included a finding that the compliance schedule ensured compliance "as soon as possible," the audit says.

While most of the permits included interim steps toward compliance, such as developing plans to meet the limits, some never required that the plan be implemented, the audit says. Some of the schedules allowed time for the state to come up with a total maximum daily load or other standard, which is not an appropriate use of compliance schedules, the audit says. -- Kate Winston

06/18/2010

**Key Players Split Over Chesapeake Cleanup Bill Ahead Of Planned Markup (*Inside EPA*)**

Key lawmakers and stakeholders are split over a pending Senate bill to clean up the Chesapeake Bay slated for environment committee markup later this month, with activists strongly supporting the plan while industry is reiterating concerns that it gives EPA too much power and opens farmers and other non-point water pollution sources to citizen suits.

The ongoing split over Sen. Benjamin Cardin's (D-MD) bill suggests that even if it clears the Environment & Public Works Committee (EPW) markup, it faces an uncertain future on the Senate floor. According to a new draft of the bill obtained by *Inside EPA*, Cardin has added new incentive programs -- such as a grant program for animal waste energy projects -- but industry says nothing has been done to address their major fears over the bill's potential scope.

Further complicating prospects for Cardin's bill, one House Democrat has introduced a competing Chesapeake Bay bill, supported by industry, that proponents say would allow more flexibility than the Cardin bill in meeting Bay water quality goals -- suggesting Democrats are also divided over what legislative approach to take.

Cardin's bill, S. 1816, would codify the Obama administration's executive order to clean up the Bay, including a requirement for EPA to establish by 2011 a Bay-wide total maximum daily load (TMDL), or pollution limit. Rep. Elijah Cummings (D-MD) has introduced a companion bill, H.R. 3852, which is yet to receive a markup. The legislation, if enacted, could possibly set a national precedent for cleaning up other watersheds.

The latest draft of Cardin's bill reflects some changes from an earlier draft floated in March, updating the legislation to include new incentive programs that one environmentalist says reflect a very deliberate effort by Cardin to reach out to all interested Chesapeake Bay stakeholders ahead of the EPW markup, which sources say will take place this month. An EPW spokesperson referred calls to Cardin's office, which did not respond to a request for comment.

But industry argues the changes in the latest draft do not resolve their broader concerns with the legislation, including their claim that it gives EPA too much authority by allowing it to implement the TMDL, contrary to Clean Water Act (CWA) precedent that delegates implementation to the states.

Industry in the past has also argued the bill would open up farmers and other previously unregulated non-point sources of water pollution to citizen suits.

The bill retains a key provision sought by environmentalists that says EPA has authority to set the TMDL in the Bay if states fail to do so. The bill says that if a Chesapeake Basin state fails to submit an adequate plan to meet the TMDL, submit a biennial report, or correct a previously missed two-year commitment and has not corrected these problems within a year, EPA may withhold certain Bay funds from the state and develop and implement its own plan to meet the TMDL. *The draft bill is available on InsideEPA.com. See page 2 for details*.

The provision would give EPA a statutory defense against expected litigation from industry, which questions EPA's ability to set a TMDL before states in the Bay region take action. EPA is currently developing a Bay TMDL under its existing CWA authority in response to several consent decrees with environmentalists, including a May 11 agreement in which EPA has pledged to complete the TMDL by the end of the year.

Environmentalists -- who supported the substantially similar March draft -- are praising the newest version of the bill, and are pushing for legislative action to move the bill this summer.

The Choose Clean Water Coalition in a June 10 statement said the Cardin legislation is necessary to prevent the Bay from becoming an environmental disaster like the Gulf of Mexico oil spill. "Unlike a disaster situation, preventing more of this pollution from happening in the first place is a far better and more cost-effective solution," Peter Johnson, manager of the group's Restoring Our Waters campaign, said in the statement.

**Industry, however, continues to criticize the Cardin bill, saying the latest draft does not resolve** their concerns with the legislation. One industry source says the bill is contrary to the CWA by giving EPA authority to implement TMDLs that are typically the responsibility of states to implement. TMDL implementation is intrinsically linked to land- and water-use decisions, which should be left in states' hands, the source says.

The new version of the bill does nothing to appease their fear that EPA can and will step in if it believes states are taking insufficient steps, the source says. "The way I see this is that this is a huge power grab and it pretty much turns the Clean Water Act on its head." The public is opposed to EPA taking on this role, according to the source, who says, "I don't think people in this country are ready to hand over land use and water use to EPA."

The industry source also discounts the grants program and other financial incentives in the bill, because it is unclear whether the funding would materialize. "Clearly they try to promise a lot of money. With $14 trillion of debt . . . I don't know where the appropriators are going to get the money to appropriate this," the source says.

Industry in the past has also expressed concern that the bill would open up non-point sources of water pollution to citizen suits. The bill gives states authority to require strict water act section 402 permits for both point and non-point sources, which would open farms up to section 402 permits and the lawsuits that go along with them, industry argues.

However, industry stakeholders are offering strong support for a competing Bay cleanup bill introduced in the House June 10 by Reps. Tim Holden (D-PA) and Bob Goodlatte (R-VA). There is no Senate companion.

Goodlatte in a June 10 floor speech said the bill gives states and communities "more flexibility" in meeting water quality goals than allowed by the Obama order and the Cardin bill. "Unfortunately, proposals like the Presidential Executive Order, and legislation that would codify this order, would force more mandates and overzealous regulations on all of those who live, work, and farm in the Chesapeake Bay Watershed," Goodlatte said.

Among other provisions, the bill creates a voluntary assurance program that will "deem farmers to be fully in compliance with their water quality requirements as long as they have undertaken appropriate conservation activities to comply with state and federal water quality standards," Goodlatte said.

The bill also requires reports from federal and state governments on how funds are being spent and would require an independent evaluator to assess and recommend changes to EPA's Bay model, which does not recognize nutrient cuts that are being made voluntarily or through Agriculture Department (USDA) programs, Goodlatte said.

The industry source says the Holden bill is a "big step forward" and says the bill's sponsors "are clearly trying to bring science along as they try to build a broader consensus on what needs to be done for the Bay."

The source praises the bill's requirement for states and the federal government to account for how they spend cleanup money and says the bill leaves the TMDL process in states' hands. The bill also appropriately puts USDA in charge of pollution trading

programs for agriculture while giving EPA authority for trading for other sources, the source says.

However, environmentalists are harshly criticizing the Holden-Goodlatte bill. The Choose Clean Water Coalition in a June 14 statement says, "the bill will simply continue the broken promises and wasted tax-dollars," and criticizes the assurance program as "more of the same failure to stop pollution and protect our water." -- *Kate Winston*

06/18/2010

**New State Fracking Rules Could Aid Industry Opposition To EPA Oversight (*Inside EPA*)**

States with rich natural gas deposits are adopting rules to require disclosure of chemicals used in hydraulic fracturing, or fracking, and to prevent water contamination from the drilling practice, a move that could bolster industry's opposition to any EPA fracking rules by arguing that states are providing adequate oversight.

Wyoming June 8 adopted first-in-the-nation rules requiring companies to disclose the chemicals used in fracking fluids in an explicit effort to stave off federal fracking rules, while Pennsylvania officials are slated to approve new rules to limit discharges from fracking into waterways in order to address fears of water contamination. Several bills pending in New York would also take steps to impose state rules -- including disclosure requirements -- on the fracking industry.

The efforts could help opponents of federal fracking rules because they could point to ongoing state plans to ensure the safety of the practice -- negating the need for EPA action. Wyoming Gov. Dave Freudenthal (R) told local reporters recently that it is "imperative" fracking continue "in a way that is properly supervised and overseen" by the state.

Environmentalists and some Democrats have argued that little is known about the chemicals used in fracking and that EPA needs to have authority to regulate the industry under the Safe Drinking Water Act (SDWA). Bills in Congress would require disclosure of the chemicals used in fracturing fluid and give EPA authority to regulate the practice under SDWA, with lawmakers concerned that the largely unregulated practice is contaminating water.

EPA is launching a two-year congressionally requested study on the impact of fracking on drinking water. EPA's Science Advisory Board June 16 finalized its recommendations on the scope of the study, designed to help determine whether EPA should continue to be barred from regulating fracking under SDWA (see related story).

But initial results from EPA's study are not expected until 2012, making it unlikely EPA will regulate the practice before then. In the interim, states are taking action to issue their own rules for the fracking industry.

In Pennsylvania, a state administrative body is slated June 17 to approve two state Department of Environmental Protection rules designed to protect water from fracking -- one would limit discharges of total dissolved solids into waterways and a second would impose buffers around the state's most pristine rivers and streams. The state is facing increased pressure to address hydraulic fracturing following a blowout of a gas well earlier this month that sent fracking fluid and natural gas 75 feet into the air for nearly a day before it could be capped (Inside EPA, June 9).

Additionally, more than two dozen bills to regulate or suspend fracking are moving through the New York legislature, with several adopted out of committee this week, including one that would require fracking fluid component disclosure and another that would impose a moratorium on new drilling until EPA's study is complete.

In Wyoming, the state's Oil & Gas Conservation Commission (OGCC) June 8 adopted its rules requiring companies to disclose chemicals used in fracking fluids in a bid to stave off federal rules and to ensure fracking can continue in the state. The OGCC unanimously adopted the measures with the backing of Freudenthal, and is winning praise from both industry and environmentalists -- though activists continue to argue that federal rules are still necessary.

One industry source says the rules appear "workable" and that industry expects to be exonerated from accusations of contaminating water resources after the fracking fluid disclosure requirements take effect later this summer.

But environmentalists believe the opposite. "Once we know . . . what chemicals are being used then it's possible to test wells subsequently and find out whether or not those chemicals are getting into water wells," according to one environmentalist. However the source notes the Wyoming rules do not require baseline data, as activists had sought. But overall, the requirements do "begin to give us a handle on possible contamination," the source adds.

The rules, which will take effect in about 60 days, also come as EPA is investigating allegations of well contamination in Pavilion, WY, after sampling last year showed drinking water wells contained a chemical widely used in fracking. The investigation is also expected to help guide EPA's fracking study (Inside EPA, Aug. 21).

A second environmentalist praises both the Wyoming and Pennsylvania rules but says federal fracking regulation is still needed. The rules are being adopted by "states that have seen significant groundwater contamination, and the fact that they are proposing new rules is testament to the fact that the old rules are not good enough. [But] what about the 31 other states where oil and gas well as being drilled? This underscores the need for federal regulation."

Additionally, the Wyoming rules allow companies to seek to prevent disclosure of the information to the public by claiming the composition of the fracking fluid is proprietary, but the first environmentalist expects industry to face a high hurdle in continuing to keep chemical names secret as confidential business information.

The rules require industry to "justify and document the nature" of their interest in keeping it secret. "I get the feeling the OGCC is going to take that seriously and make them prove it is truly proprietary," the source says.

The state disclosure rules do require the public to request the chemical composition from the state, and activists say they are hopeful the information will be easily accessible. The rules differ from a long-stalled House bill mandating disclosure that would require the information be posted on the Internet. -- Dawn Reeves

06/18/2010

**SAB Urges Narrower Lifecycle 'Framework' In EPA Fracturing Water Study (*Inside EPA*)**

EPA's Science Advisory Board (SAB) has adopted a workgroup's recommendations on how EPA should conduct its major study into whether hydraulic fracturing contaminates drinking water, saying EPA should soften its planned lifecycle assessment and adopt a more limited "framework" approach, given time and budgetary constraints.

SAB June 16 finalized its draft advisory on EPA's research scoping document for its study on fracturing, or fracking, following initial recommendations from SAB's Committee on Environmental Engineering. The final SAB advice will be sent to EPA to guide the agency's Office of Research & Development (ORD) as it conducts a two-year congressionally mandated study on the possible adverse impacts of fracking on drinking water supplies.

ORD earlier this year suggested that it could perform the study conducting a formal lifecycle assessment that would examine the drinking water impacts from the fluids, waste and emissions associated with the practice, in which water, sand and chemicals are injected underground to break rock formations and release gas. EPA asked SAB to provide guidance on how to conduct the study, sought by Congress in non-binding language in EPA's fiscal year 2010 appropriations law.

But SAB instead recommends a scaled-back lifecycle "framework" it says is necessary due to data, time and budget constraints. A copy of the draft SAB advisory is available on InsideEPA.com. See page 2 for details.

On a June 16 teleconference to approve the advisory, Environmental Engineering Committee Chairman David Dzombak said the committee would clarify in its final letter to EPA Administrator Lisa Jackson what it means by lifecycle "framework" and how that differs from a lifecycle assessment. A formal assessment, he noted, would require data that do not yet exist, more time than ORD has to publish initial findings in 2012, and more money than the nearly $2 million Congress appropriated.

"For those reasons . . . the committee recommended that the elements that would go into a full lifecycle analysis be carefully considered by ORD, but the committee did not want to recommend at this time for this initial two-year effort a full [life cycle assessment] be conducted," Dzombak said on the teleconference.

He clarified that a lifecycle framework would consist of ORD outlining components of a hydraulic fracturing lifecycle and prioritizing those components to help guide the research.

However, he added that the advisory also asks ORD to go beyond studying the relationship between fracking and drinking water to considering ecosystems impacts to the extent that it can. "We're asking ORD to undertake some work in thinking on that now," he said, adding that the committee expects the studies will continue after the initial two-year effort, though the nature, scope and funding for that research is "unclear at this time."

"How far ORD can go in [studying] ecosystem health in two years, they have to decide," he said. The committee initially backed EPA's controversial plan to take a lifecycle approach at an April meeting, while noting the agency may need to narrow its focus to the most important issues, due to time and budget constraints.

06/18/2010

**In Spill's Wake, Key Senator Proposes Stiffer Water Act Criminal Penalties (*Inside EPA*)**

A key senator has introduced a bill that would increase the sentencing guidelines for criminal offenses of the Clean Water Act (CWA) to mandate more prison time and require restitution for damages incurred in such cases as an additional deterrent against actions that create environmental catastrophes like the oil spill in the Gulf of Mexico.

While Congress has been debating what changes to make to the existing civil liability law surrounding oil spills, Sen. Patrick Leahy's (D-VT) bill is the first to suggest that there ought to be a more stringent criminal deterrent.

Leahy, who chairs the Judiciary Committee, offered a bill June 9 that would direct the United States Sentencing Commission -- an independent federal agency that develops guidelines for federal prosecutors and judges to determine what manner of sentence

they can pursue and hand down to convicts -- to increase the penalties for criminal offenses related to the CWA and to "reflect the intent of Congress that penalties for the offenses . . . appropriately account for the actual harm to the public and the environment from the offenses," according to the bill language.

The legislation, S. 3466, would also require those convicted of criminal acts under the CWA to pay restitution to those affected by the pollution they have released, as opposed to the current law which makes restitution possible but not mandatory. A copy of the legislation is available on InsideEPA.com. See page 2 for details.

Leahy said on the Senate floor that the bill is aimed at creating an effective deterrent for polluters -- specifically large corporations who are responsible for the most pollution -- to take more stringent environmental safeguards to prevent environmental catastrophes like the one in the Gulf. He said the current system of fines and penalties is not effective enough to compel corporations like BP, who operated the Deepwater Horizon oil rig that caused the spill, to take such precautionary measures.

U.S. Attorney General Eric Holder said June 1 the Department of Justice is pursuing both civil and criminal charges against BP for its role in the Deepwater Horizon spill.

**EPA moves to tighten water safety regulations (*Associated Press*)**

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

Thursday, June 17, 2010; 2:25 PM
WASHINGTON -- The Environmental Protection Agency is seeking to tighten rules protecting the safety of water in public systems.

A new rule proposed Thursday would call on water suppliers to make repairs whenever testing indicates the possibility of contamination. For example, that could mean when tests detect even harmless microbes, which could suggest a broken water main or other pathway that also might allow dangerous germs into the system.

Currently, water systems are required to do periodic tests and to make repairs if hazardous microbes are discovered.

No effective date has been set for the new rule, which will be open to public comment for 60 days.

Online:

http://www.epa.gov

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