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

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**ADMINISTRATOR JACKSON**

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March 5, 2010

**Lawmakers seek EPA delay (*Bluefield Daily Telegraph*)**

By Bill Archer Bluefield Daily Telegraph
BLUEFIELD — Coalfield legislators closed ranks Thursday and simultaneously introduced legislation in both houses of congress aimed at delaying the Environmental Protection Agency from implementing additional regulations on greenhouse gas emissions from stationary sources including coal-fired power plants.

U.S. Senator John D. "Jay" Rockefeller, D-W.Va., introduced the "Stationary Source Regulations Delay Act," in the U.S. Senate, and U.S. Reps. Nick Rahall, D-W.Va., Frederick C. "Rick" Boucher, D-Va., and Alan Mollohan, D-W.Va., jointly introduced the same legislation in the House of Representatives. Others in Congress, including U.S. Senator Lisa Murkowski, R-Alaska, demonstrated support for the legislation and United Mine Workers President Cecil Roberts expressed the union's support for the legislation.

"We regard the Clean Air Act as unsuited to providing the technology incentives needed to advance carbon capture and storage and other advanced clean energy technologies that our nation will need to combat climate change," Roberts was quoted in a UMWA press release as stating. He added that the EPA "appears in a rush to develop a slate of new rules that would hamper our economic recovery while depressing prospects for alleviating the crushing burdens of high unemployment."

"Congressmen Rahall, Mollohan and I plan to work as hard as we can to pass this legislation," Boucher said during a telephone interview Thursday afternoon from his office in Washington, D.C. "Having the EPA regulate emissions would be the absolute worst outcome for the coal industry.

"The entire reason I got into developing the climate change legislation that the House of Representatives passed last June was to prevent the EPA from having the final say in regulating greenhouse gas emissions," Boucher said. "I was able to secure changes in the bill that would have enabled electric utilities to continue to use coal as the carbon capture technology became commercially viable. Those technologies are the future of the coal industry.

"The Senate has failed to act on that legislation and unless they do, it will not become law," Boucher said. "We do not want the EPA regulating greenhouse gas emissions at stationary sources. The two-year time out, I believe, will give Congress time to develop a balanced program." He added that he thinks President Barack Obama will be receptive to the Stationary Source Regulations Delay Act.

"We need to come back here next week and get to work to pass this bill," Boucher said.

In his press release concerning the Senate bill, Rockefeller provided additional background information as to how the moment involved including a copy of the letter he, U.S. Senator Robert C. Byrd, D-W.Va., and six other senators sent to Lisa P. Jackson, administrator of the EPA. The letter addressed several concerns "relating to the potential regulation of greenhouse gases from stationary sources under the Clean Air Act."

The senators emphasized eight key points of concern in the letter dated Feb. 19, and the tone of Jackson's Feb. 22, letter responding to Rockefeller revealed her commitment to enforcing the EPA staff's Dec. 15, 2009 determination that "greenhouse-gas emissions do endanger Americans' health and welfare" and that "the U.S. Senate itself has twice passed, on a bipartisan basis, a resolution finding that greenhouse-gas accumulation from human activity poses a substantial risk of increased frequency and severity of floods and droughts."

"Today, we took important actions to safeguard jobs, the coal industry, and the entire economy as we move toward clean coal technology," Rockefeller was quoted as stating in a press release from his office. "Congress, not the EPA, must be the ideal decision-maker on such a challenging issue." Rockefeller was also quoted as stating that the House and Senate "must set this delay in stone and give Congress enough time to consider a comprehensive energy bill to develop the clean coal technologies we need."

Likewise, Rahall, chairman of the House Natural Resources Committee, issued a press release calling for congressional oversight in the climate change debate. "I am dead-set against the EPA's plowing ahead on its own with new regulations to limit greenhouse gas emissions from coal-fired power plants," Rahall was quoted as stating. "This is a reasonable and responsible legislation that will protect a vital industry — coal — and essential jobs for West Virginia and the nation."

Bill Raney, president of the West Virginia Coal Association said during a telephone interview that he was encouraged by the unified approach the coalfield legislators have taken to address the situation. "It's a shame that it reaches the point when Congress has to take action like this to stop the EPA from hurting hard-working people," Raney said.

Rick Taylor, president of the Pocahontas Coal Association said it appears as though Congress is responding to the concerns of the people. "There has been an out-cry from the public as well as from the coal industry about the situation that it was time for Congress to take drastic measures," Taylor said.

– Contact Bill Archer at barcher@bdtonline.com

Posted on Fri, Mar. 05, 2010

**EPA to hold more hearings (*Miami Herald*)**

By JOHN FRANK
Herald/Times Tallahassee Bureau
The Environmental Protection Agency agreed Thursday to a extend the public-comment period on proposed water rules that have been blasted by Florida politicians.
The decision came after members of the Congressional delegation met with EPA chief Lisa Jackson. Jackson told the lawmakers she would extend the comment period for the proposed rules by 30 days, adding three more public hearings.

But EPA officials said the rules would still go into effect on the same day.

The caps on phosphorus and nitrogen levels in Florida's lakes, rivers, streams, springs, and canals would replace the state's vague ``narrative'' approach to monitoring the effects of waste and fertilizer runoff. The EPA deemed that method insufficient.

The proposed rules include provisions giving the EPA oversight authority to enforce the standards.

``I hope this means the EPA will do a better job of listening to us,'' said U.S. Rep. Adam Putnam, R-Bartow, a candidate for state agriculture commissioner. ``Florida is the only state in the nation facing these draconian rules, rules that were established in a judge's chambers, not in a legislative body.''

**Water rules comment time extended (*St. Petersburg Times*)**

Florida
March 5, 2010 Friday
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Times staff
The Environmental Protection Agency agreed Thursday to a extend the public comment period on proposed water rules that have been blasted by Florida politicians.

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and canals would replace the state's monitoring of the effects of waste and fertilizer runoff, which the **EPA** deemed insufficient.

**Putnam: EPA Will Extend Comment Period On Florida Water Rules (*Southeast AG Net*)**

by Gary – March 4th, 2010
This in today from Florida Congressman Adam Putnam's office in WASHINGTON D C – Congressman Adam Putnam today said the Environmental Protection Agency has agreed to extend the comment period on proposed new water rules after a meeting this morning between members of the Florida congressional delegation and EPA Administrator Lisa Jackson.

Jackson told the lawmakers she would extend the comment period for the proposed rules by 30 days, adding three more public hearings. In addition she promised to "review the rigor of their science" and said she was open to third-party review of the rules said Putnam. In February, Putnam organized a letter from himself and 19 other members of the Florida Congressional delegation, including both senators, requesting an extension to the EPA's comment period.

"This is good news and I welcome the Administrator's decision," said Putnam. "I hope this means the EPA will do a better job of listening to us. Florida is the only state in the nation facing these draconian rules, rules that were established in a judge's chambers, not in a legislative body."

The EPA's rules would set strict numeric standards for nutrients running into Florida's lakes, streams and coastal waters. The regulations were prompted by a lawsuit filed by several environmental advocacy groups even though Florida's Department of Environmental Protection was already working with EPA on tougher standards. The lawsuit established even broader standards and an accelerated timeline that even the DEP and water management districts say are unreasonable.

Florida's Department of Environmental Protection (DEP) estimates the proposed rules would declare 80 percent of Florida's most pristine rivers and streams "impaired," and the regulation "has the potential to cause harm to economically important biological resources."

"Florida's DEP says these rules will cost billions of dollars without yielding cleaner water," said Putnam. "Clearly we need to examine these rules more carefully and see if there isn't a better way of reaching our common goals of cleaner waters without flawed science."

Under EPA's proposal, Putnam noted, "The average Floridian could be paying $700 a year more in utility fees according to a survey of nine state water utilities. Municipalities

– that are already scraping by – will have to make cuts in other vital programs, raise taxes, or do both. And businesses will see their costs skyrocket. With double digit unemployment and state and local government budgets stretched thin, this couldn't come at a worse time."

A description of the nutrient standards issue by the University of Florida is available online at http://edis.ifas.ufl.edu/pdffiles/SS/SS52800.pdf

Since 2001, Putnam has represented Florida's 12th Congressional District, which includes most of Polk County and portions of Hillsborough and Osceola counties.

**EPA Approval Later This Summer for Ethanol Inclusion Rates of 15%?**

**(*Gerson Lehrman Group*)**

Thursday, March 04, 2010

- Analysis by: GLG Expert Contributor
- Analysis of: US EPA to Decide Late Summer on Ethanol Fuel Boost | uk.reuters.com
- Source: www.glgroup.com

Summary:

The EPA will complete engine testing of higher ethanol inclusion rates by May, 2010 compiling the data to make a decision on potentially higher blend rates (15%) of ethanol into the gasoline. The current maximum allowed blending rates are 10%. Rates of 35% are already used in Brazil where all car manufactures and small engine manufactures sell similar engines as the United States.

Analysis:

Lisa Jackson, EPA Administrator testified before Congress yesterday. The issue of higher blends of ethanol into gasoline were addressed. The EPA has be reviewing requests to increase the level of ethanol allowed to be blended in the US gasoline supply for almost a year.

The EPA is will finish the evaluating engine test data in May determining emissions and potential engine damage by allowing ethanol to be blended up to 15% with gasoline. Currently, the maximum amount of ethanol blended is 10% except for E85 that is a minimum of 85% ethanol and can be as high as 98% ethanol. One note on E85, due to cold weather and RVP, E85 in cold states usually is capped at 70% ethanol in the winter.

After reviewing engine data, the EPA will be making a decision regarding granting the requested waiver in late summer. Frankly, this should not be much

of an issue for most engines. Clearly, the same major small engine manufactures and the same large car companies selling product in the USA also sell their equipment into Brazil that has ethanol inclusion rates as high as 35%.

**Jackson Rebuts Fears Over EPA 'Hazardous' Ash Rule Impact On Reuse (*Inside EPA*)**

3/5/2010
EPA Administrator Lisa Jackson is rebutting senators' fears that regulating coal waste as hazardous would create a stigma that could decimate industries that beneficially reuse the waste, which may indicate that EPA continues to fight for a "hybrid" approach for first-time coal ash rules regulating ash disposal as hazardous and reuse as non-hazardous.

Jackson at a March 3 Senate Appropriations Committee interior panel hearing on EPA's fiscal year 2011 budget rejected panel ranking member Sen. Lamar Alexander's (R-TN) argument that a hazardous definition for coal ash in a landfill would stigmatize ash reused in products. "I don't necessarily agree that saying that the material in a landfill is waste stigmatizes the material that is not in a landfill." She also noted that while the agency thinks most reuses are "admirable and to be encouraged," some reuses, such as using large amounts of ash as fill, might be of concern.

At the hearing, Jackson also outlined a number of other agency policy plans, including new details on the limitations of using some portions of the Clean Air Act to create a cap-and-trade program for greenhouse gases (GHG), EPA's pending decision on a request to lift the cap on ethanol in gasoline above 10 percent (E10) and other issues.

On coal ash, Alexander pressed Jackson on the status of the agency's delayed, pending first-time Resource Conservation & Recovery Act rules for the waste, originally due for release in December.

The proposal remains stalled under extended White House Office of Management & Budget (OMB) review, with states, industry and other critics of the hybrid approach lobbying OMB and EPA officials in many meetings against any designation of coal ash as hazardous. Industries that reuse coal ash in products fear that a hazardous designation would create a negative stigma that would decimate their ability to reuse the waste in products.

EPA recently updated its Web site to say the rule is due in April, and Jackson's remarks to the appropriations committee may indicate the agency is not backing down in its push for a hybrid plan.

Alexander, who represents the state impacted by the Tennessee Valley Authority's (TVA's) 2008 coal ash spill, said there should be federal oversight of the ash, but that EPA should not designate the waste as hazardous because it would damage the reuse industry, which uses the ash in concrete, asphalt, wallboard and other products.

In response, Jackson said at the hearing that the agency is most concerned about ash when it is disposed of in large impoundments, especially wet impoundments where the ash is mixed with water, because there is a risk of ash leaching into water and a risk of catastrophic spills such as the one at TVA. "So our primary concern is addressing that, not having the unintended consequence of shutting down reuse in an industry that we primarily agree with."

At the hearing, Jackson also faced questions on a number of other agency priorities, including its pending "tailoring" rule proposal to require GHG limits in Clean Air Act permits for sources emitting more than 25,000 tons per year (tpy) of GHGs. Senate appropriators asked Jackson to elaborate on a recent letter she sent to Democratic senators saying she is considering raising the 25,000-tpy threshold far higher in the rule's first few years.

At the hearing, Jackson noted that the agency has not made a decision about the final threshold but said that permits would not be required in 2011 and 2012 for sources emitting less than 75,000 tpy of GHGs, and that even at a 100,000-tpy threshold, only 67 percent of existing stationary source GHG emissions would be permitted.

Sen. Lisa Murkowski (R-AK), who has introduced a resolution to block EPA's pending finding that GHGs endanger human health and the environment and thus block EPA climate rules, pressed Jackson about the number of facilities that would be required to obtain permits under EPA's new plan.

Jackson reiterated that no decisions have been made yet, but said that by the end of 2011, 1,700 permits would be required that would not be required in 2010, and by the end of 2013, depending on the threshold EPA chooses, an additional 3,000 sources could need permits.

Sen. Dianne Feinstein (D-CA) the chair of the appropriations panel's interior subcommittee, asked whether EPA plans to use new source performance standards under section 111 of the air act to implement a cap-and-trade program for GHGs, as the agency has done for non-GHG pollutants.

EPA in its FY11 budget justification to Congress seeks $7.5 million dedicated to issuing NSPS rules for various sectors, including $5 million "to assess and potentially develop NSPS regulations for major industrial sectors and seek, where possible, market-oriented mechanisms to provide lowest cost compliance options."

Sources have told *Inside EPA* that the plan is rife with complications, open to legal challenge, and may be at odds with the NSPS program's technology requirements (*Inside EPA*, Feb. 12).

Feinstein noted the limitations of the NSPS program, for example, saying that trading would be within a sector rather than economy-wide and that offsets would not be allowed. The chairman noted that EPA has crafted trading programs for pollutants such as nitrogen oxides and sulfur dioxide, and asked whether the same approach would work for GHGs.

Jackson said that EPA has not made any decisions on the issue and warned that the budget justification language should not be taken too far. "I think that, Chairman, the reference to market-oriented mechanisms should not be read too broadly to imply that EPA is currently looking at a market-oriented mechanism, say cap-and-trade." Jackson said, "I'm not saying that it cannot be done, there are certainly limitations on it. And I think it is something that we are happy to continue to work [on] with your staff as we develop our thinking on where that might be appropriate"

Speaking to reporters after the hearing, Jackson also noted that there might be geographic limitations in the NSPS program "The question that many people have in their minds is how broad could a cap-and-trade program be under section 111 and EPA has made no finding or is not at a point where we have results or an answer to that question," she said.

Alexander also pressed Jackson about her plans for a pending agency study on the water impacts of hydraulic fracturing, a controversial drilling process in which water, sand and chemicals are injected into the ground to release oil and natural gas. Some lawmakers and environmentalists have raised concern that the practice could contaminate drinking water supplies, and Congress directed the agency in its FY10 budget to study the impacts of the practice.

EPA is in the process of re-appropriating FY10 funds to begin the study and has requested $4 million in FY11 to continue the research. Alexander urged Jackson to make sure that the study uses the "maximum amount of peer review and good science," and asked whether EPA would consider using a peer review body outside of the agency.

Jackson said the agency has not yet decided how to approach peer review but said she would be happy to work with Alexander to ensure that he is comfortable with the review. Jackson also noted that the agency has often used its chartered Science Advisory Board to review its work, but that the agency has also used other approaches.

Sen. Ben Nelson (D-NE) also pressed the administrator about pending research and the agency's progress in deciding whether to grant an ethanol industry request to allow the percentage of ethanol in gasoline to be raised above E10 to E15. Jackson in early

December indicated the agency was moving to grant partial approval for E15, possibly later this year (*Inside EPA*, Feb. 5).

Jackson said that the Department of Energy research on the impact of so-called mid-level blends on engines is on schedule and should be completed by April or May. EPA is then planning to make a decision on the E15 request by late summer, Jackson said.

**Coal-state Dems unveil bills stalling EPA emission curbs (*Greenwire*)**

Darren Samuelsohn, E&E senior reporter
This story was updated at 1:05 p.m. EST.
03/04/2010
Four influential coal-state Democrats introduced companion bills in the House and Senate today that would block U.S. EPA from implementing any climate-related stationary source rules for two years, a timeout of sorts that they think gives Congress time to pass legislation dealing with the issue.

Senate Commerce Chairman Jay Rockefeller of West Virginia unveiled the Senate bill, while the House measure was introduced by West Virginia's Nick Rahall, the chairman of the Natural Resources Committee, and Alan Mollohan, a senior member of the Appropriations Committee. Rep. Rick Boucher (D-Va.), who played a pivotal role in negotiations last year on the House-passed climate bill, also signed up an original co-sponsor.

Rockefeller said in a press release that his bill would give "Congress the time it needs to address an issue as complicated and expansive as our energy future. Congress, not the EPA, must be the ideal decision-maker on such a challenging issue," he said.

"EPA regulation of greenhouse gases would be the worst outcome for the coal industry and coal-related jobs," Boucher said. "Our bill is a responsible, achievable approach which prevents the EPA from enacting regulations that would harm coal and gives Congress time to establish a balanced program."

The Democrats' bills add to a growing chorus of congressional complaints about EPA's plan to regulate for greenhouse gases.

Sen. Lisa Murkowski (R-Alaska) may push for a vote later this month on a resolution that would overturn EPA's "endangerment" finding, a determination that opens the door to rules covering everything from cars and light trucks to power plants and other major industrial sources.

Murkowski said in a statement that Rockefeller's bill demonstrates "further evidence of the growing, bipartisan, and bicameral resistance to EPA's back-door climate regulations."

"Given the overwhelming opposition to these actions, I'm hopeful that this bill will draw additional support and advance quickly," she added. If it doesn't, Murkowski said she would push for a floor vote on her resolution that is guaranteed consideration under Senate rules.

Murkowksi to date has 41 Senate co-sponsors, including three moderate Democrats. She would need 51 votes for the measure to clear the chamber.

Obama administration officials have shown little interest in the Hill efforts to suspend EPA's efforts.

Responding yesterday to a question from Murkowski about whether she would support a temporary timeout from Rockefeller, EPA Administrator Lisa Jackson replied, "I support the need for new legislation to address carbon pollution."

"I do not think we're at a fork in the road," Jackson said, adding, "the law says that EPA has to move forward on these issues."

White House spokesman Robert Gibbs also said last month that Obama would not support Murkowski's resolution.

Efforts to undercut EPA's regulations have drawn support from industry and labor groups. United Mine Workers of America President Cecil Roberts sent a letter of support to Rockefeller today questioning whether the Clean Air Act is best suited to provide the technological incentives needed to reduce greenhouse gases from coal-fired power plants.

"The Clean Air Act has been successful in reducing harmful air pollution in our cities, but it is not designed to address the broader global challenges of climate change," Roberts wrote.

Responding to congressional complaints about climate rules on small polluters, Jackson in recent days has offered more details about the agency's plans for tackling climate change. She said EPA will soon issue a final "tailoring" rule that precludes permitting requirements over the next two years for industrial sources that emit less than 75,000 tons a year. After 2012, EPA would consider moving the threshold to about 50,000 tons per year (*E&ENews PM*, March 3).

Frank O'Donnell, director of the advocacy group Clean Air Watch, criticized the coal-state Democrats who he said are pushing to suspend Jackson's authorities even more. "The EPA seems to be backpedaling faster than an NFL cornerback, but that doesn't seem to have satisfied the appetite of special-interest opponents of climate action," he said.

Boucher helped negotiate key pieces of the House-passed climate bill to benefit his district's industrial interests, and he often explained that his primary motivation was the

threat of EPA rules. In the Senate, Rockefeller stands out as a key swing vote in efforts to pass a comprehensive energy and climate bill. Sens. John Kerry (D-Mass.), Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.) are aiming to release a bill before the spring recess that starts at the end of this month while targeting a floor debate in the late spring.

Aides to Rockefeller, Rahall and Boucher said they didn't know what the specific plans were for their two pieces of legislation. Rockefeller's bill likely will be referred to the Environment and Public Works Committee. Rahall's bill goes to the Energy and Commerce Committee, where Boucher is a senior member.

Jim Manley, a spokesman for Majority Leader Harry Reid (D-Nev.), declined comment today when asked about any floor plans on the Rockefeller legislation.

An EPA spokesperson did not immediately return calls for comment.

*Reporter Robin Bravender contributed.*

**EPA To Rename OPPTS With Priority Focus On Chemical Safety (*Inside EPA*)**

3/5/2010
EPA's Office of Prevention, Pesticides & Toxic Substances (OPPTS) is being renamed as the Office of Chemical Safety & Pollution Prevention in an effort to better reflect agency Administrator Lisa Jackson's priority of ensuring the safety of chemicals, according to the agency's top toxics official.
OPPTS head Steve Owens announced the name change during March 1 remarks at the Chemical Producers & Distributors Association spring meeting in Arlington, VA. Owens said the change would go into effect April 22, pointing out that the day also happens to be Earth Day.

The change is being made to reflect the agency's redoubled commitment to ensuring the safety of industrial chemicals and pesticides, Owens said.

Last September, EPA released a set of principles guiding reform of the Toxic Substances Control Act (TSCA). In his remarks, Owens said efforts to reform TSCA should contain a risk-based safety standard; should require industry to provide the necessary data for EPA to make the determination; should give EPA the authority to require the necessary data in a timely fashion; should give the agency greater ability to take action on chemicals of concern; should reform the rules surrounding confidential business information; and should provide EPA with the resources needed to manage chemicals.

**Wis. governor bans BPA in baby bottles, sippy cups (*Greenwire*)**

03/04/2010
Wisconsin Gov. Jim Doyle (D) yesterday signed into law a ban on the chemical bisphenol-A (BPA) in baby bottles and sippy cups for young children.

The law, which takes effect in June, makes Wisconsin the third state to keep the chemical out of children's products over safety concerns. The manufacture and wholesale of items containing BPA will be prohibited, and bottles and sippy cups will be required to be labeled "BPA Free."

Similar bans have passed in Minnesota, Connecticut, the city of Chicago and three New York counties. Bills are pending in nine other states and the District of Columbia.

An increasing number of studies have linked BPA -- a common ingredient in hard, clear plastic -- to breast and prostate cancer, heart disease, asthma, diabetes, hyperactivity and reproductive failure. The Food and Drug Administration declared earlier this year that the drug was of some concern for fetuses, infants and young children.

The Wisconsin measure was brought up last year by Sen. Julie Lassa and Rep. Kelda Helen Roys after a three-year investigation in the Milwaukee *Journal Sentinel*. The bill passed the Senate unanimously and easily in the Assembly.

In a letter to U.S. EPA Administrator Lisa Jackson yesterday, New York Sen. Chuck Schumer (D) asked why the agency was not fast-tracking the chemical for regulation. He noted that the *Journal Sentinel* reported that EPA had eased off a push for regulation after intense lobbying from BPA makers. The investigation also found that chemical industry representatives were allowed to write sections of earlier regulatory decisions on the product's safety, review scientific studies and advise on regulatory efforts (Meg Kissinger, Milwaukee *Journal Sentinel*, March 3). **– JP**

**Jackson Meets With Sen. Whitehouse To 'Push' For TSCA Reform (*Inside EPA*)**

3/5/2010
EPA Administrator Lisa Jackson is reaching out to Capitol Hill in a "push" for lawmakers to introduce legislation to reform the Toxic Substances Control Act (TSCA), according to Sen. Sheldon Whitehouse (D-RI), as key House and Senate panels gear up to hold another round of hearings on overhauling federal toxics law.

Jackson met March 2 with Whitehouse, the senator said in a brief interview later that day with *Inside EPA*, specifically on "a push for the TSCA statute. . . . It was a meeting at her request." Whitehouse is a member of the Senate Environment & Public Works

Committee (EPW), which held an oversight hearing on TSCA in December and a hearing in February on the current science on public exposures to chemicals.

EPA did not respond to an e-mail request for comment on the meeting.

Jackson's push for senators to move their pending TSCA reform legislation comes after months of delays in introducing the bill, known as the Kid-Safe Chemicals Act. Environmentalists say that despite past false starts, they expect lawmakers to formally introduce the long-pending bill this month.

Speaking to the Chemical Producers & Distributors Association spring meeting in Arlington, VA, on March 1, EPA toxics chief Steve Owens said a TSCA reform bill could be expected "in the next few weeks to a month," but noted that bill had been expected last year, as well, and that the bill-writing process has been "a dynamic, if not fluid situation."

Owens also announced that EPA's Office of Prevention, Pesticides and Toxic Substances will be renamed in April as the Office of Chemical Safety and Pollution Prevention, in an effort to better reflect Jackson's priority of ensuring the safety of chemicals -- a key aspect of TSCA reform.

Pending hearings on toxics could provide a venue for lawmakers to debate toxics law reform, including a slated March 9 EPW hearing on how a move away from using chemicals of concern could affect business, and a March 4 hearing in the House Energy & Commerce Committee's consumer protection panel on how TSCA is being used to manage persistent, bioaccumulative, and toxic chemicals.

While Jackson approached Whitehouse, most supporters of TSCA reform are looking to Sen. Frank Lautenberg (D-NJ) to introduce the bill, as Lautenberg introduced the legislation in the 110th Congress. Lautenberg's bill would end EPA's burden of showing chemicals are unsafe for use before the agency can prohibit their use in commerce. The bill would switch the burden to industry to prove that chemicals are safe before they can be used.

Rep. Bobby Rush (D-IL) is expected to introduce companion legislation in the House after Lautenberg, chair of the environment committee's panel on toxics, introduces the upper chamber's version.

While Lautenberg was recently diagnosed with a curable form of stomach cancer, he said after the diagnosis in a Feb. 23 statement that "far too many unsafe chemicals" are present in consumer products. "That's why I will soon introduce a bill that will overhaul our nation's chemical laws," he said. "My safer chemicals bill will have a simple goal: force chemical makers to prove that their products are safe before they end up in a store, in our homes, or in our bodies. I look forward to working with the EPA on this common sense legislation."

Safer Chemicals, Healthy Families, a coalition of key environmental and public health groups, said in a March 2 statement that it expects the long-awaited bill to be introduced this month.

“The chemical industry is claiming to want reform, so we’ll see how far they are willing to go to remove the most toxic substances,” coalition director Andy Igrejas said in the coalition’s statement. “With each new scientific report linking toxic chemical exposure to a serious health problem, it becomes more obvious that the law intended to keep harmful chemicals in check is not working.”

The coalition statement announced the slated March 9 EPW hearing, at which Kathy Gerwig, an environmental stewardship executive with Kaiser Permanente, is slated to testify.

The House Energy & Commerce Committee consumer protection panel hearing will include testimony from EPA toxics official Jim Jones, Linda Greer of Natural Resources Defense Council and William Adams of the North American Metals Council, among others. -- *Aaron Lovell*

**Key Lawmakers Eye EPA Spending Bill To Strengthen Endocrine Controls (*Inside EPA*)**

3/5/2010
Concerned about inadequate EPA efforts to address endocrine disrupting chemicals, key House lawmakers are vowing to strengthen federal testing and controls over the chemicals in an upcoming fiscal year 2011 spending bill, which may include consideration of new endocrine research programs and mandates to strictly regulate the chemicals under existing drinking water, chemical safety and other programs.

But EPA Administrator Lisa Jackson is resisting congressional proposals to create new regulatory mandates and is instead calling for “practical solutions” in the near term and increased research funding to study the chemicals’ risks.

And environmentalists are proposing a number of steps that EPA could take to improve its oversight of the chemicals without new regulatory mandates, including expanding EPA’s endocrine disruptor screening program (EDSP) to include priority drinking water contaminants, screening for the effects of common mixtures, accepting public nomination of chemicals to be screened, and evaluating wastewater and drinking water treatment practices, among other suggestions.

Congress’ latest focus on endocrine disrupting chemicals -- which are believed to interfere with the human endocrine system and cause developmental disorders -- comes as some sources say partisan tensions may derail efforts for broader reform of the Toxic Substances Control Act (TSCA) this year. Adding to the delay, Sen. Frank

Lautenberg (D-NJ) -- who has long vowed to introduce a TSCA overhaul bill -- was recently diagnosed with a treatable form of cancer, though he said in a Feb. 23 statement that he “will soon introduce” the bill.

The issue of endocrine disruption was the focus of a Feb. 25 hearing of the House Energy & Commerce energy and environment subcommittee that heard testimony from Rep. James Moran (D-VA), a key House appropriator and a long-time advocate of strict controls on endocrine disrupting chemicals due to growing incidence of intersex fish in the Potomac River adjacent to his district.

At the Feb. 25 hearing, Moran -- who is not a member of the energy panel -- stressed the need for “a modern, 21st Century testing paradigm that recognizes the known unique, subtle and complex properties and effects” of endocrine disrupting chemicals. He also echoed activists’ long-standing concerns that EPA requirements to address the chemicals -- including creation of the EDSP and drinking water law requirements allowing other drinking water contaminants to be tested -- have taken too long to implement and been sidetracked by industry.

He also focused on the growing number of potential health risks associated with endocrine disruptors, including asthma, cancer and developmental disorders. “Something is happening and it’s happening at an accelerated pace,” Moran said.

During the hearing, Moran told Rep. Ed Markey (D-MA), chair of the energy panel, that he has “some role” on the issue as incoming chair of the interior and environment appropriations subcommittee and vowed to support Markey’s efforts to force EPA to more strictly regulate the chemicals. “We want to do everything we can to support your efforts” on the endocrine issue, he said.

Thanking Moran for “his two cents,” Markey added, “It’s more than two cents and since you are on the appropriations committee, you have the opportunity to put in a few more.”

While the lawmakers did not say how they will address the issue, late last year Moran -- together with House Rules Committee Chairwoman Louise Slaughter (D-NY) and other lawmakers -- introduced H.R. 4190, a bill that requires EPA and other agencies to propose actions, including new regulations and orders, if a new endocrine research program to be created at the National Institute of Environmental Health Sciences (NIEHS) finds “a minimal level of concern associated with a chemical’s potential to disrupt the human endocrine system.”

In his testimony Feb. 25, Moran suggested the new research program could also be created within EPA’s Office of Research & Development. *Relevant documents are available on InsideEPA.com.* See page 2 for details.

The bill also creates authority for citizens to sue agencies “to compel” responses to research findings, and requires agencies to report to Congress on their proposed

courses of action but it does not require agencies to promulgate new rules. The bill also stresses that it does not provide agencies with any new authority to “regulate a chemical or the route or source of human exposure to a chemical.” Sen. John Kerry (D-MA) has introduced companion legislation, S. 2828, in the Senate.

The bill is one of several that lawmakers have introduced over the past few months to address endocrine disrupting chemicals. Late last year, Slaughter also introduced H.R. 4160 to create a new NIEHS research program on “the health effects on women and children that may result through disruption of the hormone systems.” Moran is a cosponsor on Slaughter’s bill.

Slaughter’s spokeswoman -- echoing concerns from environmentalists -- said recently that NIEHS is better suited to handle endocrine research than EPA because it is a smaller organization with a more targeted focus and less likely to face “criticisms and [political] pressure” than EPA.

Markey has also recently highlighted the limits of EPA’s regulatory authority to address chemicals that may disrupt the endocrine system, calling on the agency to regulate triclosan and triclocarbon, antimicrobial ingredients in toothpaste, soaps and cleaning products, under the drinking water law after the agency last year generally approved uses of the chemical under pesticide law.

But EPA officials are resisting congressional pressure to more strictly regulate the chemicals. During a Feb. 24 hearing before the appropriations panel that oversees EPA’s budget, Jackson told Moran that more research on the chemicals’ risks are needed. “What’s really needed now, in my opinion, is not regulatory action. We don’t know enough. [What’s needed is] more research . . . and a real focus on practical solutions that we can offer to folks in the meantime because trying to keep up with all the chemicals in our modern life is a difficult thing to do when you’re chasing the wagon,” she said.

She noted that EPA is seeking $7 million in its FY11 budget request for extramural grants focused on endocrine disruptor research, as well as $1.8 million for the computational toxicology program.

Jackson also appeared to make a pitch for Congress to keep federal endocrine research within EPA, saying that “EPA also has some fantastic engineers and scientists who might be able to offer some technical assistance and advice to communities.”

Other EPA officials have also been detailing actions the agency is taking on endocrine chemicals. At the Feb. 25 hearing, James Jones, EPA’s deputy assistant administrator in the Office of Prevention, Pesticides & Toxic Substances, pointed to a host of agency measures to better counter the potential threat from the chemicals.

Among other things, Jones vowed that EPA is committed to using the discretionary authority it has under the Safe Drinking Water Act (SDWA) to begin screening for

endocrine disrupting chemicals and the agency is close to issuing a proposed list of at least 100 chemicals for testing under the EDSP, which House appropriators sought in EPA's FY10 spending bill. The new list will be drawn from EPA's drinking water rules; the list of drinking water contaminants that EPA is considering for regulation, known as the Contaminant Candidate List 3 (CCL3); and "pesticides that are on the reregistration schedule for 2007 through 2008."

Jones also said that EPA will issue in the "very near future" its stalled action plan on bisphenol-A (BPA), a plastic ingredient that many activists say can disrupt the human endocrine system. He also suggested that the chemical could be added to the drinking water list. BPA is not currently on the CCL3, but could be added in the future as the Food & Drug Administration is conducting research on the chemical that could impact its CCL3 listing, Jones said. "That work will inform future CCL lists."

Jones also said EPA will issue the final test orders for the first phase of the EDSP program this week. The agency started issuing test orders for the program last fall as the agency focuses on screening 67 pesticides and, depending on those results, will determine if further testing should be conducted under the second phase of the program. At that point, substances of concern will be targeted for regulatory action.

"EPA is on track to obtain Tier 1 endocrine screening data on several hundred chemicals within the next several years," Jones said. "Although it has taken a long time to develop and implement the EDSP, we have developed and validated some useful tools and learned lessons that can be applied to other areas."

But activists and some Democratic lawmakers are making the case for stronger EPA authority to deal with the endocrine disruptors.

Rep. Lois Capps (D-CA) told Jones she was concerned that the EDSP screens "will not even begin to capture the long list of chemicals being reported in drinking water supplied today" and questioned how long it would take EPA to regulate the chemicals under the current rules, because the EDSP requires a second phase testing period prior to regulation. Capps further questioned whether the SDWA discretionary authority provides EPA with the "necessary mechanism to regulate" endocrine disrupting chemicals.

Gina Solomon, senior scientist with the Natural Resources Defense Council, said that "EPA's regulatory mechanisms in general are not good with dealing with unusual data," such as severe effects that could be caused by endocrine disruptors at low doses or at certain periods of development. -- *Aaron Lovell*

**County's air pollution plan draws criticism (*Pittsburgh Post-Gazette*)**

By Don Hopey, Pittsburgh Post-Gazette

March 5, 2010
Environmental groups say an Allegheny County Health Department plan to reduce sooty air pollution in the Liberty-Clairton area does not protect the health of more than 80 families in nearby Lincoln.

The Group Against Smog and Pollution and the Citizens for Pennsylvania's Future are urging state and federal regulators to reject the county plan that shows air at its monitors in Clairton and Liberty will improve because of operational improvements at U.S. Steel Corp.'s Clairton Coke Works, but air in Lincoln will continue to fall short of federal health-based standards for fine airborne particulates.

"The county's air quality plan is too little, too late. Worse, the plan fails to provide the basic protections of the [federal] Clean Air Act to at least 80 families living near the coke works," said Joseph Osborne, GASP's legal director. He added that the U.S. Environmental Protection Agency should declare the plan unacceptable and return it to the county.

The county's federally mandated State Implementation Plan for the Liberty-Clairton Nonattainment Area must demonstrate that pollution reductions will allow the area to meet national ambient air quality standards for PM2.5, airborne particulate matter smaller than 2.5 micrometers in size.

The fine, almost invisible, soot particles are a danger to human health because they can be breathed more deeply into the lungs than larger soot particles. Numerous studies have shown they can cause a variety of health problems, including asthma attacks, cardiac disease and respiratory distress.

Guillermo Cole, a county Health Department spokesman, said the county followed the EPA guidelines that require attainment at monitoring sites but not in unmonitored areas where a single source has an major impact. He said the modeling work done to assess pollution in Lincoln was optional work done by the department and shows that pollution levels in the community "may be higher."

In a four-page letter to EPA Administrator Lisa Jackson, the environmental groups say the Health Department has misinterpreted EPA guidelines and as a result will "expose the individuals and families in the neighborhoods to extra health risks associated with exposure to illegal levels of PM2.5."

The Allegheny County Board of Health is scheduled to vote Wednesday whether to accept the department's plan and submit it to state and federal environmental agencies.

"We want the Allegheny County Board of Health ... to understand who is being sacrificed," said Joylette Portlock, PennFuture's outreach coordinator. "These families -- children, and grandchildren, mothers, fathers, and grandparents, working people and retired -- deserve the same right to clean air that all citizens have. This clean air plan must be improved and quickly."

Joining PennFuture and GASP in calling for EPA to reject the county plan are the American Lung Association, the Environmental Integrity Project and the Sierra Club.

Don Hopey: dhopey@post-gazette.com or 412-263-1983.

**EDITOIRAL / COMMENTARY / OP ED / LETTERS**
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**If Congress won't act the EPA must (*Washington Post*)**

Efforts by Congress to overturn the Environmental Protection Agency's endangerment finding on carbon are astounding. Sen. Lisa Murkowski (R-Alaska) has made it her big issue. She and a powerful pack of Democrats rail against faceless and unaccountable bureaucrats making decisions that will affect the nation's economy. I get that. Totally understandable. But here's what I don't get. If Congress is so concerned why can't it get its act together and control greenhouse gas emissions so the EPA doesn't have to? When President Obama took office, he adopted a dual track approach to addressing climate change. Track One was his preferred track, Congress. Legislation had been rattling around the Capitol for a few years. He urged the legislature to move and plunked $600 billion from anticipated pollution permit proceeds in his first budget. Track Two was the EPA, and it was meant to stiffen the spine of Congress as it moved along Track One. Obama freed it to follow through on the Supreme Court's 2007 ruling in Massachusetts v. EPA found that the agency had the authority to control emissions from motor vehicle tailpipes and must exercise it.

If Congress failed to act, the EPA would. And because the EPA's processes are lengthy (we're talking years) and go sector by sector, there would be plenty of time for the people's representatives to devise a plan to regulate carbon and reduce our dependence on fossil fuels. Instead, the House passed the deeply flawed Waxman-Markey bill. Meanwhile, efforts in the Senate have gone nowhere. The cap-and-trade bill offered by Sens. Barbara Boxer (D-Calif.) and John Kerry (D-Mass.) made it out of committee and promptly was declared dead-on-arrival for a floor vote. Meanwhile, Kerry joined forces with Sens. Joe Lieberman (I-Conn.) and Lindsay Graham (R-S.C.) to draft a compromise bill. Sens. Maria Cantwell (D-Wash.) and Susan Collins (R-Maine) have devised an utterly sensible cap-and rebate plan. And then there's Murkowski's battle with the EPA and its Administrator Lisa Jackson.

This is nutty.

The EPA is following a law passed by Congress and that the Supreme Court ordered be followed. The president and EPA Administrator Lisa Jackson have said over and over again that they want Congress to pass comprehensive climate change legislation. They have had and will have plenty of time to get it done. So, folks, what's the hold up?

**By Jonathan Capehart | March 4, 2010; 8:30 AM ET**

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**It's baaack (*Los Angeles Times*)**

Now is the time to jump-start the nuclear power industry.

By Patrick Moore, Patrick Moore is chairman and chief scientist of Greenspirit Strategies Ltd. and co-chair of the Clean and Safe Energy Coalition.

President Obama's announcement that the federal government would guarantee loans for two advanced-design nuclear plants in Georgia was good news.

The commitment jump-starts the U.S. nuclear energy industry at a time when we have begun to understand that nuclear energy has a substantial role to play in combating climate change and supplying power. More important for the near term, the administration is putting nuclear energy at the center of its push to revitalize the economy.

In his State of the Union address, Obama called for "a new generation of safe, clean nuclear power plants" to create more "clean-energy jobs." He has called for a tripling of federal loan guarantees for reactors. And in announcing the loan guarantee for the Georgia plants, the president urged skeptical Americans to revisit their views on nuclear energy and consider the importance of this proven-safe technology to enhance energy security and climate protection.

"On an issue that affects our economy, our security and the future of the planet, we can't keep on being mired in the same old stale debates between the left and the right, between environmentalists and entrepreneurs," Obama said.

That statement struck a personal chord with me. When I helped found Greenpeace in the 1970s, I was convinced that the risks from harnessing nuclear energy outweighed the benefits. More than 30 years later, Greenpeace still embraces that view, but my views have changed, in part because many of the risks that concerned me have been addressed.

Similarly, the editorial boards of the New York Times and the Washington Post agreed with the president that nuclear energy should be part of America's energy portfolio as the country moves toward a less carbon-intensive energy base.

This timely political and public turnabout is rooted in a decades-long record of safety. Currently, nuclear power plants supply about one-fifth of the nation's energy. And no member of the public has ever been injured by a nuclear power plant in the United

States, nor has any nuclear worker died of a radiation-related incident.

Thanks to similarly strong security requirements guarding this critical U.S. infrastructure, nuclear power plants are well protected against potential security threats.

The twin challenges of climate change and rising electricity demand have pressed the United States and many other countries to seek out large-scale, low-carbon electricity sources. Nuclear energy is a central part of this global push because it has few equals when it comes to producing virtually emissions-free electricity at scale. Nuclear reactors produce more than 70% of the carbon-free electricity in the country. California would have to remove more than half a million passenger cars from its roads to eliminate the amount of carbon dioxide prevented by the state's four nuclear reactors.

As attractive as these environmental gains are, the economic gains for many states and regions are even more important. The two reactors in Georgia will create an estimated 3,500 jobs during construction and 800 permanent jobs when the reactors are up and running.

As many as 21,000 permanent jobs would be created if all of the U.S. nuclear reactors now in the planning stages are built, according to a report by the Clean and Safe Energy (CASEnergy) Coalition, a national alliance that I chair with former Environmental Protection Agency Administrator Christine Todd Whitman. CASEnergy is funded by the nuclear industry.

Although some critics have questioned the costs of building nuclear energy facilities, it's important to keep the cost issue in perspective. To match the power produced by one reactor at a cost of $6 billion to $8 billion, you would need a wind farm spanning 200,000 acres and as much as $12 billion in investment capital, plus natural gas-fired plants to back up wind turbines that are idle the majority of the time.

Encouraged by nuclear energy's environmental and economic benefits, more and more Americans favor nuclear energy. In a Congress that is growing more partisan as the midterm election nears, nuclear energy is a uniting factor among Democrats, Republicans and independents. That is why climate-change legislation crafted by Sens. John Kerry (D-Mass.), Joe Lieberman (I-Conn.) and Lindsey Graham (R-S.C.) has a significant role for nuclear power.

In California, where a state moratorium on new reactors has been in place since 1976, a majority of residents responding to the most recent California Field Poll on nuclear energy approved of building new reactors. Likewise, a majority of respondents to an ABC News/Washington Post national poll last August supported the construction of more nuclear power plants.

This emerging consensus will be crucial to ensuring that nuclear energy continues to play a vital role in meeting U.S. energy and environmental goals. As Obama said in announcing the first federal loan guarantee for nuclear energy projects, "This is just the

beginning."

The president's proposal to triple loan guarantees for the industry would help fund an estimated seven to 10 new reactors -- an important start. The fact is that many more will be needed just to maintain nuclear energy's current 20% share of U.S. electricity production. The Electric Power Research Institute recently concluded that at least 45 new reactors will be needed as part of a portfolio of low-carbon technologies to achieve Congress' desired 42% cut in greenhouse gas emissions by 2030.

Widespread engagement will also help ensure that a diversity of alternatives is considered when it comes to identifying long-term solutions for used nuclear fuel.

Earlier this year, Energy Secretary Steven Chu ramped-up this effort by forming a blue-ribbon commission of scientists and other experts to evaluate policy options, including research into nuclear fuel recycling. Up to 95% of the energy content remains in uranium fuel after one use in a reactor.

Countries such as France, Japan and Britain already have made great strides in extracting unused energy from used nuclear fuel, at the same time reducing the amount and longevity of waste byproducts. By employing advanced recycling techniques, advanced fuel fabrication and new reactor designs, we could turn what is now considered waste into one of our most valuable future energy resources.

Meanwhile, low- and high-level radioactive byproducts are safely and securely stored at either federally licensed facilities or the 64 reactor sites across the country.

The Obama administration's new political mandate to make nuclear energy a key element of the country's energy and environmental policy is a welcome development, but not a surprising one. The president supported nuclear energy when campaigning for the White House. Today, pressing concerns about the economy and the environment are driving a more sensible look at nuclear power, given its ability to create tens of thousands of high-paying jobs and produce continuous carbon-free power. By jump-starting the industry's next wave of nuclear energy production, the president has put the country that much closer to realizing a sustainable and clean energy future.

**EPA's heavy hand (*Fort Worth Star Telegram*)**

Texas
I would like to thank Gov. Rick Perry and Texas Attorney General Greg Abbott for bringing a lawsuit against the federal government's Environmental Protection Agency and standing up for Texas.

My husband and hundreds of other workers at Peterbilt Motors in Denton have lost their

jobs because of the federal government's emission restrictions; even more people will be laid off because of the 2010 restrictions and their more job-killing restrictions in 2014.

We all have children to feed, mortgages to pay and a future to prepare for. The federal government's and EPA's heavy hand have directly affected our family and community in a harmful way.

-- Amy Mach, Denton

**AIR**

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**Lawmakers From Coal States Seek to Delay Emission Limits (*New York Times*)**

March 5, 2010 Friday
Late Edition - Final
Section A; Column 0; National Desk; Pg. 16
By JOHN M. BRODER
WASHINGTON -- Coal-country lawmakers moved Thursday to impose a two-year moratorium on potential federal regulation of carbon dioxide and other climate-altering gases.

Senator John D. Rockefeller IV, Democrat of West Virginia, said the Environmental Protection Agency should refrain from issuing any new rules on greenhouse gas emissions from power plants and other major stationary sources for two years to allow Congress to pass comprehensive legislation on energy and climate change.

Representatives Alan B. Mollohan and Nick J. Rahall II of West Virginia and Rick Boucher of Virginia, also Democrats, introduced a similar bill in the House.

The moves are the latest effort by members of both parties in Congress to slow or halt carbon regulation by the administration. Separate bills are before both houses that would essentially prevent the **E.P.A.** from issuing any greenhouse gas regulations.

Lisa P. Jackson, the agency's administrator, wrote Mr. Rockefeller and seven other Democratic senators last week outlining her timetable for such regulation. She said that limits on carbon dioxide pollution from vehicles would be issued this year under an agreement negotiated last year with major automakers.

Limits for large coal-burning power plants and industrial facilities would be phased in beginning in 2011, with no restrictions on smaller sources until 2016.

But that timetable is apparently too fast for Mr. Rockefeller and other representatives of coal-producing regions.

"This is a positive change and good progress," Mr. Rockefeller said, referring to Ms. Jackson's timetable, "but I am concerned it may not be enough time. We must set this delay in stone and give Congress enough time to consider a comprehensive energy bill to develop the clean coal technologies we need."

He added that decisions with such a broad impact on the nation's economy and energy future should be made by elected representatives, not bureaucrats.

The **E.P.A.** said it was studying the Rockefeller proposal but that it was not as dismaying as the measure introduced by Senator Lisa Murkowski, Republican of Alaska, and several others that would ban any regulation of carbon dioxide, including emissions from vehicles.

"It is important to note that Senator Rockefeller's bill, unlike Senator Murkowski's resolution, does not attempt to overturn or deny the scientific fact that unchecked greenhouse gas pollution threatens the well-being of the American people," said Adora Andy, an **E.P.A.** spokeswoman, "nor would it threaten the historic clean cars program announced by the Obama administration last year."

The agency's proposed regulations are opposed not only by coal companies and their customers but also by a wide range of American industries that fear that new rules will impose huge costs and make it difficult for American manufacturers to compete with goods from countries without carbon dioxide limits.

Environmental groups generally support the prospect of **E.P.A.** regulation as a prod to Congress to impose carbon restrictions across the economy. Several issued statements opposing Mr. Rockefeller's measure.

March 4, 2010

**Coal-State Dems Unveil Bills Stalling EPA Emission Curbs (New York Times)**

By DARREN SAMUELSOHN of Greenwire

*This story was updated at 1:05 p.m. EST.*

Four influential coal-state Democrats introduced companion bills in the House and Senate today that would block U.S. EPA from implementing any climate-related stationary source rules for two years, a timeout of sorts that they think gives Congress time to pass legislation dealing with the issue.

Senate Commerce Chairman Jay Rockefeller of West Virginia unveiled the Senate bill, while the House measure was introduced by West Virginia's Nick Rahall, the chairman

of the Natural Resources Committee, and Alan Mollohan, a senior member of the Appropriations Committee. Rep. Rick Boucher (D-Va.), who played a pivotal role in negotiations last year on the House-passed climate bill, also signed up an original co-sponsor.

Rockefeller said in a press release that his bill would give "Congress the time it needs to address an issue as complicated and expansive as our energy future. Congress, not the EPA, must be the ideal decision-maker on such a challenging issue," he said.

"EPA regulation of greenhouse gases would be the worst outcome for the coal industry and coal-related jobs," Boucher said. "Our bill is a responsible, achievable approach which prevents the EPA from enacting regulations that would harm coal and gives Congress time to establish a balanced program."

The Democrats' bills add to a growing chorus of congressional complaints about EPA's plan to regulate for greenhouse gases.

Sen. Lisa Murkowski (R-Alaska) may push for a vote later this month on a resolution that would overturn EPA's "endangerment" finding, a determination that opens the door to rules covering everything from cars and light trucks to power plants and other major industrial sources.

Murkowski said in a statement that Rockefeller's bill demonstrates "further evidence of the growing, bipartisan, and bicameral resistance to EPA's back-door climate regulations."

"Given the overwhelming opposition to these actions, I'm hopeful that this bill will draw additional support and advance quickly," she added. If it doesn't, Murkowski said she would push for a floor vote on her resolution that is guaranteed consideration under Senate rules.

Murkowksi to date has 41 Senate co-sponsors, including three moderate Democrats. She would need 51 votes for the measure to clear the chamber.

Obama administration officials have shown little interest in the Hill efforts to suspend EPA's efforts.

Responding yesterday to a question from Murkowski about whether she would support a temporary timeout from Rockefeller, Jackson replied, "I support the need for new legislation to address carbon pollution."

"I do not think we're at a fork in the road," Jackson said, adding, "the law says that EPA has to move forward on these issues."

White House spokesman Robert Gibbs also said last month that Obama would not support Murkowski's resolution.

Efforts to undercut EPA's regulations have drawn support from industry and labor groups. United Mine Workers of America President Cecil Roberts sent a letter of support to Rockefeller today questioning whether the Clean Air Act is best suited to provide the technological incentives needed to reduce greenhouse gases from coal-fired power plants.

"The Clean Air Act has been successful in reducing harmful air pollution in our cities, but it is not designed to address the broader global challenges of climate change," Roberts wrote.

Responding to congressional complaints about climate rules on small polluters, EPA Administrator Lisa Jackson in recent days has offered more details about the agency's plans for tackling climate change. She said EPA will soon issue a final "tailoring" rule that precludes permitting requirements over the next two years for industrial sources that emit less than 75,000 tons a year. After 2012, EPA would consider moving the threshold to about 50,000 tons per year (*E&ENews PM*, March 3).

Frank O'Donnell, director of the advocacy group Clean Air Watch, criticized the coal-state Democrats who he said are pushing to suspend Jackson's authorities even more. "The EPA seems to be backpedaling faster than an NFL cornerback, but that doesn't seem to have satisfied the appetite of special-interest opponents of climate action," he said.

Boucher helped negotiate key pieces of the House-passed climate bill to benefit his district's industrial interests, and he often explained that his primary motivation was the threat of EPA rules. In the Senate, Rockefeller stands out as a key swing vote in efforts to pass a comprehensive energy and climate bill. Sens. John Kerry (D-Mass.), Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.) are aiming to release a bill before the spring recess that starts at the end of this month while targeting a floor debate in the late spring.

Aides to Rockefeller, Rahall and Boucher said they didn't know what the specific plans were for their two pieces of legislation. Rockefeller's bill likely will be referred to the Environment and Public Works Committee. Rahall's bill goes to the Energy and Commerce Committee, where Boucher is a senior member.

Jim Manley, a spokesman for Majority Leader Harry Reid (D-Nev.), declined comment today when asked about any floor plans on the Rockefeller legislation.

An EPA spokesperson did not immediately return calls for comment.

*Reporter Robin Bravender contributed.*

MARCH 4, 2010, 2:10 P.M. ET

**Lawmakers Offer Bills to Suspend EPA Rules (*Wall Street Journal*)**

By SIOBHAN HUGHES
WASHINGTON—Democratic coal-state lawmakers introduced legislation Thursday to suspend for two years Environmental Protection Agency rules aimed at limiting greenhouse-gas emissions from power plants, factories and oil refineries.

Sen. Jay Rockefeller (D., W.Va.) and Rep. Nick Rahall (D., W.Va.) offered the legislation as friction builds in Congress in advance of the EPA's plans to finalize the rules this month. The agency has come under intense pressure over the regulations, which would require new, large industrial facilities and existing ones undergoing modification to use the most up-to-date technology to curb carbon-dioxide emissions. One of those technologies could potentially be natural gas, which competes with coal as a source of electricity.

"I am dead-set against the EPA's plowing ahead on its own with new regulations to limit greenhouse gas emissions from coal-fired power plants," Mr. Rahall said in a statement. "This is reasonable and responsible legislation that will protect a vital industry—coal—and essential jobs for West Virginia and the nation."

Though the bills' prospects are murky, they represent a clear show of skepticism about the Obama administration's policies from within their own party. The EPA has taken pains to tell senators who hold crucial votes that it wants to keep coal a part of the fuel mix. But mistrust has been building among lawmakers from coal states in the Appalachian region, where the EPA has held up dozens of mountaintop-removal coal mining permits, citing the need to protect water quality. Blasting off mountaintops sends debris into the water below, burying streams.

An EPA spokeswoman had no immediate comment.

Jim Manley, a spokesman for Senate Majority Leader Harry Reid (D., Nev.) declined comment on when the bill could come up for a vote, citing a practice of not commenting on the timing of votes on new bills.

Environmentalists expressed outrage over a two-year delay.

"Pre-empting the EPA has been the number one objective of the coal industry ever since Congress started to address climate and energy legislation," said Tim Wirth, the president of the United Nations Foundation, in a statement. "Taking away or suspending their authority would set a dangerous precedent for environmental protection in the United States."

The coal industry expressed support for the measures, but said it prefers a separate resolution offered by Sen. Lisa Murkowski (R., Alaska) to overturn an EPA finding that greenhouse gases pose a danger to the public, a determination that is the basis for its regulatory initiatives.

"We think that what we really need is to hit the reset button, not the pause button, but both are constructive approaches," said Luke Popovich, a spokesman for the National Mining Association.

—*Stephen Power of the Wall Street Journal contributed to this article.*

**Write to** Siobhan Hughes at siobhan.hughes@dowjones.com

**Air advisory covers east-central Iowa (*Associated Press*)**

**Story also appeared: *DesMoines Register***

March 5, 2010
The Department of Natural Resources has issued an air quality advisory for east-central Iowa.

According to the department, fine particle pollution levels have risen above the health threshold established by the Environmental Protection Agency.

Department officials are recommending people living in east-central Iowa with respiratory or heart disease, the elderly and children limit prolonged outdoor exertion.

According to the DNR, fine particles are emitted by vehicle traffic and other combustion sources, and are formed by chemical reactions in the atmosphere.
Officials said they expect air quality to improve once the wind picks up today.

March 5, 2010

**Lawmakers seek EPA delay (*Bluefield Daily Telegraph*)**

By Bill Archer Bluefield Daily Telegraph
BLUEFIELD — Coalfield legislators closed ranks Thursday and simultaneously introduced legislation in both houses of congress aimed at delaying the Environmental Protection Agency from implementing additional regulations on greenhouse gas emissions from stationary sources including coal-fired power plants.

U.S. Senator John D. “Jay” Rockefeller, D-W.Va., introduced the “Stationary Source Regulations Delay Act,” in the U.S. Senate, and U.S. Reps. Nick Rahall, D-W.Va., Frederick C. “Rick” Boucher, D-Va., and Alan Mollohan, D-W.Va., jointly introduced the same legislation in the House of Representatives. Others in Congress, including U.S. Senator Lisa Murkowski, R-Alaska, demonstrated support for the legislation and United Mine Workers President Cecil Roberts expressed the union’s support for the legislation.

“We regard the Clean Air Act as unsuited to providing the technology incentives needed to advance carbon capture and storage and other advanced clean energy technologies that our nation will need to combat climate change,” Roberts was quoted in a UMWA press release as stating. He added that the EPA “appears in a rush to develop a slate of new rules that would hamper our economic recovery while depressing prospects for alleviating the crushing burdens of high unemployment.”

“Congressmen Rahall, Mollohan and I plan to work as hard as we can to pass this legislation,” Boucher said during a telephone interview Thursday afternoon from his office in Washington, D.C. “Having the EPA regulate emissions would be the absolute worst outcome for the coal industry.

“The entire reason I got into developing the climate change legislation that the House of Representatives passed last June was to prevent the EPA from having the final say in regulating greenhouse gas emissions,” Boucher said. “I was able to secure changes in the bill that would have enabled electric utilities to continue to use coal as the carbon capture technology became commercially viable. Those technologies are the future of the coal industry.

“The Senate has failed to act on that legislation and unless they do, it will not become law,” Boucher said. “We do not want the EPA regulating greenhouse gas emissions at stationary sources. The two-year time out, I believe, will give Congress time to develop a balanced program.” He added that he thinks President Barack Obama will be receptive to the Stationary Source Regulations Delay Act.

“We need to come back here next week and get to work to pass this bill,” Boucher said.

In his press release concerning the Senate bill, Rockefeller provided additional background information as to how the moment involved including a copy of the letter he, U.S. Senator Robert C. Byrd, D-W.Va., and six other senators sent to Lisa P. Jackson, administrator of the EPA. The letter addressed several concerns “relating to the potential regulation of greenhouse gases from stationary sources under the Clean Air Act.”

The senators emphasized eight key points of concern in the letter dated Feb. 19, and the tone of Jackson’s Feb. 22, letter responding to Rockefeller revealed her commitment to enforcing the EPA staff’s Dec. 15, 2009 determination that “greenhouse-gas emissions do endanger Americans’ health and welfare” and that “the U.S. Senate itself has twice passed, on a bipartisan basis, a resolution finding that greenhouse-gas accumulation from human activity poses a substantial risk of increased frequency and severity of floods and droughts.”

“Today, we took important actions to safeguard jobs, the coal industry, and the entire economy as we move toward clean coal technology,” Rockefeller was quoted as stating in a press release from his office. “Congress, not the EPA, must be the ideal decision-

maker on such a challenging issue." Rockefeller was also quoted as stating that the House and Senate "must set this delay in stone and give Congress enough time to consider a comprehensive energy bill to develop the clean coal technologies we need."

Likewise, Rahall, chairman of the House Natural Resources Committee, issued a press release calling for congressional oversight in the climate change debate. "I am dead-set against the EPA's plowing ahead on its own with new regulations to limit greenhouse gas emissions from coal-fired power plants," Rahall was quoted as stating. "This is a reasonable and responsible legislation that will protect a vital industry — coal — and essential jobs for West Virginia and the nation."

Bill Raney, president of the West Virginia Coal Association said during a telephone interview that he was encouraged by the unified approach the coalfield legislators have taken to address the situation. "It's a shame that it reaches the point when Congress has to take action like this to stop the EPA from hurting hard-working people," Raney said.

Rick Taylor, president of the Pocahontas Coal Association said it appears as though Congress is responding to the concerns of the people. "There has been an out-cry from the public as well as from the coal industry about the situation that it was time for Congress to take drastic measures," Taylor said.

– Contact Bill Archer at barcher@bdtonline.com

**Panel weighs resolution on burning (*Wichita Eagle*)**

Posted on Fri, Mar. 05, 2010
TOPEKA — A resolution that seeks to allow rangeland burning in the Flint Hills without sending Wichita and other cities out of compliance with air pollution regulations drew testimony in a Senate panel Thursday.

Each year, millions of acres of prairie are burned in the Flint Hills. The process helps keep trees and other woody plants from encroaching on the grasslands and helps provide richer fodder for cattle.

Burning in the grasslands is an economic and environmental issue, said Mike Beam, senior vice president of the Kansas Livestock Association.

Cattle that graze on grass grown on burned prairie on average weigh about 32 pounds more, which is about $8 to $16 more per animal, he told the committee.

The burns also send smoke into the air and threaten to push cities such as Wichita and Kansas City out of compliance with stricter ozone rules that the U.S. Environmental Protection Agency is considering,

"We want to be an urban partner with our rural neighbors," Wichita lobbyist Dale Goter told the Senate Natural Resources Committee.

The city supports an amendment proposed by the Kansas Department of Health and Environment that seeks to have the EPA exclude air monitoring data on days when there is burning in the Flint Hills.

Senate Concurrent Resolution 1623 urges the U.S. Congress to exempt the Flint Hills from smoke management plans mandated by the EPA. If the resolution passes both chambers, the Kansas secretary of state will send a copy to federal leaders in Washington, D.C.

The committee will vote on the resolution next week.

**Colorado companies blast Murkowski's bid to block EPA on greenhouse gases (*Colorado Independent*)**

By David O. Williams 3/4/10 11:14 AM
Colorado businesses, tourism industry and health care officials are scrambling to counteract an ongoing push in the U.S. Senate to block the U.S. Environmental Protection Agency (EPA) from regulating greenhouse gas emissions under the Clean Air Act.
Sen. John D. Rockefeller, D-W. Va., today was set to introduce legislation to impose a two-year moratorium on the EPA effort, which was first unveiled by EPA Administrator Lisa Jackson in December. Some accused Jackson at that time of gunning for big polluters like stationary coal-fired power plants to give the Obama administration more ammo headed into United Nations climate change talks in Copenhagen.

The U.S. House passed a climate change bill last summer, but the Senate version has been stalled. In January, Sen. Lisa Murkowski, R-Alaska, floated a disapproval resolution aimed at forcing Senate debate on whether the EPA should be able to impose penalties on big polluters.

Just this week Murkowski, the ranking member of the Senate Energy and Natural Resources Committee, pressed Jackson during a hearing of the Senate Interior and Environment Appropriations Subcommittee, demanding to know whether she preferred a regulatory path or a cap-and-trade solution approved by Congress.

"The Clean Air Act was written by Congress to regulate criteria pollutants, not greenhouse gases, and its implementation remains subject to oversight and guidance from elected representatives," Murkowski said in a release. "We should continue our work to pass meaningful energy and climate legislation, but in the meantime, we cannot

turn a blind eye to the EPA's efforts to impose back-door climate regulations with no input from Congress."

Colorado critics say Murkowski and coal-state Democrats like Rockefeller are pandering to entrenched fossil-fuel-based power sources and mining interests at the expense of a growing clean-energy sector like the one currently booming in Colorado.

"We are very concerned that the dialogue that Murkowski is supporting has the priorities wrong: Investing in climate solutions is profitable and creates jobs," said Paul Sheldon of Natural Capitalism Incorporated, a Longmont-based consulting business. "Investing in energy efficiency and renewable energy could generate $440 million in economic development in Colorado and as many as 20,000 new jobs."

Others say climate change legislation or at least letting the EPA enforce the Clean Air Act as ordered by the U.S. Supreme Court in 2007 goes far beyond mere economics and verges into public health.

"Coal is a particularly dirty and harmful fuel source, both because of its disproportionate contribution of greenhouse gases to the problem of global warming, and because of its production of numerous other air pollutants and environmental toxins," said Dr. Roberta M. Richardson, president of Colorado-based Physicians for Social Responsibility.

Richardson said PSR, along with other public health organizations such as the American Public Health Association and the National Association of County and City Health Officials, oppose Murkowski's resolution because of science-based findings by the EPA and others that "greenhouse gases are air pollutants that threaten human health."

The ski and outdoor recreation industries, made up of cross-over Colorado businesses touching on both health and economic vitality, are perhaps the most threatened by climate change, advocates say, making climate change legislation or EPA regulation all the more imperative.

"Colorado is a climate state," said Auden Shendler, director of sustainability for Aspen Skiing Company. "Colorado's economy is climate-dependent – whether it's fishing or hunting, skiing, hiking, ranching or river rafting. At the same time, we're teed up for solutions, with great sun and wind resources, and a growing green-tech industry."

And all arguments for stepped-up regulation of coal-fired power plants ultimately seem to circle back to pure economics for many Colorado companies engaged in Gov. Bill Ritter's "New Energy Economy."

"There are federal lawmakers who are ignoring the science and health experts for short term political gain," said George Danellis, Principle of The Vector Group, a Steamboat Springs-based consulting firm. "Investments in clean energy would spur innovation and generate economic growth."

**EPA Vows Simultaneous Issuance Of NAAQS, Implementation Guidelines (*Inside EPA*)**

3/5/2010
EPA is vowing to states that they will issue future implementation guides for new national ambient air quality standards (NAAQS) simultaneously with the final standards, a critical shift for states who say EPA's history of years-long delays between final standards and implementation guides has hindered their efforts to meet NAAQS limits.

In response to the long-standing state concerns, high-ranking EPA Office of Air & Radiation (OAR) officials last month "committed" that they will "work as hard as they can" to issue final implementation guidance, or rules for how states must meet the NAAQS, at the same time the agency finalizes new standards, starting with the ozone NAAQS EPA will issue this summer, informed sources say.

The agency did not issue an implementation rule for its nitrogen dioxide (NO2) NAAQS it finalized in late January, however the agency is also significantly delaying implementation of that standard in order to establish a new, elaborate near-road monitoring network. But EPA will delay implementation for that standard beyond the agency's time frame to complete the next NO2 NAAQS review in 2015, and therefore sources have said the new standard -- updated for the first time in nearly 40 years -- is essentially moot (*Inside EPA*, Feb. 26).

The implementation documents define requirements for states to mandate pollution controls in their plans for attaining EPA's standards, and delays in issuing the guides can delay pollution cuts, these and other sources say.

Simultaneous issuance of the implementation plans and NAAQS would be a major change at EPA, which has faced criticism for taking years to issue implementation guides. For example, EPA still has not fully completed implementation guides for either its original 8-hour ozone standard or first-time fine particulate matter (PM2.5) NAAQS, both issued in 1997.

EPA plans to first adopt the new simultaneous approach in its proposed tightening of the Bush-era 2008 ozone standard. In a recent "general overview" of the proposal, the agency says it is planning to propose an implementation rule in spring 2010 and issue a final rule "as quickly as possible" after it issues the final ozone NAAQS by its Aug. 31 court-ordered deadline. *The overview is available on InsideEPA.com.* See page 2 for details.

One state air official says EPA's new approach is vital because without implementation guidance, states cannot develop their state implementation plans (SIPs), which are federally enforceable plans that detail pollution reduction measures states will mandate in order to meet EPA's NAAQS within a given time frame. "It's really tough to write plans

without EPA guidance. . . . We need the guidance at the same time the standard is adopted," the source says.

Once an area is designated as non-attainment with a NAAQS, the Clean Air Act requires the state to submit a SIP to EPA for approval within three years. To aid states, EPA develops implementation rulemakings that outline policies for evaluating emissions, along with required pollution controls the agency will accept in a SIP.

For example, EPA in its implementation guide for the 1997 PM2.5 standard -- issued 10 years after the final NAAQS in March 2007 -- detailed the steps states must take in their SIPs to demonstrate that they have adopted all reasonably available control measures for PM2.5 sources, among other requirements.

EPA has never previously committed to issuing the implementation guide alongside past NAAQS, sources say, as evidenced by the long delay in issuing guides for the 1997 ozone and PM2.5 standards.

EPA took a decade to issue the guidance in part due to legal uncertainty over its PM2.5 standard after industry filed suits challenging the NAAQS. Similarly, EPA delayed issuing its guidance for the 8-hour ozone standard while the NAAQS was subject to legal challenge. The lengthy litigation over both standards ultimately went before the Supreme Court, which in 2001 ruled in the agency's favor.

EPA issued its ozone implementation rule in 2004 and the PM2.5 implementation rule three years later. However, both of those faced subsequent lawsuits, and the U.S. Court of Appeals for the District of Columbia Circuit ultimately vacated key portions of both rules -- leaving states without final implementation guidance for either standard. "We still do not have all the guidance necessary for the PM2.5 SIPs," the state air official says.

An environmentalist says the agency's commitment to issuing implementation guides at the same time as NAAQS is "a big improvement" from past EPA practice because "the implementation rules determine the speed and strength with which the new standard will be applied, and the longer it takes EPA to roll those out, the more delays we're likely to see."

The source notes that many if not all implementation rules face legal challenges, so if EPA does not adopt a rule until years after it sets a new NAAQS and then lawsuits are filed, "It may be in some cases we are past attainment deadlines before the litigation is resolved" -- as with guides for the 1997 PM2.5 and ozone standards.

States add that EPA's commitment to take the new approach of issuing future implementation guides in tandem with final standards will help ensure air quality improvements. Another state official says states have long sought this approach, and will push for it in upcoming comments on EPA's proposed revisions to the 2008 ozone NAAQS.

After new NAAQS are finalized, “States conduct stakeholder meetings and talk to the public and governors, and they try to explain not only why it’s important to meet certain levels of pollution but what the implications are,” the source says. “And it makes it very difficult for states . . . to move full speed ahead in their obligations when they don’t know their obligations and don’t know how the new [standard] will affect their state.”

The source adds that states have long held the position that a new NAAQS will not automatically result in cleaner air without adequate SIPs crafted in line with federal implementation guidelines.

“You are not just setting an ozone standard [at a certain level]. It’s the measures and strategies that are equally important to achieving the standard, and that part should be provided almost even before [a new NAAQS] is final but certainly no later,” the source says. The new commitment shows “that EPA gets it, that they realize it is important to come out with guidance right around the time of promulgation. We are hopeful and confident they will” follow through.

The first air official adds that the commitment highlights the strong state-level experience by top EPA officials, including OAR chief Regina McCarthy, former head of Connecticut’s environment department. “This is a good thing that EPA intends to do, and shows the knowledge of the administrator, assistant administrator, deputy administrator and others working for the [assistant administrators], all of whom are former state program administrators. They know what we need” at the state level for implementing and meeting the NAAQS, the source says. -- *Dawn Reeves*

**States See Obama EPA Departing From Multipurpose Air Monitoring Goals (*Inside EPA*)**

3/5/2010
State and local air officials say the Obama EPA in revisions to several national ambient air quality standards (NAAQS) is shifting toward a narrow approach of using air monitors to determine individual sources’ contributions to ambient air pollution levels at the expense of existing goals of using the data for research and other broader efforts.

States say the apparent new approach is at odds with a state-EPA negotiated monitoring strategy from 2008 that outlines a variety of purposes for the monitoring program. States have concerns that the Obama EPA’s approach ignores other key aspects of the strategy, including broad goals on using monitoring data to help develop multipollutant strategies to reduce several air pollutants at once.

But environmentalists enthusiastically support the shift toward monitoring for pollution spikes known as “hot spots,” saying the new strategy could help to better address problem areas of adverse emissions.

The National Association of Clean Air Agencies (NACAA), which represents state and local air officials, in Feb. 12 comments on EPA's proposed revision to its December 2008 lead NAAQS monitoring network says it sees evidence of the Obama administration's new, narrower approach to monitoring in that rule. NACAA also says it sees the approach in separate rulemakings to revise the nitrogen dioxide (NO2) and sulfur dioxide (SO2) air standards.

NACAA says the new approach appears to move toward using monitoring data for the limited purpose of determining industrial and other pollution sources' emissions for purposes of designating whether areas near those sources meet or exceed the NAAQS. *Relevant documents are available on InsideEPA.com.* See page 2 for details.

NACAA says the shift is contrary to EPA's National Monitoring Strategy, a framework negotiated between EPA and state, local and tribal air officials to outline the monitoring program's goals. The group says it is "concerned that EPA appears to be changing the focus" of the program as described in the National Monitoring Strategy.

The strategy, issued by the agency in 2008, includes a number of broad goals for using data collected by air monitors that EPA requires state, local and tribal agencies to install and operate as part of the NAAQS. It includes goals of using the monitoring data to "implement a multipollutant monitoring approach that will broaden the understanding of air quality conditions and pollutant interactions, furthering the capability to evaluate air quality models, develop emission control strategies, and support long-term health studies."

The strategy also outlines a number of other goals. For example, it says the data should help air quality planners to pursue opportunities for integrating monitoring networks and programs; reconfigure the existing NAAQS compliance networks and place emphasis on pollutants for which problems with attainment are more widespread and persistent, such as ozone and fine particulate matter; and encourage high-quality data and high-sensitivity monitoring methods.

But NACAA says EPA's monitoring proposal to accompany the final lead NAAQS and rulemakings to tighten the NO2 and SO2 standards seem to show that the agency "is shifting the focus of the monitoring program from recording ambient measurements to measuring emissions from sources." The group argues that the negotiated strategy intends for NAAQS monitoring data to be used for "a variety of purposes, not only for determining attainment/non-attainment."

According to the comments, the primary purpose of the strategy "was to gain a better understanding of the relationships and potential atmospheric reductions of various pollutants, as well as to develop a strategy to apply lessons learned." NACAA says the Obama EPA's apparent new approach sacrifices these broader monitoring goals in an effort to determine compliance with the NAAQS, particularly with regard to large sources.

NACAA argues that EPA should renegotiate the strategy with state and local agencies in order to incorporate “this new direction along with the different philosophies and funding issues involved.” The discussion, NACAA says, should focus on how the monitoring program can generate data to produce “a better understanding of what is happening in the environment, leveraging resources already in place, as well as recognizing that a monitoring program needs to be cost-effective,” according to the group’s comments.

**States Say EPA Planning Fix For Contested ‘Exceptional Events’ Air Rule (*Inside EPA*)**

3/5/2010
EPA will within six months suggest a series of short-term actions to improve implementation of its controversial Bush-era “exceptional events” rule, which allows local air districts to exempt certain unusual events, such as high winds, from air monitoring data, state sources say.
The fixes will seek to address complaints primarily from Western states that the rule discriminates against the dust-storm and wildfire-prone states in the region, and that their requests to EPA to approve air monitoring exemptions under the rule are being unreasonably delayed. The delays are in part due to frequent disputes over whether the request qualifies under the rule.

However, the move may increase the likelihood of legal action against EPA by environmentalists, should the agency allow use of the exemptions more often and allow air districts to meet mandatory air quality standards that they would otherwise not attain without the exemptions.

A source with the Western States Air Resources Council (WESTAR) says it held a Feb. 25 conference call with EPA staff to discuss the issue in earnest for the first time, after WESTAR sent a Sept. 11 letter alleging discrimination against dusty and fire-prone Western states to EPA air chief Regina McCarthy. The call followed a recent briefing on the issue by EPA staff to the agency’s “senior management,” the source says.

Although EPA has not responded to WESTAR in writing, the WESTAR source says the agency agreed to issue possible solutions to ease implementation within six months. The source says EPA is also increasingly worried about the large backlog of state exceptional event requests for the agency to approve, with the largest concentration in Region IX.

Under the rule, an exceptional event is defined as a natural event or an event unlikely to recur that is not reasonably controllable or preventable. States must prove that such events are the exclusive cause of exceedances of ambient air quality limits recorded by air monitors, and that the event caused a measured pollutant concentration in excess of normal historical concentrations.

One short-term action EPA could take to reduce the backlog is to weed out contested exceptional events determinations and prioritize less-controversial ones, enabling states to complete state implementation plans to show how they plan to meet national ambient air quality standards (NAAQS), the WESTAR source says. However, though that is WESTAR's preference, EPA seems likely do to the opposite, instead prioritizing controversial determinations, the source says, adding such a move would fail to address the problem.

Another possible fix for the rule would be for EPA to develop standardized metrics to determine which types of events comport with the rule, rather than dealing with all requests on a case-by-case basis, the source says.

If EPA determines that such workarounds are insufficient, the agency may consider proposing a change to the rule, the source says, although it is unclear what changes could be contemplated at this time.

**Coal-plant bill in alignment with other regs -- EPA air chief (*Greenwire*)**

Robin Bravender, E&E reporter
03/04/2010
U.S. EPA air chief Gina McCarthy said today that proposed Senate legislation aimed at curbing harmful air pollution from coal-fired power plants can "align very well" with pending EPA regulations.

Speaking at a joint hearing of the Senate Environment and Public Works Committee and the Clean Air Subcommittee, McCarthy weighed in on a **draft bill** from Sens. Tom Carper (D-Del.) and Lamar Alexander (R-Tenn.) that seeks steep cuts in electric utilities' emissions.

The senators' effort comes as EPA works to draft replacements for several George W. Bush administration power plant pollution rules that were tossed out by a federal appeals court.

"I think we're totally in line in terms of the direction we're taking," McCarthy said. "We very much appreciate the standards and the timelines that were set."

The Carper-Alexander measure aims to cut soot-forming sulfur dioxide (SO2) by 80 percent by 2018, smog-forming nitrogen dioxide (NOx) by 50 percent by 2015 and mercury by 90 percent by 2015.

Meanwhile, EPA is hustling to come up with replacements for the Bush-era programs aimed at slashing those power plant emissions.

The U.S. Circuit Court of Appeals for the District of Columbia in 2008 vacated the Bush-era cap-and-trade Clean Air Mercury Rule (CAMR), finding that EPA had unlawfully allowed trading of the toxic pollutant. Also in 2008, the same court struck down the Clean Air Interstate Rule (CAIR), a cap-and-trade program aimed at cutting NOx, SO2 and mercury pollution in the eastern United States. The court temporarily reinstated the CAIR program to give EPA time to craft a replacement.

EPA officials have said they plan to issue a draft CAIR replacement by April and a final rule in early 2011. The agency is under a court deadline to issue a proposed mercury rule by March 2011, and a final rule no later than November 2011.

McCarthy said today that EPA is obligated by the court to move forward with its plans but that the legislative and regulatory efforts can work in tandem.

"The United States works best when the Congress does its thing and we go along and do ours, as well," McCarthy said.

It will be important to align those efforts, she said, by sharing information about what the emission reduction levels will mean for the states, what kind of timelines should be adopted, and what emission reductions are necessary.

In addition to Carper and Alexander, who have teamed up on similar power plant bills in the past, the bill has the backing of Sens. Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.), two of the three architects of a Senate climate bill. The bill's other co-sponsors are: Sens. Amy Klobuchar (D-Minn.), Dianne Feinstein (D-Calif.), Judd Gregg (R-N.H.), Jeanne Shaheen (D-N.H.), Susan Collins (R-Maine), Ted Kaufman (D-Del.), Chuck Schumer (D-N.Y.), and Olympia Snowe (R-Maine).

Carper said today that the measure would save more than 215,000 lives over a 15-year period and more than $2 trillion in health care costs over the next 15 years. The bill would cost families less than $2 per month, he added.

While the Senate continues to debate what to do about greenhouse gases, "there's no excuse for not moving ahead on SOx, NOx and mercury," Alexander said, adding: "We've actually got a good chance to pass this bill this year."

Two of the EPW Committee's top Republicans, however, expressed concerns with the proposed bill.

"The level and the timing of the reductions are unprecedented" and cannot be achieved without fuel switching and significant increases in electric rates, said Sen. George Voinovich (R-Ohio).

Ranking member James Inhofe (R-Okla.) said in a statement that his "leading concern is that the bill superimposes fairly strict emissions reductions over a short time frame on top of several impending EPA regulations facing power plants."

"In my view," Inhofe added, "we should require significant emission reductions from power plants, but we should also provide flexibility for how those plants meet those targets."

## CLIMATE CHANGE / GLOBAL WARMING

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**Lawmakers move to restrain EPA on climate change (*Washington Post*)**

By Juliet Eilperin and David A. Fahrenthold
Friday, March 5, 2010; A02

As climate change legislation stalled in the Senate, the Obama administration noted that it had a workable -- although admittedly unwieldy -- Plan B. If Congress wouldn't cap U.S. emissions, officials said, the Environmental Protection Agency would do it instead.

Now, even Plan B may be in trouble.

On Thursday, Sen. John D. Rockefeller IV (D-W.Va.) introduced a bill that would put a two-year freeze on the EPA's ability to regulate greenhouse gases from power plants. His was the latest of various congressional proposals -- from both chambers and both parties -- designed to delay or overturn the EPA's regulations.

It is unclear how far Rockefeller's bill will go. Even if it passed, it could face a presidential veto. But environmentalists are worried that the measure could attract moderate Democrats, who are worried, in turn, about driving up the prices of fossil fuels such as oil and coal.

And, in a broader sense, activists are concerned about a loss of momentum for action on climate change.

Since the House passed a climate bill last summer, there has been disappointment in Copenhagen, gridlock in the Senate and increased skepticism in opinion polls. Now, some environmentalists say, it turns out the old worst-case scenario -- a crackdown by the EPA as the only option -- might not be as bad as it can get.

Rockefeller's legislation would not affect the EPA's plans to limit greenhouse gas emissions from cars and trucks. But it would prevent the agency from implementing -- or even doing much work on -- caps on emissions from such "stationary sources" as power plants and factories. Experts say the bill could postpone regulations for as much as four years.

Rockefeller said the two-year delay would allow time for Congress to impose its own rules on emissions and, perhaps, for technological breakthroughs to reduce emissions from burning fossil fuels.

"Today, we took important action to safeguard jobs, the coal industry and the entire economy," Rockefeller said. West Virginia is a major coal producer.

Rockefeller added, "Congress, not the EPA, must be the ideal decision-maker on such a challenging issue."

Oil and mining industries started lobbying for Rockefeller's proposal as soon as it was introduced, although Lou Hayden, a policy analyst for the American Petroleum Institute, said Rockefeller didn't go far enough. Petroleum industry groups have said that higher fuel costs would be a heavy weight on the U.S. economy. "We don't know why [the freeze on EPA authority] isn't made permanent," Hayden said.

Several other Democrats have already signaled their unease about the administration's tackling climate change without explicit congressional approval.

Sens. Blanche Lincoln (D-Ark.), Mary Landrieu (D-La.) and Ben Nelson (D-Neb.) are co-sponsoring a "resolution of disapproval" introduced by Sen. Lisa Murkowski (R-Alaska). It calls for Congress to overturn the EPA's finding that greenhouse gases are a danger to public health and welfare, the trigger for the agency's efforts to regulate them.

In the House, Agriculture Committee Chairman Collin C. Peterson (D-Minn.) and Armed Services Committee Chairman Ike Skelton (D-Mo.) have introduced a measure similar to Murkowski's. Rep. Earl Pomeroy (D-N.D.) proposes to strip the EPA of its authority to regulate pollution linked to global warming. And House Natural Resources Committee Chairman Nick J. Rahall II (D-W.Va.) and Reps. Alan B. Mollohan (W.Va.) and Rick Boucher (D-Va.) have said they will introduce a companion bill to Rockefeller's.

On Thursday, EPA spokeswoman Adora Andy said in a written statement that the agency was reviewing Rockefeller's bill.

"It is important to note that Senator Rockefeller's bill, unlike Senator Murkowski's resolution, does not attempt to overturn or deny the scientific fact that unchecked greenhouse gas pollution threatens the well-being of the American people," Andy said.

Centrists such as Joshua S. Freed, who directs the Clean Energy Initiative at the think tank Third Way, say Rockefeller's proposal might represent the best they can hope for, because it "preserves EPA's ability to act after two years and creates a clock for Congress to get moving on a substantive way."

Frank O'Donnell, head of the group Clean Air Watch, said the Obama administration has made so many concessions that it is "backpedaling faster than a quarterback in the NFL."

"It's as if the Obama administration is running scared from a Congress controlled by the Democrats," O'Donnell said. "The more concessions they make, the fiercer the opposition seems to be."

Friday March 5, 2010

**Leaders want two-year break from EPA (*Charleston Daily Mail*)**

W.Va. lawmakers' proposal would temporarily limit agency's emissions crackdown
by Ry Rivard
Daily Mail Capitol Reporter
CHARLESTON, W.Va. -- U.S. Sen. Jay Rockefeller and Reps. Alan Mollohan and Nick Rahall have introduced legislation that would give coal-fired power plants a two-year break from EPA regulators intent on cracking down on emissions.
The bill would put a temporary stop to any Obama administration imposition of limits on greenhouse gas emissions from the power plants and other large polluters.
Sen. Robert C. Byrd has decided not to sign on as a sponsor.
Rockefeller, Mollohan and Rahall say they want to preempt action by federal regulators. Proponents of the emission reduction argue that it would help to curb the global warming problem. Opponents say such cuts are a needless overreaction that would devastate the coal industry and impose higher costs on all Americans.
The state contingent in Congress has been under widespread public pressure in West Virginia for months to take a stronger stand in opposition to the Obama administration's regulatory crackdown on coal.
The bill would give Congress the sole authority for the next two years to do anything about greenhouse emissions from large stationary sources, like power plants, oil refineries and factories.
Byrd said he didn't want to be a co-sponsor because he's having "significant discussions about how to ensure the future of coal as a long-term energy resource.
"I am reluctant to give up on talks that might produce benefits for West Virginia's coal interests by seeming to turn away from ongoing negotiations. I will continue to negotiate with all who are earnestly engaged in the pursuit of a proper balance between saving jobs, protecting the environment and ensuring the health of our communities."
The Environmental Protection Agency plans to impose emission cuts starting sometime next year.
In December, the EPA found that greenhouse gases harm humans. The agency was given the authority to make that determination and begin regulation of emissions under a 2007 Supreme Court ruling.
"Congress, not the EPA, must be the ideal decision-maker on such a challenging issue," Rockefeller said Thursday. "Today, we took important action to safeguard jobs, the coal industry, and the entire economy as we move toward clean coal technology."
The EPA is still examining the legislation, said agency spokeswoman Adora Andy.
"It is important to note that Senator Rockefeller's bill, unlike Senator Murkowski's resolution, does not attempt to overturn or deny the scientific fact that unchecked

greenhouse gas pollution threatens the well-being of the American people - nor would it threaten the historic clean cars program announced by the Obama Administration last year," Andy said.
Sen. Lisa Murkowski, R-Alaska, has proposed that the EPA be stripped of its authority to regulate greenhouse emissions entirely. The legislation backed by Rockefeller, Mollohan and Rahall does nothing to prevent the EPA from regulating automobile emissions.
Rockefeller, Byrd, Mollohan and Rahall have said they believe that global warming is occurring, but they differ with the Obama administration and some environmentalists on how to solve the problem.
One bill, which passed the House of Representatives last year, would have created a system to limit a company's right to release carbon dioxide and set up a system to trade rights to emit the gas.
Critics say cap and trade would damage the U.S. economy by driving up the price of energy for customers and businesses. Supporters say the legislation is an essential part of heading off catastrophic global climate change.
Rockefeller and Byrd have shown support for cap and trade if it gives the coal industry money for research. But all three of West Virginia's House members, including Republican Shelley Moore Capito, voted against cap and trade.
Rahall, who chairs the House Committee on Natural Resources, said Thursday: "There is strongly felt disagreement about what is happening in our climate, why it is happening, and what humans can do about it. Most West Virginians have those questions and are concerned about the EPA moving forward with a scheme to unilaterally cap carbon dioxide emissions from coal. I share those concerns, which is why I have offered this legislation."
Mollohan said, "Climate change will remain deeply controversial, but our approach is the only one that has a chance of bringing all sides together to stop what most everyone agrees is a very bad idea - EPA pushing ahead with its own regulations."
Contact writer Ry Rivard at ry.riv...@dailymail.com or 304-348-5185.

**Study Hints at a Release Of Undersea Methane Gas (*New York Times*)**

By CORNELIA DEAN; Andrew C. Revkin contributed reporting.
Correction Appended
Climate scientists have long warned that global warming could unlock vast stores of the greenhouse gas methane that are frozen into the Arctic permafrost, setting off potentially significant increases in global warming.

Now researchers at the University of Alaska, Fairbanks, and elsewhere say this change is under way in a little-studied area under the sea, the East Siberian Arctic Shelf, west of the Bering Strait.

Natalia Shakhova, a scientist at the university and a leader of the study, said it was too soon to say whether the findings suggest that a dangerous release of methane looms. In a telephone news conference, she said researchers were only beginning to track the

movement of this methane into the atmosphere as the undersea permafrost that traps it degrades.

But climate experts familiar with the new research reported in Friday's issue of the journal Science that even though it does not suggest imminent climate catastrophe, it is important because of methane's role as a greenhouse gas. Although carbon dioxide is far more abundant and persistent in the atmosphere, ton for ton atmospheric methane traps at least 25 times as much heat.

Until recently, undersea permafrost has been little studied, but work so far shows it is already sending surprising amounts of methane into the atmosphere, Dr. Shakhova and other researchers are finding.

Last year, scientists from Britain and Germany reported that they had detected plumes of methane rising from the Arctic seabed in the West Spitsbergen area, north of Scandinavia. At the time, they said they had begun their work hoping to gain data to predict future emissions and had not expected to find evidence that the process was under way.

It is "indispensable" to keep track of methane in the region, Martin Heimann of the Max Planck Institute in Germany said in a commentary accompanying the Science report. So far, Dr. Heimann wrote, methane contributions from Arctic permafrost have been "negligible." He added: "But will this persist into the future under sustained warming trends? We do not know."

In an e-mail message, Euan G. Nisbet of the University of London, an expert on atmospheric methane, said the situation "needs to be watched carefully."

Atmospheric concentrations of methane have more than doubled since pre-industrial times, Dr. Heimann wrote. Most of it comes from human activities including energy production, cattle raising and the cultivation of rice. But about 40 percent is natural, including the decomposition of organic materials in wetlands and frozen wetlands like permafrost.

Dr. Shakhova said that permafrost in the East Siberian Arctic Shelf, peat land that flooded as sea levels rose after the last ice age, is degrading in part because runoff from rivers that feed the Arctic Ocean is warmer than in the past.

She estimated that annual methane emissions from the East Siberian Arctic Shelf total about seven teragrams. (A teragram is 1.1 million tons.) By some estimates, global methane emissions total about 500 teragrams a year.

Dr. Shakhova said that undersea methane ordinarily undergoes oxidation as it rises to the surface, where it is released as carbon dioxide. But because water over the shelf is at most about 50 meters deep, she said, the gas bubbles to the surface there as methane. As a result, she said, atmospheric levels of methane over the Arctic are 1.85

parts per million, almost three times as high as the global average of 0.6 or 0.7 parts per million. Concentrations over the shelf are 2 parts per million or higher.

But, "I am not the person to judge" whether the Arctic findings suggest that estimates of **climate change** in coming decades should be rewritten, she added.

"I would not go so far as to suggest any implications," she said. "We are at the very beginning of research."

Correction: March 04, 2010

An earlier version of this article incorrectly referred to a teragram being 1.1 billion tons. It is 1.1 million tons. The version also incorrectly said that the East Siberian Arctic Shelf is east of the Bering Strait. It is west of the Bering Strait.

**Factbox: Swift US EPA climate regulation faces hurdles (*Reuters*)**

Thu Mar 4, 2010 11:32pm IST

(Reuters) - The U.S. Environmental Protection Agency faces big hurdles in implementing regulations to curb greenhouse gas emissions from sources such as coal-fired power plants.

The Obama administration is pushing the EPA to regulate emissions under the Clean Air Act partly to force companies and lawmakers to support a climate bill stalled in the Senate that would reduce gases blamed for global warming.

Here is background on what EPA is considering and challenges it faces:

BACKGROUND

Late last year, the EPA declared that greenhouse gases endanger human health after the Supreme Court ruled that the agency had the power to regulate the gases under the Clean Air Act, legislation last amended in 1990.

The EPA, along with the Department of Transportation, plans late this month to boost fuel economy standards on cars and light duty trucks, which would cut emissions. The EPA benchmark would be raised to 35.5 miles per gallon (15.1 km per liter).

That would open the door for more controversial regulations on stationary sources of emissions such as power plants and cement, glass and steel makers. Under the rules, those sources would have to get permits showing they are using the best available technology to cut emissions.

EPA administrator Lisa Jackson has indicated the agency is willing to soften rules on smaller businesses and that no company would be regulated before 2011.

CONGRESS

Senator John Rockefeller, a Democrat from coal-rich West Virginia, introduced legislation on Thursday seeking to delay rules controlling carbon dioxide pollution from sources such as coal-fired power plants for two years.

The bill would not delay EPA from moving forward on carbon regulations from vehicles.

In addition, Senator Lisa Murkowski, a Republican from oil-rich Alaska, introduced legislation that would permanently delay EPA from regulating the gases. The bill has little chance of being enacted as President Barack Obama would have to sign it into law and Congress would likely not have the votes to override that.

STATES

California, a long-time leader in taking action on environmental issues, wants the EPA to delay the rules. California's Energy Commission says imposing the rules could hurt its plans to transform its energy system to run more on renewable energy such as solar power.

States in the U.S. Northeast support eventual EPA regulation if a climate bill fails. However, they too have called for delays, saying that requiring factories to have permits would overwhelm state air offices.

COMPANIES AND INDUSTRY GROUPS

Many industry groups have filed petitions in court questioning whether EPA has conducted independent research on the dangers of greenhouse gas emissions. Petitions can linger in the courts for years, according to clean air lawyers. The U.S. Chamber of Commerce filed a petition challenging the EPA's decision to regulate the gases.

GREEN GROUPS

The EPA also faces potential lawsuits from moderate and more liberal environmental groups. Some groups want EPA to implement cap-and-trade market system on greenhouse gases under the National Ambient Air Quality Standards, the same measure that limits pollutants such as particulates. That would limit the amount of carbon dioxide and other gases allowed in the air. Other green groups say that would subject EPA to a rash of lawsuits.

(Compiled by Timothy Gardner; Editing by Lisa Shumaker)

**Swing-Vote Senators Show Interest In Narrower, Sector-Based Climate Bill (*Inside EPA*)**

3/5/2010
Senate Democrats from industrial states -- as well as some key Republicans often cited as potential swing votes on climate change -- are offering qualified praise for an effort by three of their Senate colleagues to draft a climate plan that could include separate regulatory approaches for the utility, transportation and the manufacturing sectors.

But these lawmakers are also insisting on seeing more details of the effort, amid a series of meetings this week between the three senators -- John Kerry (D-MA), Lindsey Graham (R-SC) and Joseph Lieberman (I-CT) -- and other key lawmakers as well as outside groups in an effort to hammer out a proposal.

Developments on the issue this week include a mid-afternoon March 2 meeting with several Democrats, as well as Sen. George Voinovich (R-OH). Democrats who attended the meeting included Energy & Natural Resources Committee Chairman Jeff Bingaman (D-NM), Finance Committee Chairman Max Baucus (D-MT), and Sens. Carl Levin (D-MI), Sherrod Brown (D-OH), Mary Landrieu (D-LA), Tom Carper (D-DE), Mark Warner (D-VA) and Debbie Stabenow (D-MI). The meeting is only one of numerous sessions scheduled this week with other senators or outside groups, including a slated March 3 meeting Kerry said he is planning with key committee chairman to discuss the progress of the effort.

Just prior to the March 2 bipartisan meeting, Landrieu, who is co-sponsoring a resolution that would overturn EPA's greenhouse gas endangerment finding, said she believes that Congress needed to implement legislation to put a price on carbon emissions, and indicated that the trio's potential approach could garner her support, in contrast to greenhouse gas cap-and-trade proposals included in House-passed climate legislation and an existing Senate bill.

"I think the industry-wide cap-and-trade would've been much too aggressive at the wrong time, both politically and economically," Landrieu told reporters. "But a more limited cap-and-trade for utilities, which is being contemplated, and then identifying a price for carbon in fuels to encourage us to go to cleaner fuels . . . if we do this right, that could be a great benefit."

After the meeting, Landrieu indicated that it went "very well" and also indicated that discussion of issues related to offshore drilling and revenue sharing for drilling -- two of her priorities for any climate bill -- are in the mix.

Levin brushed off questions on specific proposals, but noted that he has made it clear that any legislation must have a "national standard" for reducing mobile source emissions.

Brown said before the meeting that the trio is getting closer to provisions he would like to see for the manufacturing sector, endorsing an approach that would phase the sector into a cap over time and include a border adjustment mechanism for energy-intensive, trade-exposed firms. “I very much want to vote on a climate change bill, a good one, I think it’s a moral issue,” he told reporters. “But manufacturing’s got to be done right, or we’re going to lose more jobs and have more carbon emissions.”

Voinovich, who has harshly criticized prior House and Senate cap-and-trade measures, stopped short of embracing the trio’s effort and said he prefers starting with the Senate energy package approved last year by Bingaman’s committee, with provisions to benefit nuclear and clean coal.

Voinovich expressed some continuing skepticism on the idea of cap-and-trade, particularly if it is a broad economy-wide plan. “The smaller the net the better the chance you have of getting something done,”Voinovich said, acknowledging that at least some discussion occurred at the meeting on the notion of a cap for the utility sector. Voinovich said he remains open to additional details on the plan. “I’ll try to be as objective as I can,” Voinovich said.

Sen. Lamar Alexander (R-TN), who has criticized the House bill but said climate change should be addressed, praised the trio’s efforts to find a new approach, although he was not present in the meeting. “Any movement away from an economy-wide cap-and-trade is a move in the right direction,” Alexander told reporters earlier in the day, although he clarified that his statement should not be seen as an indication he would support what the three introduce.

Kerry told reporters earlier on March 2 that “we are looking at a new way of coming at this,” though he declined to discuss any details. In conceptual terms, however, he drew a distinction between talk that an economy-wide cap-and-trade bill is dead, and the idea that an economy wide approach is off the table. “What we do may be economy wide but we are not going to do it in the same way that everybody has talked about doing it,” he said. Kerry has previously expressed support for achieving cuts in the range of 17 percent reduction in emissions from 2005 levels.

Meanwhile, Sen. Olympia Snowe (R-ME), another potential GOP supporter for a climate bill, was not present in the March 2 meeting but said she had met with Kerry to discuss the issue last month and planned to meet with the trio again either this week or next.

Even some Democrats, however, remain skeptical of the effort. “We are not going to do cap-and-trade or the first cousin of cap-and-trade this year in my judgment,” Sen. Byron Dorgan (D-ND) told reporters. Dorgan said he wants to instead bring already pending energy legislation to the floor of the Senate.

**Senators Warned Combining Multipollutant, Climate Bills May Stall Action (*Inside EPA*)**

3/5/2010
Industry and state officials say pending Senate legislation to cut nitrogen oxide (NOx), sulfur dioxide and mercury from power plants should remain separate from an emerging sector-based climate bill that may include specific power plant greenhouse gas (GHG) limits, because each bill could stall the other in the highly polarized 111th Congress.

The only way the two bills are likely to be merged is if they both appear to be moving with the same momentum, one industry source says, noting that the controversy surrounding both bills may lead their sponsors to keep them separate. “I don’t think [the bills’ sponsors] are willing to sacrifice either of them for the other,” the source says.

The multipollutant bill, S. 2995, introduced Feb. 4 by Sens. Thomas Carper (D-DE) and Lamar Alexander (R-TN), would set a strict maximum achievable control technology (MACT) limit to reduce power plant mercury emissions by 90 percent and set up a cap-and-trade program for NOx and SO2. The Senate Environment & Public Works (EPW) committee is slated to hold a hearing on the bill March 4.

The bill is intended to ensure EPA has the authority to use trading programs after the court struck down the Bush administration’s clean air interstate rule (CAIR), which set up a trading plan for NOx and SO2 from power plants in eastern states and its clean air mercury rule, which set up a trading program for mercury from power plants. EPA is separately working on its own utility MACT and a replacement rule for CAIR.

The emerging climate bill is being crafted by Sens. John Kerry (D-MA), Lindsey Graham (R-SC) and Joseph Lieberman (I-CT). That bill would take a different approach to climate controls compared to earlier cap-and-trade proposals. Some say the bill could take a more sector-based approach and begin with requirements for power plants, while including separate requirements for other sectors, such as GHG rules for mobile sources.

A Carper spokeswoman says that merging the multipollutant bill with the climate bill is one option, but stressed that no decisions have been made on the issue. The spokeswoman says all options are still on the table, including adding to the bill, subtracting from it and merging it with another measure.

However, some sources say that merging the two bills could hinder both. The industry source expects that Carper would not want to see his bill stalled by controversy surrounding a climate bill.

Conversely, one state source says concerns about the Carper bill -- especially concerns that the NOx limits may not be stringent enough to meet ozone standards -- could hold up the climate bill.

“Given that passage of the Carper bill is not a slam dunk and it may interfere with a climate bill, I can’t see the two being merged this Congress,” the source says, adding, “I think passing either would be a daunting challenge in light of everything going on this session, especially in an election year.”

One public health advocate says it is too early to tell the course that the bills may take. The source says advocates hope EPW will report the bill out of committee this spring, but it is unclear whether Senate leaders will move it alone, decide it needs another bill as a vehicle to move or decide it is vehicle that other measures can be attached to.

However, the source says that the Carper measure is a bipartisan bill with 13 co-sponsors that appears to have momentum as a stand-alone bill. The source also says that the bill provides EPA will authority to tighten the NOx cap seasonally and in the long term and notes that states can take additional steps to meet the ozone standard.

**Key Judge Downplays Prospects For Successful Climate Damages Suits (*Inside EPA*)**

3/5/2010
A key appellate judge who last year ruled that states have standing to sue power plants over the climate change damages that result from their emissions is downplaying prospects that the plaintiffs will ultimately succeed in winning monetary damages, though the justice says he hopes the ruling will still keep pressure on policymakers to develop climate emissions rules to preempt future damages cases.

Judge Peter Hall, one of two judges on the U.S. Court of Appeals for the 2nd Circuit, which ruled last year that plaintiffs have standing to sue emitters for common law damages caused by their greenhouse gas (GHG) emissions, told a conference on climate change law in Washington, DC, Feb. 26 that the plaintiffs may ultimately struggle to prove that emissions from individual facilities may be causing damages.

“Expert evidence, which is the kind of thing that will be needed in this case, ultimately, to prove . . . causative action and whether that can be done beyond preponderance of the evidence, certainly remains an open question,” Hall told the conference, “Environmental Protection in the Balance: Citizens, Courts, and the Constitution.” The conference was co-sponsored by The Environmental Law Institute, Center for Law, Energy & the Environment at UC Berkeley Law School, and Georgetown Environmental Law and Policy Program.

Hall was one of two justices who ruled last year in *Connecticut, et al. v. American Electric Power [AEP], et al.* that states and other plaintiffs have standing to file tort claims against emitters to address the public nuisance of global warming. A key portion of the ruling rejected industry arguments that federal courts could not consider common

law damages cases to address climate change because it is a “political question” best left to other branches of government.

The ruling -- together with a similar ruling from a three-judge panel on the 5th Circuit in *Comer, et al. v Murphy Oil USA, et al.* -- created new leverage for environmentalists and others to win agreement from industry on federal GHG rules as a way to preempt similar rulings in the future.

But Hall’s assessment -- together with a recent order from the full 5th Circuit to grant an industry request for an *en banc* review of its ruling -- suggests the leverage could be waning. “A full appellate court often decides to hear a case *en banc* because a majority thinks that the panel got it wrong,” Seth Jaffe, an industry lawyer, wrote in a recent blog posting about the 5th Circuit’s decision.

Despite his skepticism about the prospects for plaintiffs winning damages, Hall nevertheless said he hopes the ruling and others like it will pressure both the executive branch and Congress to implement climate policies, because its burdensome “nuisance action by nuisance action” approach is hanging over their heads like a “sword of Damocles.”

“To the extent there is out there . . . some opportunity to pursue or continue to pursue a nuisance action, that may help in a political sense,” he said, at least to get the executive branch moving to develop regulations and to control the fight that will emerge once regulations are promulgated. He also hoped that the existence of this nuisance action may influence the Senate to provide 60 votes to pass a climate bill.

He said that until federal policies displace the damages cases, “the litigation may provide a backstop to the regulations and perhaps some small impetus [for regulatory and legislative action].” He added that the litigation is viable “at least in the 2nd Circuit.”

Hall appeared mixed on whether courts are the appropriate institution for addressing climate change via damages cases, telling the audience of lawyers, “You really don’t want a district judge supervising your relief in all of this stuff.” However, he noted that federal courts had supervised civil rights remedies in cases addressing desegregation, busing and voting rights prior to passage of various civil rights laws.

“I started thinking about all of the civil rights litigation that went on . . . which ultimately emerged into laws that got passed and actions by the Justice Department to enforce these things,” he said, “so I guess the district court judges are stuck with supervising something” either way.

Hall’s comments come as two other appellate courts are poised to consider the issue. In a Feb. 26 order, the 5th Circuit granted industry’s request for *en banc* rehearing of its ruling, though seven of the circuit’s 16 judges recused themselves and will not participate in the review. The nine judges that did not recuse themselves will rehear the

decision with oral argument at a date to be scheduled, and the clerk of the court will specify a briefing schedule for supplemental briefs, the Feb. 26 order says.

The three-judge panel's Oct. 16 ruling granted plaintiffs standing to bring their complaint against a host of oil refiners, chemical manufacturers and other industries for contributing to property loss due to their GHG emissions after Hurricane Katrina struck New Orleans and the surrounding area.

A three-judge panel of the 9th Circuit is also poised to begin reviewing the issue. The panel is slated to begin receiving briefs March 11 as it considers *Native Village of Kivalina v. ExxonMobil Corp.*, a lower court ruling that held the Alaskan village is barred from their climate change nuisance claim against 24 oil, energy and utility companies for emitting GHGs that contributed to the erosion of their coastal home, because the village did not have standing.

**Utility group explains its opposition to EPA rules (*Greenwire*)**

Robin Bravender, E&E reporter
03/04/2010
The American Public Power Association yesterday detailed its concerns about U.S. EPA's pending climate rules after two top House Democrats blasted the utility group last week for supporting a Senate effort to block EPA's regulatory authority.

Mark Crisson, APPA's president and CEO, said his group does not dispute the science of climate change but maintained that Congress, not EPA, should establish a federal regime to curb carbon emissions.

"APPA has been on record since 2007 in support of appropriate federal legislation to address climate change, and we continue to work with members of Congress to ensure passage of such legislation," Crisson wrote Reps. Henry Waxman (D-Calif.) and Ed Markey (D-Mass.).

"However, APPA has repeatedly expressed opposition to the regulation of GHG emissions under the Clean Air Act while at the same time recognizing that the 2007 *Massachusetts vs. EPA* Supreme Court decision has prompted such regulation by the EPA."

Sen. Lisa Murkowski (R-Alaska) has introduced a disapproval resolution that would effectively veto EPA's "endangerment" finding, a determination that greenhouse gases threaten public health and welfare and that sets the stage for broad regulations.

Crisson's **response** came after Waxman and Markey, the lead authors of the House-passed climate bill, sent a **letter** to the utility group last week expressing concerns that

APPA was urging Congress to overturn valid scientific research and that the group was misinforming its members on the issue.

Waxman and Markey expressed disappointment that the utility group was supportive of a Senate effort to block EPA's endangerment finding. The lawmakers said they had heard from several of APPA's members that opposed that position.

Crisson said yesterday that APPA would also support an alternative approach in the Senate that achieves a "time out" from Clean Air Act regulation of stationary sources. Sen. Jay Rockefeller (D-W.Va.) introduced such an approach today (*see related story*).

Crisson added that APPA does not oppose regulating carbon dioxide emissions from automobiles but that EPA's proposed tailpipe standards would automatically trigger stationary source regulations under the Clean Air Act.

"This must be avoided through legislation to delay EPA action to regulate stationary sources and also in any comprehensive climate change legislation that is ultimately passed," the letter says.

**Shifting soils endanger homes' foundations (*Greenwire*)**

03/04/2010
Shifting soil, exacerbated by extreme swings in weather, has led to an unprecedented number of foundation failures in houses across the United States.

Companies that shore up houses against the risk of sinking or fix foundation problems report that their business has doubled, even tripled in the past two decades and continued strong even during the recession.

"We've seen a tremendous influx of pretty severe cases due to either drought or too much rain," said Dan Jaggers, vice president of technical services at Olshan Foundation Repair, which has offices in the South, Midwest and Great Plains.

Residents become aware of their foundation issues when they see gaping cracks in their walls, grout popping, doors and windows that won't close or bowing basement walls. Sometimes owners can even hear the creaking that indicates the foundation is unstable.

Since the 1990s there has been a growing trend nationwide toward more extended dry periods followed by downpours, according to data from the National Oceanic and Atmospheric Association. Whether due to random climate patterns or global warming, the swings between hot and dry weather and severe rain or snow have had a significant impact on the soil underneath buildings.

Another factor leading to the increased work for foundation fixers is that developers built homes on land more prone to shift during the housing boom. "If you think about it, the best ground in cities is usually taken early on, so the builders and developers have often been expanding into less desirable areas, and in their rush to make money, may not have designed structures to deal with it," said David Lourie, a geotechnical engineer in New Orleans.

Experts say the cost to stabilize or shore up foundations runs around $4 billion annually, up from $3 billion a decade ago, although more houses have been built in that time period. Subsidence, or this type of sinking, is not covered by most homeowners' insurance policies in the United States (Kate Murphy, *New York Times*, March 3). **-- DFM**

**Utah puts climate debate on ice (*Greenwire*)**

03/04/2010
Utah Gov. Gary Herbert (R) is canceling plans for a conference to discuss the science of climate change.
"Emotions are too high to have a good debate," explained Ted Wilson, the governor's environment adviser.

The governor announced plans in August to invite experts with differing views on the science of climate change to help inform his decision on the best policy for the state. The governor said his goal for the conference was to, "for the first time, have a legitimate debate with civility, have a discussion on climate change, man's impact on the climate and global warming: what it is, where it is and what you do about it, including cost-to-benefit analysis and making sure we have good science that dictates and leads us toward good policy."

His advisory team had penciled in the conference for January, then pushed it back to coincide with Earth Day in April. Now, Herbert thinks the atmosphere is too volatile to have a sensible discussion on the issue in the near future, Wilson said.

"It's not off," Wilson said, "but definitely postponed for an indefinite time."

The governor's energy adviser, Dianne Nielson, said the delay will not change the governor's plans on key climate-related initiatives including work on energy-saving efforts for Utah businesses and alternative energy programs. She said the governor will also still be part of the regional climate group that his predecessor had signed up for on regional strategies for dealing with climate disruption (Judy Rahys, *Salt Lake Tribune*, March 3). **-- DFM**

**ENERGY**
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**EPA Names Kimberly-Clark 2010 ENERGY STAR(R) Partner of the Year (*Charlotte Business Journal*)**

Earns Award for Second Consecutive Year for Company's Leadership in Energy Management
DALLAS, March 4 /PRNewswire-FirstCall/ -- The U.S. Environmental Protection Agency (EPA) has named Kimberly-Clark Corporation (NYSE: KMB) as a 2010 ENERGY STAR Partner of the Year. For the second consecutive year, K-C will be recognized for its energy management practices and commitment to sustainable operations, resulting in significant energy and financial savings. K-C will be recognized at the ENERGY STAR awards ceremony in Washington, D.C. on March 18.

Kimberly-Clark is being honored for its continued focus on achieving its energy efficiency targets for its manufacturing processes as well as its energy conservation goals for all of its facilities. As part of its environmental vision 2010 program, K-C estimates that it has improved its worldwide energy efficiency by 4.4 percent since 2005. The company's energy efficiency initiative continues to generate ongoing cost savings while further driving K-C's long-term sustainability strategy.

"Kimberly-Clark is leading the fight against climate change through greater energy efficiency," said Gina McCarthy, EPA Assistant Administrator for Air and Radiation. "Kimberly-Clark's robust energy management program is a model for others and affirms that energy efficiency is our most cost-effective climate strategy."

In choosing Kimberly-Clark as an ENERGY STAR Partner of the Year, EPA specifically recognized the company's approach to energy management, which is an integral part of K-C's long-term strategy. In addition to its thorough tracking process of energy usage at its facilities, the company influences its supply chain to address imbedded energy costs in their operations. KC continues to invest in energy improvement projects including combined heat and power systems, landfill gas and biomass to power manufacturing sites and offices. The company also continued to launch energy and other sustainability awareness campaigns to further engage its employees worldwide.

"Earning the EPA ENERGY STAR Partner of the Year for the second consecutive year is a testament to our ongoing commitment to sustainable energy management practices throughout every aspect of our business," said Suhas Apte, Vice President of Global Sustainability at Kimberly-Clark. "Our partnership with ENERGY STAR allows us to collaborate on important issues and improve our environmental stewardship through energy efficiency, which is a critical component of K-C's sustainability strategy and long-term growth plans."

Kimberly-Clark has been a member of the ENERGY STAR program since 2007 and was originally recognized as an ENERGY STAR Partner of the Year in 2009. In addition, K-C is also involved in EPA's Climate Leaders, Green Power Partnership, Landfill Methane Outreach Program and SmartWay programs.

The ENERGY STAR award follows K-C's recent number one ranking on EPA's list of On-site Green Power Users as well as its top 20 ranking on the organization's National Green Power Purchasers list. In addition, K-C received its third consecutive Environmental Excellence award from EPA's SmartWay Transportation Partnership for leadership in reducing greenhouse gases and conserving energy.

About Kimberly-Clark

Kimberly-Clark and its well known global brands are an indispensable part of life for people in more than 150 countries. Every day, 1.3 billion people - nearly a quarter of the world's population - trust K-C brands and the solutions they provide to enhance their health, hygiene and well-being. With brands such as Kleenex, Scott, Huggies, Pull-Ups, Kotex and Depend, Kimberly-Clark holds the No. 1 or No. 2 share position in more than 80 countries. To keep up with the latest K-C news and to learn more about the company's 138-year history of innovation, visit www.kimberly-clark.com.

About ENERGY STAR

ENERGY STAR was introduced by the U.S. Environmental Protection Agency in 1992 as a voluntary market-based partnership to reduce greenhouse gas emissions through increased energy efficiency. Today, ENERGY STAR offers businesses and consumers energy-efficient solutions to save energy, money and help protect the environment for future generations. More than 17,000 organizations are ENERGY STAR partners committed to improving the energy efficiency of products, homes, buildings and businesses. For more information about ENERGY STAR, visit www.energystar.gov or call toll-free 1-888-STAR-YES (1-888-782-7937).

MARCH 4, 2010, 11:46 P.M. ET

**Democrats Revolt Over Energy (*Wall Street Journal*)**

By REBECCA SMITH And STEPHEN POWER
President Barack Obama's energy strategy came under attack on at least three fronts Thursday, highlighting the conflict that has hobbled one of the administration's top domestic priorities.

On Thursday, big utility operators and some state officials blasted the administration's formal announcement that it would drop plans for a federal nuclear-waste vault beneath Yucca Mountain, Nev., and instead consider what it believes are better options. On

Capitol Hill, a group of Democratic lawmakers introduced legislation to block the administration from using the Clean Air Act to regulate carbon-dioxide emissions. Meanwhile, Democratic lawmakers urged the administration not to use federal stimulus dollars to help finance a wind-energy project that involves a Chinese maker of wind turbines.

The actions add up to a significant challenge to Mr. Obama, who took office promising a fresh approach to energy policy that would promote jobs, slash greenhouse-gas emissions and put the U.S. in the forefront of new energy-technology development. More than a year into his presidency, Mr. Obama's policies are encountering resistance from big industries and members of his own party.

The Energy Department's move to formally drop its application for the Yucca Mountain waste site could hobble efforts to build more nuclear power plants—a strategy the Obama administration has promoted as a way to reduce U.S. greenhouse-gas emissions. Without a permanent solution to the waste-storage problem, several states, including California, won't let new nuclear plants be built.

Michael Morris, chief executive of American Electric Power Co., said on Thursday that "there has to be a reaction," because Yucca is the only site that's been vetted and deemed capable of storing waste from the nation's 104 operating power reactors. Speaking at a Wall Street Journal conference, he blasted the "idiocy of Yucca Mountain" being terminated as a repository and said the government will have wasted $10 billion on the project if it doesn't proceed.

Under federal law, Yucca is the designated site for the nation's spent nuclear fuel and high-level radioactive waste. But the repository is more than a decade behind schedule. As a result, the waste generally remains at the nuclear reactors and DOE sites where it was generated.

Original plans called for multiple repositories, to cut the distances waste would be transported. But Congress dropped sites in Washington state and Texas more than a decade ago, leaving Yucca Mountain the sole contender. This exclusive focus on Yucca assured nearly unanimous opposition from Nevada officials, including Senate Majority Leader Harry Reid, who has long challenged the safety and security of the site. Energy Secretary Steven Chu recently convened a blue-ribbon panel to study new options for managing nuclear waste.

The administration has said it believes there are better options than Yucca Mountain. It cites increased understanding of technical issues surrounding nuclear-waste disposal than was the case in the late 1980s. Critics accuse the administration of pandering to Mr. Reid. They also note that three months before Mr. Obama's election, Dr. Chu joined nine other scientists in co-signing a paper advocating Yucca's use.

Asked in a recent interview why he now favors terminating the repository, Dr. Chu laughed and said, "I have to work with the reality that I found myself in," then added that

"going forward, there are better solutions" than Yucca. Speaking to reporters Thursday on Capitol Hill, he said the administration is confident it has the legal authority to terminate it.

Also Thursday, the White House strategy to use the Environmental Protection Agency to regulate emissions of greenhouse gases came under attack from Democratic lawmakers from coal states. The lawmakers introduced legislation to suspend for two years the EPA's authority to regulate greenhouse-gas emissions from power plants and other sources. Although its prospects are murky, the bill underscored the difficulty Mr. Obama faces in persuading lawmakers to go along with his effort to put a price on carbon.

Sen. Jay Rockefeller (D., W.Va.) and Rep. Nick Rahall (D., W.Va.) offered the legislation as the EPA plans to finalize regulations governing automobile emissions this month. The agency has come under pressure over plans to eventually regulate greenhouse-gas emissions from large industrial facilities, such as power plants. "I am dead-set against the EPA's plowing ahead on its own with new regulations to limit greenhouse-gas emissions from coal-fired power plants," Mr. Rahall said.

The EPA has told senators who hold key votes that it wants to keep coal a part of the fuel mix. But mistrust has been building among lawmakers from coal states in the Appalachian region, where the EPA has held up dozens of mountaintop-removal mining permits, citing the need to protect water quality.

"Pre-empting the EPA has been the number one objective of the coal industry ever since Congress started to address climate and energy legislation," said Tim Wirth, the president of the United Nations Foundation.

The coal industry expressed support for the measures, but said it preferred a separate resolution offered by Sen. Lisa Murkowski (R., Alaska) that would overturn an EPA finding that greenhouse gases pose a danger to the public. That determination is the basis for the agency's regulatory initiatives.

On Thursday, the EPA said in a written statement that it is still reviewing Mr. Rockefeller's proposal. The agency said "it is important to note that Sen. Rockefeller's bill, unlike Sen. Murkowski's resolution, does not attempt to overturn or deny the scientific fact that unchecked greenhouse gas pollution threatens the well-being of the American people—nor would it threaten" the EPA's proposal to regulate greenhouse-gas emissions from vehicles.

Mr. Obama's aides said separately on Thursday that they had no intention of suspending a program under the economic-recovery legislation that awards grants to renewable-energy developers.

On Wednesday, a group of Senate Democrats led by New York's Charles Schumer called on the administration to suspend the program, saying they feared federal dollars

could be used to finance a proposed wind farm in Texas that involves a Chinese manufacturer of wind turbines. Administration officials said the concerns were premature.

—*Siobhan Hughes contributed to this article.*

**Write to** Rebecca Smith at rebecca.smith@wsj.com and Stephen Power at stephen.power@wsj.com

**Cemex USA and Ford receive EPA Energy Star recognition (*Control Engineering)***

Initiatives aimed at energy management and greenhouse gas emissions reduction garner Cemex and Ford EPA 2010 Energy Star awards.
By David Greenfield -- Control Engineering, March 4, 2010
The U.S. Environmental Protection Agency (EPA) has named Cemex USA a 2010 Energy Star Partner of the Year for outstanding energy management and reductions in greenhouse gas emissions. In related news, Ford Motor Company earned its fifth straight Energy Star Award for Sustained Excellence.
Cemex USA, an Energy Star partner since 2004, is receiving the Energy Star Partner of the Year award for strategic energy management and a commitment to save energy across its entire operation that has resulted in significant energy and financial savings. This is the second year that Cemex USA has been named Partner of the Year. In 2009, Cemex reduced its overall energy intensity by 2.2% as a result of its energy management program using Energy Star guidelines. More than 1.1 million MMBTUs were saved through such measures as commissioning two new cement lines using state-of-the-art vertical roller mills for finish grinding, replacing and repairing compressed air systems, and upgrading plant lighting. This energy savings resulted in cutting 107,500 metric tons of CO2 emissions and is equal to providing electricity to 14,900 American homes for one year, or avoiding emissions from about 19,700 passenger vehicles.

The energy management program at Cemex employs a corporate energy management team and a site energy team at each plant to deliver on the company's energy conservation and sustainable manufacturing practices. Cemex cement plants in Clinchfield, GA, Davenport, CA, Knoxville, TN, Louisville, KY, and Wampum, PA, have all received Energy Star certifications for their work to protect the environment through energy efficiency.

Ford's recognition results from the company's 2009 energy efficiency improvement of 4.6%, resulting in savings of approximately $15 million. Actions that have enabled Ford's energy efficiency gains include updated heating and lighting systems and advanced computer controls. The 2010 award marks the fifth consecutive year that Ford has been recognized with the EPA's Energy Star Award for its actions to reduce the amount of energy used to manufacture vehicles.

Since 2000, Ford's U.S. facilities have improved energy efficiency by more than 30%. That's equivalent to the annual energy consumed by more than 110,000 homes. Actions taken by Ford since 2000 that have contributed to its overall energy efficiency improvement include:

- using flexible tooling to assemble multiple vehicles on the same production line, which requires less manufacturing floor space and optimizes plant utilization;
- facility lighting system updates by replacing inefficient high-intensity discharge fixtures with up-to-date fluorescent lights and control systems;
- upgrading paint process systems, including booth air handling and improved emission controls;
- continued development of Ford's "Paint Shop of the Future" processes, including fumes-to-fuel that turns paint fumes into electricity, the 3-Wet painting process that significantly reduces the footprint and energy use of paint booths, and zirconium oxide pretreatment that uses less energy to inhibit surface corrosion;
- installation of advanced computer controls on all North American plant air compressors for paint shop applications and pneumatic tools;
- use of a PC power management program to improve global energy efficiency with an estimated reduction in the company's carbon footprint of between 16,000 and 25,000 metric tons annually;
- a "Go Green" dealership sustainability program to improve the energy efficiency of Ford and Lincoln Mercury dealerships;
- aggressively curtailing energy use during extended production shutdown periods;
- leveraging the Energy Star program through employee energy awareness communications and events, development of energy modeling and analysis tools, and replication of industry best practices; and
- updating heating systems at manufacturing facilities by replacing outmoded steam powerhouses with digitally controlled direct-fired natural gas air handler.

**DOE disputes senators' claims of stimulus grants flowing overseas (*Greenwire*)**

Katherine Ling, E&E reporter
03/04/2010
The Energy Department official overseeing DOE stimulus spending said today that suspending renewable energy grants as urged by Senate Democrats would hurt domestic job creation.
"Halting the program at this point would not be helpful for jobs," Matt Rogers, senior adviser to Energy Secretary Steven Chu, told the Senate Energy and Natural Resources Committee.
Sen. Charles Schumer (D-N.Y.) introduced legislation yesterday that would restrict grants to companies that rely on materials manufactured in the United States and create the bulk of jobs domestically (E&ENews PM, March 3).

Schumer cited a report by the Investigative Reporting Workshop at American University that states 79 percent of the $2 billion in renewable energy grants doled out from the stimulus went to foreign companies, as well as a controversial proposal by a U.S.-China joint venture to apply for $450 million in funding from the stimulus.

But Rogers called the American University report "at best, misleading" and "factually false." It may have kept track of locations of companies' headquarters but failed to identify the location of jobs created, which was in the United States.

If the stimulus funds are suspended, it creates uncertainty and so any projects going forward now will pause and any workers just hired "we will have to lay those people off," Rogers said.

Rogers said DOE has not even seen an application from the proposed China-U.S. joint venture highlighted in the report, which said the project would create hundreds of U.S. construction jobs but thousands of manufacturing jobs in China.

"Until we have a project application, we have nothing to evaluate," Rogers said.

The proposed U.S.-China venture would build a 648-megawatt wind farm in West Texas, generating enough power to light 135,000 homes. The venture is made up of China's Shenyang Power Group, Texas-based Cielo Wind Power and the U.S. Renewable Energy Group.

Rogers added that the United States has a manufacturing shortfall, which is why Congress should expand the $2.3 billion renewable energy manufacturing tax credit, which was oversubscribed 3 to 1.

"We need to manage our supply and demand together," Rogers said.

The U.S. stimulus incentives for manufacturing and development "have created the most attractive market for investment and job program in the world," he added.

## ENFORCEMENT

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### EPA Enforcement Chief Says Priorities Overhaul Offers Greater Focus (*Inside EPA*)

3/5/2010
EPA enforcement chief Cynthia Giles says the agency's decision to pare down its list of 15 proposed enforcement priorities to six "national enforcement initiatives," along with three overarching enforcement program "goals," is an intentional shift to better focus enforcement efforts through the goals for fiscal years 2011-2013.

Giles also said in an Feb. 25 interview with *Inside EPA* that the agency "never intended" to adopt all 15 proposals -- which would have almost doubled the eight enforcement priorities for FY08-10. The proposal prompted critics to say EPA risked diluting its enforcement focus for FY11-13 by taking on too many priorities.

In the interview, Giles said the new approach of setting enforcement goals and initiatives -- rather than the past approach of establishing enforcement priorities -- means the agency now has "an enforcement plan that addresses key [areas] in all our enforcement work." The agency Feb. 22 released its final enforcement goals and initiatives for FY11-13 after taking comment on 15 proposed enforcement priorities in January.

Giles said that EPA's decision to settle on six initiatives does not mean the other nine proposed target areas will not be a focus of strong enforcement efforts. "We want to make clear that whether something is or isn't [an enforcement initiative] doesn't mean enforcement attention isn't going to be focused" on it, she said.

Giles added that the "most important" document EPA put out this week is its enforcement goals, which she said are the agency's "statement of our priority areas" that is an "overarching document about where to focus" enforcement efforts. The three goals are: aggressive enforcement in equity communities, resetting the agency's relationship with states and improving transparency. The goals also highlight specific areas of enforcement focus such as clean water, clean air, climate, clean energy and protecting people from exposure to hazardous chemicals.

"One thing that is different from how enforcement goals have been established in past, is the most visible enforcement work [was chosen as priority areas]. What we are saying now is we have an enforcement plan that addresses key [areas] in all our enforcement work," Giles said. She added that EPA also plans to develop strategies to best address each of the sub-goal areas identified in the three main goals.

In addition to finalizing the three new goals, the agency's six national enforcement initiatives include: keeping raw sewage and contaminated stormwater out of our nation's waters; preventing animal waste from contaminating waters; cutting toxic air pollution; reducing widespread air pollution from the largest sources, especially coal-fired power plants and the cement, glass and acid manufacturing sectors; reducing pollution from mineral processing operations; and assuring energy extraction sector compliance with environmental laws.

Giles, who became assistant administrator of EPA's Office of Enforcement & Compliance Assurance (OECA) in June 2009, said the national initiatives "are one way, but not the only way, to go about trying to achieve some of these goals."

She added that the agency never planned to almost double the number of priorities, though it included 15 candidates in its January proposal of enforcement priority areas -- seven more than it had for FY08-10. Critics said the proposal to expand the list to 15

risked diluting efforts to best focus enforcement because EPA would be taking on too much.

Giles said, “We never intended [to] do all of the candidate initiatives suggested” in the proposal. “The list we put out was a candidate list . . . from which we always intended to be selecting some much smaller number.”

Additionally, Giles said the initiatives selected are the ones the agency decided work best from a national focus because they can be addressed through development of a coherent, unified strategy, such as reducing pollution from large sources. “But not every problem that’s highlighted here within the goals is well suited to that type of strategy,” and some are “better addressed through the overarching goals,” she added.

For example, Resource Conservation & Recovery Act enforcement, while not a new initiative, is “reflected in the goal of preventing hazardous releases,” she said.

The goal of assuring clean drinking water also does not lend itself to enforcement as the best and most efficient choice because many of the systems that are out of compliance are very small, Giles said. “So even though drinking water is not picked as a national enforcement initiative, it doesn’t mean it is not equally as important as some of the others that were selected.”

Further, Giles said while a proposed priority to focus on pesticide users and farmworker protection did not become a new initiative, the enforcement goals do include reducing exposure to pesticides, and the national program managers’ guidance, to be released in coming weeks, will also address the issue.

And while surface impoundments were also a suggested candidate, Giles said they are being addressed in the agency’s work on a Clean Water Action plan, which is “actively . . . trying to prioritize the high number of sources” under water act jurisdiction.

Giles added that the agency is directing civil and criminal enforcement efforts to focus on protecting vulnerable communities, a shift also articulated this week by OECA’s criminal division director Fred Burnside.

And she said OECA is trying to improve its state relations to better advance the new goals, given that the bulk of environmental protection work is done by states, while also recognizing that the agency retains federal oversight.

Further, she said the goal of improving transparency means OECA will seek to present information about facility and government performance “in a clear and accessible way,” while recognizing that the more information communities have about nearby facilities, “The more eyes and ears on the ground to push for better compliance performance. That is a valuable and useful tool in pushing to get better results.”

Giles added that the agency did not issue a formal response to the comments it received on its proposal but did conduct numerous meetings with environmental groups, environmental justice advocates and states to discuss reasons for or against certain approaches. -- *Dawn Reeves*

**EPA, California Drafting Regulatory Policies For Emerging Carbon Markets (*Inside EPA*)**

3/5/2010
California and EPA officials are working with other federal agencies to develop policies and regulatory recommendations for a broad state carbon-market oversight and enforcement program, which could be reflected in California's emerging climate cap-and-trade proposals and possibly in federal legislation and rules, sources say.

The effort is seen as a first of its kind among the varying federal and state agencies and underscores a strong desire by regulators to ensure consistency among emerging federal and state requirements to avoid the potential for market manipulation under varying greenhouse gas (GHG) cap-and-trade programs, according to sources.

California, as the nation's only state with a climate change law mandating GHG reductions, is leading the effort in establishing emissions-trading policies.

In addition to EPA, other federal agencies participating in the effort include the Securities & Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC) and Federal Energy Regulatory Commission (FERC). Also involved are the Northeast Regional Greenhouse Gas Initiative (RGGI), California Environmental Protection Agency (Cal/EPA), the California state attorney general's office, Duke University and the University of California-Berkeley Boalt School of Law, according to a source closely following the effort.

The group has met several times in person and held multiple conference calls since last June, the source says. The purpose of the effort is to "pool expertise on all the kinds of market oversight and enforcement issues," particularly regarding GHG auctions and secondary market trading, "How do you find manipulation, monitor for that, and how do you enforce it if it comes about?" the source says.

The group has drafted a series of recommended policy and regulatory provisions, some of which are expected to be reflected in a forthcoming California cap-and-trade program regulatory proposal, according to the source. The plan ensures that the state maintains a powerful set of enforcement tools to respond quickly to any fraud or manipulation, rather than giving federal agencies sole authority, according to the source.

"It's an interesting policy point -- the importance of state and federal regulatory authority," the source says. "We saw, for instance one of the issues during the California

electricity crisis [of 2000-01] was that the state didn't have any authority over electricity markets, because it had been preempted and FERC had sole authority."

FERC failed to carry out what California officials "thought were some obviously required market intervention" measures when the state was getting "scammed" by energy suppliers, the source says. "So if the state also had its own independent authority and enforcement power, then it could have provided a backstop to federal enforcement. So that's one idea going on here is that you want both federal enforcement and state enforcement authority. So this is a valuable opportunity to get both of those engaged and on the same page."

The group's recommendations are also being crafted in a way that the state provisions could be harmonized, or merged, with a future federal oversight and enforcement program for a national cap-and-trade scheme, the source says.

Eventually, the group's recommendations are likely to be cited by agency officials during congressional hearings on climate change legislation, especially because pending cap-and-trade legislation does not delve deeply into necessary details for market oversight and enforcement, the source says.

For example, the Waxman-Markey and Kerry-Boxer climate change legislation from last year "didn't answer all the questions, and even no matter how detailed a legislative proposal is, the regulations need to take on a further level of detail."

The multi-agency workgroup's proposals are also likely to emerge during forthcoming discussion regarding financial market oversight reform in general, which is expected to be addressed by Congress once a jobs bill is dealt with, the source says. By "front-loading" the oversight and enforcement proposals for GHG cap-and-trade programs, the group can "inform the financial reform package."

## FUEL

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### Ethanol Proponents Attack Study Criticizing EPA GHG Lifecycle Analysis (*Inside EPA*)

3/5/2010
A key industry proponent of ethanol is blasting a paper by Cornell University researchers that criticizes EPA's use of a "lifecycle" analysis for determining the greenhouse gas (GHG) benefits of ethanol, claiming there are flaws in such an approach's accounting for indirect land use changes.

Growth Energy CEO Tom Buis, in a Feb. 24 statement, says the Cornell study is flawed because it fails to take into account the benefits of domestically produced energy, among other issues.

“The Cornell paper is pretzel logic at its worst. The truth is that when we fuel up with domestic ethanol in the U.S., we need less gasoline refined from carbon-heavy oil. And the science on this is clear: a peer-reviewed study published by Yale University found that grain ethanol is 59 percent cleaner than gasoline -- with cellulosic ethanol 86 percent cleaner than gasoline,” Buis says, adding the findings would “have us . . . maintain the status quo -- keep our addiction to oil, no matter what the cost to our economy in lost jobs and money we send overseas, no matter what the cost to our environment, no matter what the cost to our national security.”

The EPA lifecycle analysis is crucial to setting national policy on the use of biofuels. The lifecycle was a key component of EPA’s proposed renewable fuels standard issued last year, but which was revised in its final form, released earlier this month, to promote the use biofuels.

The Cornell paper, “The Social Costs and Benefits of Biofuels: The Intersection of Environmental, Energy and Agricultural Policy,” was written by Harry de Gorter and David Just. It will be published in the March issue of the journal *Applied Economic Perspectives and Policy*.

According to the Cornell researchers, “We argue that the entire methodological debate surrounding [lifecycle analysis] is misplaced because sustainability standards for ethanol are illogical, ineffective, impossible to measure, inconsistent, illegal under the [World Trade Organization] and ignore more important issues,” the paper says.

The paper continues: “With public concerns over global climate change only recently heating up in the United States, the corn-ethanol lobby quickly seized upon the benefits of ethanol in reducing GHG emissions. But this strategy backfired because [lifecycle analysis] is inherently flawed, which is first highlighted in the Searchinger et al. (2008) study showing that U.S. corn-ethanol emits more GHGs relative to gasoline if changes in the use of land (e.g., converting forest into crop land), called indirect land use change, are taken into consideration.”

## GRANTS

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### EPA awards Bellingham with presitigious grant (*Western Front*)

by Jen Sawyer

Friday, March 05, 2010

The City of Bellingham was awarded a $350,000 federal grant from the Environmental Protection Agency on March 1 for a project aimed to reduce carbon emissions by minimizing energy use.

Bellingham was one of the first cities awarded with the grant—chosen as one out of 25 to be given money from 450 applicants. Bellingham and Bremerton are the only cities representing Washington in the nationwide program.

The money was given to the city through the EPA's Climate Showcase Communities program.

"[Climate Showcase Communities] is a program that the EPA created to give a little bit of funding to cities around the country in reducing the pollution that is changing the climate," said

Alex Ramel, energy and policy manager of Bellingham-based Sustainable Connections. "The idea is to advance those programs so they can serve as leaders to other communities in the nation."

The recent grant from the EPA will specifically be used toward education and outreach programs for the countywide Community Energy Challenge project.

The Community Energy Challenge is a collaborative project with Puget Sound Energy and the nonprofit organizations Sustainable Connections, RE Sources for Sustainable Communities and the Opportunity Council.

Ramel said the education and outreach will encompass several different types of media. He plans to use traditional print advertising, materials in utility bills and banners with community goals to track progress. These are expected to be seen around Whatcom County as early as this spring.

"The overarching goal is to make Whatcom County energy efficient," Ramel said.

The challenge expects a significant and measurable reduction in energy use and carbon emissions from businesses, schools and homes across the county. It will also create living wage "green collar" jobs utilizing local contractors, according to Bellingham officials.

By 2012 the challenge will reduce carbon emissions equivalent to taking 1,378 passenger cars from the road, with the goal of leaving efficiency improvements.

Funds for the challenge have come from several different state and federal grants, as well as money from the city's stimulus package.

An additional grant of $500,000 from a state energy program will soon be added to the

financial support for the challenge project, said Tara Sundin, special projects manager for planning and community development.

Sundin said contracts are still being finalized for this upcoming grant.

All funding is placed toward implementing different initiatives and incentives created for those who participate in the Community Energy Challenge.

Ramel said some rebates include receiving a coupon for purchasing a compact fluorescent lightbulb and getting an appliance rebate check for installing an energy efficient appliance.

“The incentives were made to inspire multiple energy efficiency methods helping people qualify for more of a bonus back,” Ramel said.

Participation from the same core partners in a 2006-2007 community-wide campaign called the Green Power Community Challenge resulted in Bellingham becoming the EPA’s number one Green Power Community in the nation.

This previous recognition and experience in energy efficiency helped Bellingham receive the current grant money, Ramel said.

Western students helped initiate the Green Power Fee that is currently in place. The fee helps Western purchase 100 percent green power.

Ramel said the students’ involvement with the Green Power Fee and the Green Power Community Challenge helped put Bellingham at the top of the nation in terms of green communities.

“The student leadership at Western was partially responsible for Bellingham receiving this current recognition and award,” Ramel said. “Western students have another opportunity to help the community with this goal of being a nationally recognized efficient community.”

**Audit outlines difficulties in tracking stimulus grants (*Greenwire*)**

Sara Goodman, E&E reporter
03/04/2010
U.S. EPA faces challenges in ensuring that the stimulus cash it sends to states is not wasted, the agency's inspector general said in a report released yesterday.

"If EPA does not assign sufficient staff to oversight, the agency increases the risk of fraud, waste and abuse of federal funds," Melissa Heist, an assistant inspector general, told a House committee last year.

Given the collaboration between EPA and states, the report says the inspector general has been devoting much of its oversight efforts to training state and local officials, contractors and grant recipients to prevent fraud.

The inspector general received $20 million in stimulus funds to oversee and review EPA's grants and has focused on ensuring that funds are awarded quickly and fairly and reported properly. Auditors are also examining whether programs are meeting goals without delays or cost overruns.

So far, the inspector general has spent more than $3 million on stimulus oversight and completed seven audits and evaluation reports, with another 20 in the works.

So far, the office has received 32 complaints of fraud or abuse of funds and has begun 11 investigations.

The inspector general also has several ongoing audits of EPA funding, including how states are overseeing projects related to water projects. It is also reviewing EPA's Superfund efforts to ensure cleanup objectives are met.

More than half of the total stimulus funding given to EPA -- $4 billion -- went to the Clean Water State Revolving Fund, while the drinking water fund received $2 billion. That money has all been awarded by states, the report says.

The inspector general had warned EPA last December that it must help states spend stimulus cash on drinking water projects since states face contracting delays, their own budget cuts and difficulty understanding stimulus rules (*E&ENews PM*, Dec. 17, 2009).

EPA has also awarded the full $600 million allocated for speeding up cleanups at Superfund sites, spurring construction at 33 projects. The inspector general wants to know whether EPA is meeting its cost-control plan for these cleanups.

EPA did not respond to requests for comment on the inspector general's findings.

## HAZARDOUS WASTES

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### Administration to end Yucca Mt. nuclear waste repository (*Waste & Recycling News*)

March 4 -- The Obama Administration has formally moved to end the national nuclear waste repository at Yucca Mountain.
The U.S. Department of Energy filed a motion with prejudice Wednesday with the Nuclear Regulatory Commission to withdrawn license applications for the high-level nuclear waste storage facility.
"President Obama is fully committed to ensuring that the Nation meets our long-term storage obligations for nuclear waste," said Department of Energy General Counsel Scott Blake Harris. "In light of the decision not to proceed with the Yucca Mountain nuclear waste repository, the president directed Secretary [Dr. Steven] Chu to establish the Blue Ribbon Commission on America´s Nuclear Future to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle and to provide recommendations for developing a safe, long-term solution to managing the Nation´s used nuclear fuel and nuclear waste."

In its filing with the NRC, the Department of Energy states it no longer feels the underground storage of the waste is viable, and states it "does not intend to ever refile an application to construct a permanent geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain."

Contact Waste & Recycling News reporter Amanda Smith-Teutsch at 330-865-6166 or asmith-teutsch@crain.com

**Blizzards Drive Airlines' Push To Kill EPA Limits On 'Deicing' Runoff (*Inside EPA*)**

3/5/2010
Citing their experiences with the recent record-setting snow storms on the East Coast, airline industry officials are warning that EPA's proposed rule setting discharge limits on airline deicing operations could pose safety concerns by restricting the use of deicing fluids and are calling on EPA to withdraw the proposal and start over.

Industry and local governments also charge the rule's requirements are too costly, especially for airports where space is limited, and that EPA did not estimate the cost of flight delays in proposing its rule.

"The proposed rule needs such extensive and fundamental input from [the Federal Aviation Administration (FAA)] that reproposal or publication of a notice of data availability (NODA) subject to public comment will be required," the Air Transport Association (ATA), the largest trade association for the sector, said in Feb. 26 comments on the proposal. *Relevant documents are available on InsideEPA.com.* See page 2 for details.

An EPA spokeswoman says safety is the "primary concern" of the agency. "This has been an open and transparent process from the very beginning. We consulted with FAA

and worked with industry on the proposal. We are going through public comments as we move forward in finalizing this rule."

EPA has said in the past that FAA -- which regulates deicing operations from a safety perspective -- was on board with the proposed rule, though one FAA source told *Inside EPA* last year that he had safety concerns about the rule.

EPA's proposed Airport Deicing Effluent Guidelines (ELG) rule seeks to limit discharges of deicing fluids that industry uses to remove and prevent ice buildup on aircraft wings to ensure safe takeoffs. But the fluid, which includes chemicals such as potassium acetate, runs off airport runways into local waterbodies, harming water quality.

The proposed rule generally requires large airports to collect 60 percent of the deicing fluid they use on planes and runway pavement and either treat the fluid or reuse it to deice other planes.

But pilots, airlines and airport officials are citing a range of provisions in the proposal that they charge impinge on airports' ability to properly deice planes, especially in the wake of the recent storms that shuttered major airports in the Mid-Atlantic and Northeast, including major hubs in Philadelphia, Washington, DC, and elsewhere.

Continental Airlines, which faced significant delays at its hub at Newark International Airport in New Jersey during snow storms last December, told the agency in Feb. 26 comments that EPA's proposed ELG is unnecessary. "As can be seen from the described actual winter weather event from December 2009, there are significant operational delays affecting thousands of passengers," the airline's comments say, noting that storm events had, in some cases, resulted in 45 percent of its scheduled flights from Newark being canceled, stranding 11,000 passengers.

"Continental will continue to work with the EPA on these issues, but does not believe that the proposed ELG regulations adequately allow feasible emergency actions taken to protect Continental's response to weather related to public safety in winter weather events and believes that existing federal and state storm water regulations adequately address aircraft deicing operations," the comments say.

One East Coast airport official says the recent blizzards illustrated the inadequacies of EPA's proposal, especially a provision that sets a 25-gallon limit on the amount of deicing fluid that can be applied to a plane for taxiing purposes. "You don't want a couple of feet of snow on the planes when they are taxiing. If you have got a DC-10 sitting there with quite a bit of snow on it, 25 gallons [of deicing fluid that EPA allows for taxiing aircraft] isn't even going to come close to cutting it," the source says.

The source also says that snow events can render useless technologies EPA is requiring to capture the deicing fluid because the fluid instead ends up embedded in snow that is plowed away.

The source suggests EPA add a “force majeure” clause to provide flexibility in similarly extreme circumstances.

The Air Line Pilots Association raises similar concerns in its Feb. 26 comments, saying it is “troubled” the proposed rule “does not take into full consideration the potential operational and safety considerations associated with deicing an aircraft and preparing it for flight.”

The pilots association says EPA acknowledges that under FAA regulations, pilots are “ultimately responsible” for ensuring their planes have been fully deiced, which is in “direct conflict” with a mandated volume limits EPA is proposing. “If the pilot-in-command does determine that additional [deicing fluid] is required, in excess of the allotted 25-gallons, will ground personnel be authorized to apply the requested additional fluid without penalty or a violation being levied against the airport or airline?” the pilots ask.

In its comments, ATA says EPA did not properly consider safety in it provisions regarding deicing pads, which are special platforms for deicing designed to collect the fluid. ATA says FAA regulations govern airport design for safety purposes and that EPA admits in the rule it did not have sufficient data to determine whether its requirements would force design changes violating those FAA safety rules.

“EPA . . . does not attempt to consider these safety imperatives and openly acknowledges that it did not gather sufficient information to evaluate these and other safety imperatives,” ATA says.

Another safety concern raised by the industry groups is whether vehicles that roll up alongside planes and suck up deicing fluids before they trickle off runways would increase vehicle traffic on runways, potentially leading to collissions.

ATA says EPA should conduct a safety analysis for increased use of the recovery vehicles.

Besides the safety groups, the industry groups say EPA did not properly estimate costs and whether the technology would be “available” to airports to implement.

EPA, “even if one accepts its rationales for its metrics and formulas (which we do not) -- fails to apply the metrics and formulas correctly, leading it to underestimate capital costs by over a billion dollars and annual costs by nearly $90 million,” ATA says in the comments.

The group also takes issue with the agency’s method of analyzing whether airports have space for new deicing collection facilities by viewing maps of the airports on Google Earth.

“EPA conducted the Land Availability Analysis by taking overhead images from Google Earth and drawing boxes on them to approximate potential deicing pads. This method for determining land availability is completely inaccurate and not suitable for even a rough approximation of land availability. A review of the Google Earth images in the Land Availability Analysis demonstrates that the proposed deicing pad locations are unrealistic as they cover parking lots, maintenance hangars, and large aircraft movement areas,” ATA says.

EPA in documents supporting its proposal says use of Google Earth provided a “gross” estimate.

**High Court Review Sought For Cleanup Liability Bankruptcy Protections (*Inside EPA*)**

3/5/2010
The Apex Oil Company is asking the Supreme Court to review an appellate court ruling holding that bankruptcy is not necessarily a defense against cleanup liability, arguing the decision conflicts with the precedent of the Supreme Court and other appellate courts and that it significantly erodes protections under bankruptcy law.

At issue is the U.S. Court of Appeals for the 7th Circuit’s Aug. 25 decision in the case *United States v. Apex Oil Company*, in which the appellate court ruled Apex could not use its bankruptcy as a defense against its cleanup liability at a site in Hartford, IL, where “millions of gallons of oil . . . are contaminating groundwater and emitting fumes that rise to the surface and enter houses in Hartford and in both respects [are] creating hazards to health and the environment.” Agreeing with a lower court ruling, the 7th Circuit found the company has “legal responsibility to abate this nuisance because the plume was created by an oil refiner owned by a corporate predecessor of Apex.”

The ruling was a win for several other oil companies that sided with the federal government and were concerned that the portion of the cleanup liability for which they are liable at the Hartford sites and at other sites around the country would increase if companies like Apex are allowed to use bankruptcy as a defense to get out of their share of the liability.

Apex, however, in its petition for *cert* argues the decision “conflicts with an uninterrupted line” of Supreme Court precedent on the issues in the case, reiterating the claim it made in its unsuccessful petition for rehearing before the 7th Circuit that the ruling conflicts with the high court’s 1985 ruling in *Kovacs v. Ohio* and the 6th Circuit’s 1988 ruling in *United States v. Whizco Inc*.

The basic issue addressed in the three cases is whether liability to clean up a contaminated site is “discharged” in bankruptcy where, prior to the conclusion of the

bankruptcy proceedings, the debtor is “disposed” of ownership and control of the site, Apex’s petition for rehearing noted.

In its August ruling, the 7th Circuit held that only monetary liability could be discharged during bankruptcy proceedings, and that under the Resource Conservation & Recovery Act (RCRA) -- which is the basis of the government’s claim -- the government cannot pursue monetary payments. RCRA only authorizes the government to seek claims for injunctive relief under which the company is ordered to conduct the cleanup rather than pay the government to do it, the court ruled, and such claims cannot be discharged during bankruptcy proceedings, the 7th Circuit found.

In its *cert* petition, Apex argues, however, that the 7th Circuit ruling conflicts with the high court’s decision in *Kovacs*, which “holds that an environmental clean-up order -- indistinguishable from the order in this case -- is a claim subject to payment and discharge in bankruptcy.” *Relevant documents are available on InsideEPA.com.* See page 2 for details.

In addition, “as the Seventh Circuit acknowledged, [its] ruling . . . squarely conflicts with the precedent of the Sixth Circuit, which reads both the Bankrupcy Code and [the Supreme] Court’s precedents to provide that the term ‘claim’ encompasses the debtor’s obligation to clean up environmental pollution that (as in this case) can only be satisfied by the debtor’s expenditure of money,” Apex says in its *cert* petition.

“There is in fact a three-way circuit conflict, which only [the Supreme] Court can resolve because it arises from irreconcilable readings of [the Supreme] Court’s ruling in *Kovacs*,” Apex adds. “That conflict cries out for resolution, given the manifest importance of the question presented. The issue recurs frequently and is essential to determining whether the government asserts environmental clean-up liabilities in bankruptcy, the mechanism by which corporations with potential environmental liabilities reorganize or liquidate, and the resulting allocation of their assets to fund clean-up efforts.”

Apex claims that, if allowed to stand, the 7th Circuit’s ruling “will ironically push corporations into liquidations, in which none of the debtors’ assets will be allocated to finance environmental clean-up orders because they are not ‘claims.’”

Other lawyers familiar with the ruling claim it could dramatically weaken previously understood protections for industry under bankruptcy law, lawyers following the issue say. For example, Adam Orford, of the Marten Law Group, said in an Oct. 29 analysis that the “decision significantly weakens the ‘fresh start’ afforded by the Bankruptcy Code.”

Orford said companies “that have emerged from bankruptcy should reassess their risk of future environmental liability from pre-bankruptcy activities, and may expect EPA, states and other [potentially responsible parties] to use the precedent to more

aggressively pursue their participation in cleanup activities going forward in light of the ruling."

However, Orford notes the impact of the ruling is for now technically limited to the 7th Circuit, and companies therefore still have some potential legal defenses to it being used against them. "Unless and until the Supreme Court resolves the issue (it has declined to do so once in the past) debtors may point to the [6th] Circuit precedent relied upon (albeit unsuccessfully) by Apex," Orford said.

**Salt domes better than Yucca for long-term storage -- Chu (*Greenwire*)**

Mike Soraghan, E&E reporter
03/04/2010
Under fire from lawmakers for abandoning an effort to develop a nuclear-waste dump at Yucca Mountain, Nev., Energy Secretary Steven Chu told Senate appropriators today that salt domes might make better long-term storage sites.

The domes, Chu said, "have been stable for tens of millions, hundreds of millions of years."

"People ask, 'Why were these sites excluded in the first place?" from consideration as possible storage sites, he said.

Yucca Mountain, he said, has fissures and could be saturated with water if the climate shifts in the distant future.

"So you say we could maybe add a titanium shield," Chu said. "Then you wonder if you're throwing good money after bad."

Chu faced hostile questioning from Sen. Patty Murray (D-Wash.), who had harsh words for the Obama administration's decision on Yucca. She said the decision to pull the plug on Yucca could slow the progress of the cleanup at the Hanford nuclear site in Washington state and other former nuclear weapons sites.

"I think it's irresponsible for DOE to abandon completely the Yucca site," Murray said. "These sites and the communities that support them have been left in limbo."

Murray also asked Chu for an "impact statement" about how shuttering Yucca will affect nuclear cleanups around the country.

Yesterday, the Energy Department filed its motion to withdraw the license at the Nuclear Regulatory Commission for the spent nuclear waste repository at Yucca (*E&ENews PM*, March 3).

Chu reiterated today the administration's plan to convene a commission to review and recommend policies to manage U.S. nuclear waste, and he stressed such a move would not affect future nuclear energy expansion in the United States. Murray said the panels should not have excluded restarting Yucca as an option.

Murray also questioned whether the basis for shutting down the facility was based on science or politics. Chu did not pinpoint a specific scientific study that recommended shutting down the site, but he cited the 25 years of experience working at Yucca as the basis for the decision.

At a hearing last week, John Holdren, director of the White House Office of Science and Technology Policy, told the House Science Committee that the years of experience at Yucca had not been wasted as they led to a better understanding of the characteristics of nuclear waste and the changes necessary to best store it.

**Utah facility could contain banned materials -- report (*Greenwire*)**

03/04/2010
Nuclear waste disposed of by the U.S. Department of Energy in the Utah desert likely contains material that is banned under state law, according to a new report.

The report, commissioned by the Healthy Environment Alliance of Utah, says the depleted uranium dumped since 2003 at an EnergySolutions Inc. facility in Utah could contain radionuclide technetium-99, which violates state standards. The material is a man-made product resulting from the production of plutonium for nuclear weapons. Utah law only allows for certain levels of the material to be discarded in the state.

More than 10,000 drums from a nuclear weapons complex near Aiken, S.C., have been put in Utah. Others have gone to the Nevada Test Site, about 65 miles north of Las Vegas. More than 5,000 drums from the Savannah River Site in Aiken are in Utah to be disposed, with an additional 10,000 more drums slated for disposal.

A DOE spokeswoman said the agency is confident it has not broken any state laws. HEAL Utah says the state and DOE need to stop additional disposals to head off depleted uranium. State officials have started sampling some of the waste awaiting disposal, with test results expected in several weeks (Brock Vergakis, Associated Press, March 3).

**Mich. running low on funds to clean up abandoned sites (*Greenwire*)**

03/04/2010

Michigan's orphan sites -- contaminated industrial properties with no private ownership liable for cleanup -- may not be dealt with because state funds for cleanup are drying up.

The economic collapse and industry flight from Detroit have left more than 4,000 contaminated sites, and that number is growing while resources dry up. Addressing all of the sites with cleanup, remediation and long-term monitoring would cost at least $10 billion.

The funds are currently being drawn from Part 201, a program set up in association with the Natural Resources and Environmental Protection Act. Michigan residents have put more than $1.3 billion in the program through bond issues, the most recent coming in 1998. However, funds from those bonds will end this year, and no future funding is in sight.

Among the sites are abandoned auto plants and mines, which can leak pollutants including asbestos, chromium nickel, chlorides, tetrachloroethylene and PCBs into the surrounding air and land. The debris can pose a health risk for residents and visitors, according to state assessments. The chemicals have also contaminated some drinking water.

The blights have also hurt real estate in the city, as developers report difficulties building up areas near orphan sites. Many are surrounded by boarded-up houses, and entire neighborhoods have been stigmatized by the reputation as an unsafe place to live (Jim Lynch, *Detroit News*, March 4). **-- JP**

**PESTICIDES**

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

**Grain fine (Kansas City Star)**

Bartlett Grain Co. of Kansas City has agreed to pay a $14,560 fine for selling pesticides that were improperly labeled.

The settlement with the Environmental Protection Agency involved four pesticides sold at Bartlett's Waverly, Mo., facility without the necessary authorizations. The agency said the company has since complied with the regulations.

"We take our responsibilities seriously and try to do things properly," said Chip Buckner, the company's corporate counsel.

**Marrone Bio Innovations seeks EPA approval for pesticides (*MSN Money*)**

March 4, 2010 5:27 PM ET
Melanie Turner
Marrone Bio Innovations has submitted two new agricultural biopesticides to the U.S. Environmental Protection Agency for review and possible approval.

Approval typically takes about 16 months and is expected in 2011, said Keith Pitts, vice president for regulatory affairs for Marrone Bio Innovations.

The first submission is a bioinsecticide that affects both sucking and chewing insects. The source of the product is a licensed bacterium discovered in the lab of microbiologist Phyllis Martin at the U.S. Department of Agriculture's Agriculture Research Service.

Developed over two years as a commercial product in Davis at Marrone, it "shows excellent activity" on whitefly, spider mite, diamondback moth, cabbage looper, tobacco budworm and Lygus bugs.

The second submission is a new bioherbicide that's based on a lead obtained from a marine microbe originally discovered by and licensed from DuPont Crop Protection. Markets opportunities for the product include those in rice, turf, wheat and other cereal crops.

"On both of these new products, time lines were very aggressive from petri plate to EPA submissions and commercial products," Marja Koivunen, Marrone Bio Innovation's vice president of research said, in a news release.

**POLITICAL**

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**High-level talks on fish fillets at an international flash point (*Washington Post*)**

By Al Kamen

Secretary of State Hillary Rodham Clinton told a congressional hearing Feb. 25 that she would try to resolve a trade problem that has blocked shipment of nine huge containers -- that's nearly 400,000 pounds -- of frozen Asian carp fillets from entering Israel. Carp is an essential ingredient in gefilte fish, traditionally eaten during the Passover holiday, which begins March 29.

Although there was much laughter at the hearing over the Gefilte Fish Crisis of 2010, it's

no joke to Schafer Fisheries of Thomson, Ill. It is "the only company in the world supplying the Asian carp for gefilte fish," Rep. Donald Manzullo (R-Ill.) wrote in a letter to the Israeli ambassador here. And there is no Israeli supplier.

(Wait a minute? Thomson, Ill.? Where the Obama administration wants to send the Guantanamo detainees? So now Thomson has become the epicenter of the administration's foreign policy?)

Anyway, Israel slapped a 120 percent tariff on the fish, stranding two containers there -- worth $100,000 -- and seven others in cold storage in this country. The company says it laid off nine of its 43 Illinois workers and cut more than 30 workers' hours in half. The trade glitch with Israel, Schafer's biggest customer, also caused it to lay off 34 workers in Wisconsin and Iowa, the company said.

A day after the hearing, Clinton raised the issue publicly at the highest levels, with none other than Israeli Defense Minister Ehud Barak, in a discussion before their formal meeting. By late yesterday, there were hints that the two containers in Haifa might get in, but no other movement.

If it's this hard to get action on carp, think how hard the Israeli-Palestinian negotiations must be.

And why is this fish different from all other fish?

Too much information

Speaking of the State Department, the inspector general's report on the agency's public affairs operation found serious problems with morale, staffing, communication and leadership in the 175-person bureau. Some components -- for example, the "dysfunctional" Agency for International Development office -- have too many vacancies, the report said.

On the other hand, the public diplomacy office seems to be somewhat overstaffed. One employee, the report found, works about 90 minutes a day. Another "employee cited a three-page memorandum that the office director issued to all staff on the proper use of the office coffee pot," according to the report, first obtained by the Associated Press's Matt Lee.

Assistant Secretary P.J. Crowley was dinged for failure to communicate "his strategic vision" to all hands and for "inadequate oversight." Key deputy Philippe Reines, who worked for Hillary Clinton in the Senate, in the campaign and now at Foggy Bottom, "has important access" to her "but needs to communicate information transparently to" Crowley and others in key positions.

What! You want more communication? Be careful what you wish for. So now, on Clinton's five-country swing through Latin America, Reines is in constant, breathless

twitter mode, communicating important information -- about his and her every move and thought.

Transparency? He's sending out scores of photos (http://www.flickr.com/photos/statephotos) -- they appear to be from an iPhone -- on Clinton's meetings, landings, arrivals, events, the plane itself and things important to us all, including a photo of his place card at one meeting and another of the cookies he was having for breakfast.

Shhh. What's that whirring sound? Ah, yes. The legendary Secretary of State George C. Marshall spinning in his grave at Arlington.

Precision paperwork

The Missile Defense Agency, lately in the news over strange allegations about a logo on recruiting materials, pays meticulous attention to detail.

Take, for example, this recent e-mail detailing the appropriate way to send documents to the MDA director, Lt. Gen. Patrick J. O'Reilly.

Subject: Tabbing and Assembling of Correspondence

Ladies and Gentlemen,

The below information is new guidance when tabbing and assembling correspondence to the Director.

-- Ensure the Director's original mark-up correspondence is returned on all packages; and placed on the left-side of the folder, on top of the SSS. [Staff Summary Sheet, which tells the director what he's looking at.]

-- Highlight the Director's edits/changes in yellow; then tab the sections that are being corrected with a yellow sticky at the edge of the paper; this will allow the Director to better focus on the areas of the document he wants changed.

-- If a document requires additional coordination on the package after the Director has identified his edits/corrections; those additional coordination's should be high-lighted in pink with a separate Tab.

-- The SSS will reflect all Tabs within a package.

And remember, do not use black binder clips.

'Outta There' deadline looms

Remember, Wednesday midnight is the deadline for the Loop "Outta There" contest.

Just pick the Cabinet member or top official who will bolt or be pushed first. Included in the pool are Chief of Staff Rahm Emanuel, **EPA** Administrator Lisa P. Jackson, OMB Director Peter Orszag, U.S. Trade Rep Ron Kirk, Ambassador to the United Nations Susan E. Rice and economic adviser Christina D. Romer.

Also included: national security adviser James L. Jones, National Intelligence Director Dennis C. Blair, CIA Director Leon Panetta, press secretary Robert Gibbs, economic adviser Lawrence H. Summers, health reform chief Nancy-Ann DeParle, **climate change** czar Carol M. Browner and advisers David Axelrod, Valerie Jarrett and Pete Rouse.

Send your entry to outtathere@washpost.com or In the Loop, The Washington Post, 1150 15th St. NW, Washington, D.C. 20071. You must include a phone number -- work, home or cell.

**SUPERFUND**

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**Residents get little good news on Dewey Loeffel dump site pollution (*Albany Times Union*)**

By BOB GARDINIER, Staff writer
Click byline for more stories by writer.
Last updated: 12:03 a.m., Friday, March 5, 2010

NASSAU -- A large crowd of town residents were told by federal officials Thursday that even if the area polluted by the Dewey Loeffel toxic landfill gets on the EPA Superfund list it could be years before any action is taken.

"Everyone should understand that it is a slow process," said Mel Hauptman, an Environmental Protection Agency official. "This area is polluted enough it could be still on the list in a 100 years when we are all long gone."

Scores of residents packed the VFW hall on Lyons Lake Road where federal officials provided information and answered questions regarding the nomination of the site for placement on the Superfund National Priorities list.

The 57-year-old Dewey Loeffel toxic dump site off Mead Road has polluted the Valatie Kill and Nassau Lake where PCBs and volatile organic compounds have been found at dangerous levels in soils and fish.The 16-acre site has been monitored by DEC since 1979. The dump operated legally from 1952 to 1970 and contains 46,000 tons of toxic waste dumped there by General Electric and other companies. One of the most dangerous chemical that leaked from the dump is polychlorinated biphenyls (PCBs), oily substances mostly used in transformers and capacitors. PCBs, considered a probable human carcinogens, were banned in the 1970s due to their high toxicity.

Some residents, clearly frustrated by years of reports of pollutants continually seeping from the site and contaminating the creek, the small man-made lake and area wells, asked what the federal government can do to clean up the site that the state could not.

"We can put more pressure legally on the companies who dumped there to get them to pay for remediation efforts," Hauptman said.

Residents got even worse news from Michael W. Kane, DEC fish specialist.

Kane said that PCB levels in fish in the creek and the lake dropped off after sections of the creek were dredged in 2006 but scientists have not found a trend that the contamination overall is falling off.

Minnows, eels, trout and other fish tested showed in some cases 100 times more PCB contamination than fish in a reference site that is not polluted.

"I would not get very excited about these numbers," Kane said. "These are horrible numbers and the white perch still contain very high levels of PCBs and we dont really know why. We are not really seeing a downward trend."

The state Health Department still has a ban on eating any fish taken from the creek and the lake, Kane said. A 60-day public comment period began this week on the

federal Superfund nomination.
For more information and to submit a comment visit
http://www.epa.gov/superfund/sites/npl/pubcom.htm or call (212) 637-4344.

Posted on Fri, Mar. 05, 2010

**Chemetco plant on EPA's list Hartford site is added to Superfund (*Belleville News Democrat*)**

BY WILL BUSS
News-Democrat
The U.S. Environmental Protection Agency has added the former Chemetco plant to its Superfund list.
The agency announced Thursday that it was adding the 41-acre copper-smelting site -- located on 230 acres across Illinois 3 from the Lewis and Clark State Historic Site -- to the U.S. EPA's Superfund National Priorities List.

Illinois EPA spokeswoman Maggie Carson said adding this site, which Chemetco operated from 1969 until the company's bankruptcy in 2001, to the list now officially makes it one of "the worst of the worst" in terms of contamination. She said the site has been documented as having contaminated a nearby wetland, known as Long Lake and located just south of the plant, with elevated levels of copper, cadmium, lead and zinc. The company was ordered to pay $3.86 million in fines and to pay for the cleanup, and its executives pleaded guilty to criminal charges.

Carson said the clean up process will include technical requirements, community outreach and community involvement requirements. She also said the process of cleaning up the shuttered plant will take some time and could not estimate a time frame for the cleanup. It will not be a quick job, she said.

"Being a federal thing and with some situations in this state compared to huge mine sites out west, an average (time frame) would be skewed by that," Carson said. "Many years is not an overstatement."

She also said the site poses no threat of further contamination to the surrounding community.

"It's a sealed site with restricted access," she said. "Contaminants are contained on site. It is not so much affecting neighboring properties."

Contact reporter Will Buss at wbuss@bnd.com or 239-2526.

**EPA Takes Charge of Ten More Toxic Superfund Sites (*Environment News Service*)**

WASHINGTON, DC, March 3, 2010 (ENS) - The U.S. Environmental Protection Agency is adding 10 new hazardous waste sites that pose risks to human health and the environment to the National Priorities List of Superfund sites. The listings makes these sites eligible to receive federal funds for long-term cleanup while the EPA seeks to recover costs from the responsible parties.

In addition to the final sites added on Tuesday, the EPA also is proposing to add eight sites to the list. The list covers priority sites that the EPA investigates to determine if actions are needed to clean up the waste.

Superfund is the federal program that cleans up the most complex, uncontrolled or abandoned hazardous waste sites in the country - protecting the health of nearby communities and ecosystems from harmful contaminants.

Currently, there are 1,279 sites on the National Priorities List, including the 10 new sites.

With the proposal of the eight new sites, there are 61 proposed sites awaiting final agency action, for a total of 1,340 final and proposed Superfund sites.

Contaminants found at these sites found include arsenic, benzene, chromium, copper, creosote, cyanide, dichloroethene, lead, mercury, perchloroethene, polychlorinated biphenyls and selenium, among others. These toxics produce a wide range of adverse health effects in humans and wildlife.

These 10 sites have been added to the National Priorities List:

1. Salt Chuck Mine in Outer Ketchikan County, Alaska: The Salt Chuck Mine is an inactive former gold, silver and copper mine on Prince of Wales Island in the Tongass National Forest at the northern end of Kasaan Bay. The Kasaan Tribe of several hundred people uses the bay as a commercial and subsistence fishery and shell fishery. Heavy metals from tailings both in the upland and in the bay are impacting water quality and sediments in the bay and Lake Ellen Creek which drains into the bay, affecting the salmon and shellfish.

2. JJ Seifert Machine in Ruskin, Florida: The company has operated at the site since 1962, manufacturing electronic components, tools, dies, jigs and fixtures. A paint shed, a drum storage area, and a plating operation formerly existed at the site. The primary source of contamination in the ground water is a former

tetrachloroethene vapor degreaser used to clean parts. There are 28 private and community drinking water wells within a one-quarter mile radius of the site. In the latest well sampling conducted in August 2008 volatile organic compounds above EPA safe limits were found in 12 residential wells.

3. Kerr-McGee Chemical Corp in Jacksonville, Florida: This site covers 31 acres located along the western shoreline of the St. Johns River in downtown Jacksonville. From 1893 to 1978, Kerr-McGee Chemical Corp operated as a fertilizer and pesticide formulating, packaging, and distributing facility. The site is currently vacant and undeveloped. Site investigations showed volatile organic compounds, semi-volatile organic compounds, pesticides, polychlorinated biphenyls, and metals at concentrations exceeding EPA cleanup target levels in the soils, ground water, and sediments. Offsite migration of contaminants has adversely impacted St. Johns River water quality.

4. Kerr-McGee Chemical Corp in Navassa, North Carolina: The 300-acre site was used as a creosote-based wood treating facility from the mid-1930s until 1974, generating wastewater which was discharged into ponds on site. Kerr-McGee dismantled the site in 1980. The wastewater ponds were emptied and the remaining sludge was mixed with clean soil and seeded. Polynuclear aromatic hydrocarbons have been detected in soil and ground water on site and in the sediments of the marsh adjacent to the site.

5. Chemetco in Madison County, Illinois: Chemetco was a former secondary copper smelter operation which operated from 1969 to 2001 recycling or secondary processing copper-bearing scrap and manufacturing residues. Waste byproducts such as slag, zinc oxide from scrubber sludge, and spent refractory brick were produced on a 41 acre section of the site. On October 31, 2001, the facility was shut down, and filed for Chapter 7 bankruptcy on November 13, 2001. On December 7, 2001 the Illinois EPA issued an order to seal Chemetco. Elevated levels of cadmium, copper and lead have been found in the sediments collected from the wetlands and Long Lake downstream of the site.

6. Lake Calumet Cluster in Chicago, Illinois: Located on the southeast side of Chicago, this 87 acre sites was originally a wetland. Excavation, filling, and dumping activities occurred from the 1940s to the 1980s. The site is covered by

as much as 30 feet steel mill slag and industrial, chemical and municipal waste. Contaminants include: arsenic, cadmium, calcium, chromium, copper, cyanide, manganese, zinc, phenanthrene, fluoranthene, acenaphthene, bis (2-ethylhexyl) phthalate, benzene, toluene, polychlorobiphenyls, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene.

Wetlands adjacent to the landfills are known to be used by 14 different federal and state endangered or threatened species. Contaminants from the site are being carried by the surface water to the sediments in Indian Ridge Marsh where people and wildlife fish.

7. Gratiot County Golf Course in St. Louis, Michigan: From 1956 to 1970, the Michigan Chemical Corp. burned and disposed of industrial and hazardous waste, including the pesticide DDT, on the five acre site. Waste seeped from the site into the Pine River, which is used for recreation. In 1982, Velsicol Chemical Corp., which bought Michigan Chemical, cleaned up the site under state supervision. But the site is being reinvestigated as part of an ongoing state-led study at the Velsicol Chemical Corp. site. Some 2,500 people live within one mile of the site. Six municipal water wells used by about 5,500 people are located within three miles of the site.

8. Gowanus Canal in Brooklyn, New York: The Gowanus Canal is bounded by the neighborhoods of Park Slope, Cobble Hill, Carroll Gardens and Red Hook and empties into New York Harbor. Completed in 1869, the canal was once a major transportation route. Manufactured gas plants, mills, tanneries, and chemical plants operated along the canal. Contamination now affects the 1.8 mile length of the 100-foot wide canal.

   As a result of years of discharges, stormwater runoff, sewer outflows and industrial pollutants, the Gowanus Canal has become one of the nation's most extensively contaminated water bodies. Contaminants include PCBs, coal tar wastes, heavy metals and volatile organics, which endanger nearby residents who use the canal for fishing and recreation.

   "After conducting our own evaluations and consulting extensively with the many people who have expressed interest in the future of the Gowanus Canal and the surrounding area, we have determined that a Superfund designation is the best path to a cleanup of this heavily contaminated and long neglected urban waterway," said Judith Enck, administrator of EPA Region 2. "We plan to continue our work with the same spirit of inclusion and involvement that has already been demonstrated."

9. Black Butte Mine in Cottage Grove, Oregon: Mercury and other contaminants from tailing piles at the abandoned mine site affect creeks that flow into Cottage Grove Reservoir and the Coast Fork of the Willamette River. The Black Butte Mine operated between the 1890s and late 1960s and was one of the largest mercury mines in Oregon.

10. Van Der Horst USA Corporation in Terrell, Texas: This site, located in a commercial warehouse district, is an inactive chromium and iron plating facility that began operations in the 1950s and operated until December 2006. The facility generated spent kerosene, wastewater treatment sludge, and chromium contaminated wastewater and soil. When the site was abandoned in April 2007, these wastes remained on-site in two underground sumps, 27 vats, and 450 drums. A residential neighborhood lies less than one mile away.

    "Cleaning up contaminated sites in Texas is one of the most visible kinds of projects that demonstrate to the public and our government partners the value that the agency can have," said Al Armendariz, EPA administrator for Region 6. "We are committed to strengthening our work to clean up and revitalize communities."

**EPA collects soil samples in Cameron (*St. Joseph News-Press*)**

Agency checking tip that lead may have been dumped at site
By Ray Scherer
Friday, March 5, 2010
CAMERON, Mo. — The U.S. Environmental Protection Agency collected soil samples Thursday from a snowy soccer complex in a search for heavy metals possibly left by an old rail spur.

The samples are part of an ongoing investigation into potential links between contamination in the vicinity of Cameron, Mo., and health problems such as brain tumors reported by area residents. Other surface-soil samples were taken from yards in an adjacent subdivision.

The samples were taken from a city-owned recreational field on Cameron's south side, said Doug Ferguson, a regional on-scene coordinator for the EPA's Superfund hazardous waste cleanup program. Other samples were taken from yards in an adjacent subdivision.

The field was once the site of a rail spur used by the former Rockwool Industries plant, Mr. Ferguson said. Trucks would retrieve loads of material that included lead ore stockpiled on the ground by rail cars, then take the product to the plant — located

approximately one mile away — for processing. The practice was acceptable in the industry at the time, according to Mr. Ferguson.

It will take from 30 to 45 days for a federal lab in Kansas City, Kan., to complete testing and analysis of the samples. The tests will seek to determine the contamination primarily of lead and iron, and chemicals like chromium. Hexavalent chromium is suspected to be involved in the spread of fertilizer sludge by a St. Joseph tannery on area farmland, and possibly linked as a cause of the area's health problems.

The investigating team, which arrived from Kansas City, did not expect to contend with the snowpack. But the frozen ground did not pose as much of a challenge to the sample collection as mud.

"It's not exactly ideal conditions," Mr. Ferguson said. "This is our best weather window that we could find."

Both the Rockwool plant and Cameron's rail system ceased to exist several decades ago.

"That's the problem with historic information, Mr. Ferguson said. "It's pretty sketchy ... We don't know if there's any material here."

An anonymous tip from a resident led to the sampling session at the soccer complex, he said. The area under study measured 500 feet by 300 feet. Some nearby residents opted out of having their yards tested, but Mr. Ferguson said those decisions will not impact the testing.

A member of a regional brain tumor support group criticized the federal government's efforts for focusing solely on the Cameron area as a possible source of the health concerns.

"I just feel badly they're trying to pinpoint something in this area," said Loura Cook, a spokeswoman for H.U.G.S. (Help Us Give Support), a group which meets the first Thursday night each month at the First Baptist Church of Cameron. "What about all the other places?"

Last year, the EPA announced that the presence of high lead and arsenic levels at the Rockwool plant did not pose a general public health risk. The plant manufactured insulation in the 1970s and 1980s.

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**Black Butte mercury mine near Cottage Grove put on Superfund list (*Oregon Live*)**

By Scott Learn, The Oregonian
March 04, 2010, 12:12PM
The U.S. Environmental Protection Agency has put the former Black Butte mercury mine near Cottage Grove on its Superfund list of the nation's most contaminated cleanup sites.

The formal decision, announced Wednesday, followed an earlier EPA notice of intent to put mine on the cleanup list of about 1,300 sites nationwide.

Piles of mine waste from the abandoned site are leaching mercury, arsenic and other contaminants into creeks flowing into Cottage Grove Reservoir, a popular site for fishing, swimming and boating, the agency says.

Elevated mercury concentrations in reservoir fish have prompted fish consumption advisories in order to protect public health.

The site has been the focus of previous investigation and cleanup work by the Oregon Department of Environmental Quality and EPA. It is the 13th Superfund site in Oregon.

-- Scott Learn

**Gowanus Canal added in National Superfund List of Hazardous Waste Sites (*Examiner*)**

March 4, 12:56 PM ▪ NY Green Products Examiner ▪ Christian Tambornini
Toxic mud at Gowanus
http://flickr.com/photos/69616736@N00/4787649/
The Environmental Protection Agency (EPA) announced on Tuesday that Brooklyn's Gowanus canal is now officially included in the Superfund National Priorities List of the Country's most hazardous waste sites that pose risks to human health and environment.

EPA proposed the enlistment of the site already in april 2009; since then, Agency officials have met with government elected, business representatives, civic parties and community members, reviewing instances and examinating comments on the proposal of listing the site.

Judith Enck, Regional Administrator, said that after conducting on-field evaluations and consulting with all the people that have shown interest to such a vital environmental issue as the future of Gowanus canal, "We have determined that a Superfund

designation is the best path to a cleanup of this heavily contaminated and long neglected urban waterway."

The canal, built in the 19th century, soon became a very busy industrial waterway home to heavy industries like gas plants, chemical plants and oil refineries, thus receiving massive amounts of untreated waste, raw sewage and runoff. Gasoline on the canal surface caught fire in 1946. Millions of gallons of heating oil leaked into it in 1976.

By now, almost all the industrial activity has stopped, but high contaminant levels still affect
the 1.8 mile lenght of the canal.

Tests have shown that the sediment in the Gowanus Canal is contaminated with a variety of pollutants, including polycyclic aromatic hydrocarbons, heavy metals, pesticides, polychlorinated biphenyls (PCBs), metals and volatile organic contaminants.

EPA also reports that the canal is actually sorrounded by residential neighbourhoods. The waterway is still used for commercial as well as recreational purposes, and a public fishing area just downstream of the canal in Gowanus Bay is fished on a regular basis by local residents.

EPA has scheduled its third general public meeting on **Thursday March 4 from 7pm to 9pm** in the auditorium of P.S. 58, located at 330 Smith Street in Brooklyn.

For more information on the Gowanus Canal, go to EPA's Gowanus section.

Follow EPA Region 2 (NY) on Twitter.

**TOXICS**
**==========**

**Claim: San Francisco giving gardeners toxic sludge (*Associated Press*)**

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

By Evelyn Nieves, Associated Press Writer | March 5, 2010

SAN FRANCISCO --San Francisco wears its environmental consciousness like a green badge of honor. Residents separate and recycle their food scraps. Streets close to cars so people can walk and bike them. A city department even gives away "high-quality, nutrient-rich, organic bio-solids compost" to any and all takers.

But hold on there: A public interest and environmental advocacy group says San Francisco's free compost, used by community, backyard and school gardens in the Bay Area, is processed sewage sludge -- the product of anything flushed, poured or dumped into the wastewater system, including industrial, chemical and pharmaceutical toxins.

"This sludge belongs in a hazardous waste dump," said Ronnie Cummins, national director of the Organic Consumers Association, before he poured some of the compost on carefully laid out plastic sheeting at the steps of San Francisco City Hall on Thursday.

The protest, he said, was the launch of an all-out campaign the organic foods movement is planning to wage against the use of bio-solids compost.

The San Francisco Public Utilities Commission, which manages the city's sewage treatment, says the 1 percent of the city's 80,000 tons of sewage that is converted into compost each year is treated and tested to the point of sterility.

San Francisco isn't even the only California city to have bio-solid giveaways, according to the Organic Consumers Association. Los Angeles, San Diego, San Juan Capistrano, Santa Rosa, Fortuna, Carlsbad, and Calabasas do the same.

Not only that, sewage or bio-solids compost is packaged and sold in major house and garden centers across the country. And fertilizer made from bio-solids is used on millions of acres of land throughout the U.S. where plants are grown, according to a report by the U.S. Geological Survey. That fertilizer is not treated and heated to the point where it becomes compost and is not used for human food crops, though it is used for animal food crops.

San Francisco's bio-solids compost has become the focal point for the issue precisely because the city is so environmentally aware, say organic groups.

"San Francisco as the greenest large city in the country should be the first to stop this," Cummins said.

Federally mandated testing shows that the compost has far lower levels of nine pollutants than the Environmental Protection Agency deems acceptable, San Francisco Public Utilities Commission spokesman Tyrone Jue said.

"We're in the business of protecting public health and the environment," Jue said. "That's our mandate and our mission statement. That's what we do. If for even a minute we thought one of our activities was going against that mandate, we would absolutely stop doing it."

But the problem, say groups like the Organic Consumers Association and the Center for Food Safety, is that the EPA requires testing only for nine metals, when there are potentially thousands of chemicals in the compost.

The EPA is evaluating if more pollutants need to be regulated, and believes additional studies are needed, said Lauren Fondal, an environmental engineer for the EPA office in San Francisco.

"I don't believe there have been any major studies of all these chemical that we've begun detecting," she said.

There is no hard science that bio-solids compost is perfectly safe, the organic groups say, while there is anecdotal evidence that it is not.

In 2008, for example, a federal judge in Georgia ruled in favor of farmers who sued the U.S. Department of Agriculture when their cows became ill and died after eating silage grown on land upon which the compost had been applied.

"The EPA cannot assure the public that current land application practices are protective of human health and the environment," U.S. District Court Judge Anthony Alaimo.

Last fall, The Center for Food Safety, a watchdog group with offices in Washington, D.C., and San Francisco, tried to raise awareness of the "bio-solids" issue when it petitioned San Francisco to end the compost giveaways.

The city made no promises. But the PUC did stop calling its free compost "organic." Under USDA rules, no sewage sludge compost, or farms that use bio-solids, can be called "organic."

On Thursday, when the Minnesota-based members of The Organic Consumer Association held their "toxic sludge giveback" at City Hall, five protesters were flanked by about a dozen reporters and curious passers-by.

One of those watching was Jue of the PUC. He said that the city still considers the compost giveaways a pilot project. The city has held six giveaways since 2007. Jue said it has none planned for the near future.

"Of course, if the public doesn't want it, we'll stop," he said.

**EPA Moves To Require TRI Reporting Of Facilities' H2S Releases (*Inside EPA*)**

3/5/2010
EPA is moving to require industrial facilities to report to the Toxics Release Inventory (TRI) their releases of hydrogen sulfide (H2S) due to its harmful health and ecological effects, a move that could open the door to stricter regulation of H2S under the Clean Air Act and other laws for scores of manufacturing, energy and agricultural facilities.

The move is likely to be opposed by industry groups, who have long argued that the substance is not harmful enough to justify regulation.

In a Feb. 26 *Federal Register* notice, EPA announced that it is considering whether to lift a Clinton-era administrative stay that has delayed requiring industrial facilities to report their H2S releases to TRI. The announcement has long been expected since an EPA official said in 2009 that the agency was considering the move. *The notice is available on InsideEPA.com.* See page 2 for details.

EPA agreed in 1993 to a petition from the Natural Resources Defense Council to list H2S -- a gas released during industrial operations and from concentrated animal feeding operations (CAFOs) -- and 20 other chemicals and two chemical categories to the list of toxic chemicals that must be reported to TRI under the Emergency Planning & Community Right-to-Know Act (EPCRA).

But in 1994 EPA issued an administrative stay of the reporting requirements for H2S due to concerns from some members of the regulated community that H2S did not meet the “chronic human health effects” basis for listing under section 313 of EPCRA. EPA vowed to review the scientific data on H2S.

In the *Federal Register* notice, EPA says it has now completed the review, including a consideration of additional data on the human health and environmental effects of H2S that has become available since the stay was put in place, and found that the substance is harmful.

“EPA has determined that hydrogen sulfide can reasonably be anticipated to cause serious or irreversible chronic human health effects at relatively low doses and thus is considered to have moderately high to high chronic toxicity,” EPA says in the notice. “In addition, EPA’s technical evaluation of hydrogen sulfide also shows that it can be reasonably anticipated to cause, because of its toxicity, significant adverse effects in aquatic organisms.”

EPA adds, “Based on this further evaluation, EPA believes that the administrative stay should be lifted.” EPA says it will take comment on its proposal and respond to those comments before “taking appropriate action.” The agency also says, “As an aside, EPA notes also that it believes that the above findings clearly demonstrate the correctness of the agency’s final decision” to list H2S under EPCRA section 313.

According to the notice, facilities that could be potentially affected by requiring H2S reporting include coal mining, petroleum bulk terminals and plants and other sectors.

The move could also open the door to additional regulatory requirements under other environmental laws. For example, the Sierra Club and a host of other organizations have a long-standing petition urging the agency to formally acknowledge H2S’ “serious acute and chronic toxicity” and list H2S as a hazardous air pollutant subject to

technology-based air toxics standards. The petition also asks the agency to require TRI reporting.

The new finding and proposed action could also signal agency efforts to revise a controversial Bush-era rule exempting some CAFOs from reporting their H2S releases under EPCRA and the Superfund law. The rule is currently stayed as EPA, industry and environmentalists pursue settlement talks to resolve litigation challenging the exemption.

But industry groups have long opposed regulation, arguing that the gas is not toxic enough to warrant regulation. In 2005, a number of industry sectors including chemical, petroleum and forest and paper, successfully blocked the agency from listing H2S as an air toxic, fearing the move could prompt new emissions control requirements. At the time, the groups cited industry-backed research that downplayed the substances' harm. The oil industry funded subsequent research that found no correlation between exposure to H2S and harmful neurological health effects.

**Expanded EPA Bid To Set Strict Toxicity Limits Reignites Texas Permit Fight (*Inside EPA*)**

3/5/2010
Recent EPA efforts to require Texas to use the agency's strict toxicity test method for strengthening discharge limits in dozens of permits is renewing a dispute over EPA's test method as well as the agency's authority to impose stricter requirements than what the state is proposing.

The agency's latest effort has also stalled an ongoing challenge before EPA's Environmental Appeals Board (EAB) by a Texas river authority challenging an EPA-imposed permit limit that says EPA's toxicity test method -- known as a Whole Effluent Toxicity (WET) test -- is being applied without scientific justification.

The San Jacinto River Authority (SJRA), a water resource management agency overseen by Texas, said in a Feb. 18 brief to the EAB that EPA Region VI's expansion of the WET requirements to other facilities in the state makes its case duplicitous of other challenges likely to appear before the board as a result of EPA's decision. *Relevant documents are available on InsideEPA.com.* See page 2 for details.

This is the second time in the past few years that the issue has been before the EAB. In 2007, EAB dismissed a similar case brought against Region VI in which the utility complained that the agency had unduly sought specific requirements, including WET testing limits and other strict permit requirements. EPA withdrew those provisions and EAB dismissed the 2007 case for lack of cause on March 28, 2008.

Nevertheless, the earlier *San Jacinto* case spurred industry fears that EPA Region VI was poised to federalize scores of water discharge permits in states with delegated authority in the region, including Texas, Louisiana, Oklahoma and Arkansas. New Mexico, which is also in Region VI, does not have delegated authority.

EPA's dispute over Texas' water quality permits also echoes a similar dispute the agency is waging with the state over the adequacy of its air quality permits. EPA Region VI officials are currently in talks with industry groups, state officials and environmentalists over the adequacy of the state's permits, with the agency still retaining the option of withdrawing the state's federal permitting authority if it fails to strengthen its programs.

In the water quality dispute, EPA Region VI sent a letter to the Texas Commission on Environmental Quality (TCEQ) Dec. 22 detailing more than 30 facilities whose WET test results have exceeded lethal and sub-lethal toxicity limits for aquatic life, and calling on the commission to implement revisions to its permitting requirements to include discharge limits based on WET test data. WET limits are meant to protect aquatic organisms from the aggregate effects of multiple pollutants in a single waterway.

**Laboratory Investigation Raises Questions About EPA Risk Reviews (*Inside EPA*)**

3/5/2010
Government health scientists are launching a broad review of the practices of a controversial Italian laboratory that has produced data EPA is relying on for two major chemical risk assessments, including methanol and another fuel additive, but which industry is challenging as unreproducible and containing false positives, officials say.

But the examination may not satisfy methanol and other industry critics who are urging EPA to drop its use of the lab's studies from its risk assessments.

Nevertheless, an EPA spokeswoman says the agency will await the results of the review before deciding how to proceed with the risk assessments. "We are very interested in the results of this effort and will review them before making decisions on what additional actions may be needed," she says.

The National Toxicology Program (NTP), an arm of the National Institute for Environmental Health Sciences (NIEHS), is poised to send a team of pathologists to the European Ramazzini Foundation (ERF) in April to conduct a pathology data review of the ERF's methanol study, an NTP spokeswoman says. "The team will develop a written assessment that will be publicly available."

John Bucher, associate director of NTP, said in a March 1 interview that the purpose of the trip is "not to [perform a pathology working group] review but to look at the entire

[process], a pathology data review. It follows the records from the time the animals are killed, to the [determination] of gross lesions, how they are traced through."

"We want to get an idea of their processes," he said.

Bucher said that while the NTP assessment will focus on ERF's methanol study, it is part of a broader effort to help the lab gain wider acceptance of its data. "I think Ramazzini is opening up a little. They've had some difficulties with some in the science community accepting their data at face value," Bucher said.

NTP and ERF have had a long-standing agreement of at least a decade, under which NTP has assisted Ramazzini "to make their studies more accepted," Bucher says. NTP has assisted ERF in upgrading to electronic data capture, and has had an ongoing effort to try to match ERF's diagnostic criteria to NTP criteria. Standardizing pathology criteria is an ongoing effort by pathologists worldwide, because the criteria differ internationally, Bucher says.

NTP's review comes amid broad industry criticism of the lab and EPA's use of its data to justify strict risk assessments. The lab's studies are the basis for EPA's conclusion in its recent draft Integrated Risk Information System (IRIS) assessment of methanol that the chemical is "likely to be a human carcinogen." Industry and other critics warned the finding could undermine the use of methanol as an ingredient in increasing production of biodiesel -- a renewable fuel.

EPA also relies on data from ERF in its draft risk assessment of the fuel additive ethyl tertiary butyl ether (ETBE), which was released last fall to similar criticisms from the petrochemical industry. Industry also raised concerns that ERF's data will be used in EPA's pending risk assessment of another fuel additive, methyl tertiary butyl ether (MTBE), which was more widely used than ETBE and has more liability associated with it for groundwater contamination.

In both cases, industry has argued that ERF is the only lab to find evidence of tumors associated with exposures to the chemicals. Industry argues that ERF's rats have a high incidence of lung infections, and that ERF scientists misidentified some of the infections as cancer.

While all the industry groups have urged EPA to drop its use of ERF data, the methanol industry appears to have been the most aggressive. The Methanol Institute (MI), an international trade organization, filed a petition with EPA last May urging the agency to conduct a "complete and thorough review following established protocols," of ERF's methanol study and not use the data in its risk assessment of methanol until such a review is performed.

"The Methanol Institute is petitioning the Agency not only to carry out a Pathology Working Group review of the methanol study slides, but also to refrain from placing any reliance on this study for any health or risk assessment purposes throughout the agency

until these issues are resolved," according to industry's 2009 petition. *The petition is available on InsideEPA.com.* See page 2 for details.

The petition describes an earlier effort to petition EPA to review the ERF methanol data. EPA staff denied the 2006 request, as they were already considering the issue, according to the petition. EPA scientists in a 2008 publication in *Environmental and Molecular Mutagenesis* concluded that ERF's findings are not confounded with a lung infection. "We find that the background incidence of hemolymphoreticular tumors in female rats in the MTBE study is consistent with contemporaneous studies at the ERF and that there is an exposure-related effect, which is unlikely to be due to infections," the authors write in an abstract for the article.

But the MI argues that EPA should reconsider, given the "number of additional publications that have addressed the veracity of the Ramazzini studies." It cites several publications by its consultant, George Cruzan of ToxSciences, as well as scientists at Gradient Corporation, another consulting firm, and researchers at the University of Alabama at Birmingham, all of whom conclude that Ramazzini's findings could instead be due to lung infections.

"EPA's position arrived at in 2006 that there was not a legitimate and important scientific controversy/concern that could justify a more in-depth review of the underlying data, including the tissue slides, from the Ramazzini methanol study can no longer be maintained," the MI's petition states.

MI representatives also met last month with EPA research chief Paul Anastas to discuss the NIEHS review and industry's petition to EPA, according to its spokesman. The petition calls on EPA to create a work group to reconsider the ERF's study of rats treated with methanol, including re-examining slides of tissue samples that ERF determined showed evidence of cancer. Industry asks EPA to discount the study until a re-examination is completed.

EPA has not responded to the petition, but an EPA spokeswoman said the agency "will benefit from the planned [NTP] review and believes that there is no need for additional pathology review beyond the review [NTP] will conduct."

But industry is wary of the NIEHS review, citing a 2004 pathology review that NTP conducted of ERF slides from its study of the artificial sweetener aspartame. In that case, even after NTP reviewed ERF's data, the Food & Drug Administration, as well as the European Union Food Safety Authority, could not confirm ERF's findings.

NTP reviewed 75 of thousands of [aspartame] slides that were handpicked by Ramazzini," the MI spokesman says, adding that the slides were "not representative." MI has "fears" of a similar, limited review of ERF's methanol slides, the spokesman says, noting that the results of a limited review would be "not only meaningless but could also be damaging."

In the methanol case, NTP pathologists will not be performing a traditional pathology working group review of ERF's methanol slides, as industry has requested, Bucher says. Such a review includes voting on and potentially changing the original researchers' diagnoses of the slides.

But he says the methanol review will be different from the aspartame review in that NTP pathologists will travel to ERF's lab and NTP pathologists are selecting the slides and data they want to review. "In the past, pathologists at Ramazzini selected the examples and brought them over here," Bucher explains. -- *Maria Hegstad*

**EPA Poised To Take Action On BPA's Risks Amid Contested Science (*Inside EPA*)**

3/5/2010
EPA is poised to unveil several new steps to address the risks posed by the ubiquitous plastic ingredient bisphenol-A (BPA) but industry and environmentalists are continuing their long-running debate over the chemical's potential developmental effects on fetuses, infants and children.

In the latest fight over the science, the chemical industry is touting recently published toxicological studies of rats dosed with the chemical, including one conducted by EPA researchers, in an effort to refute concerns raised by the National Toxicology Program (NTP) about the chemical's potential developmental effects on children. NTP's study prompted calls for EPA and others to strictly regulate the chemical.

But environmentalists and other proponents of strict regulation are challenging the study, saying it does not address the developmental effects of concern.

At a Feb. 25 House Energy & Commerce subcommittee hearing, James Jones, EPA's deputy assistant administrator in the Office of Prevention, Pesticides & Toxic Substances, said EPA will in the "very near future" issue its stalled action plan on BPA as one of a series of steps designed to address the so-called endocrine disrupting substance.

The White House Office of Management & Budget March 1 completed its review of the BPA action plan, though at press time EPA had not released the plan. One source says the agency is developing a rule that will require industry to provide the agency with test data.

Jones also suggested that the chemical could be added to the drinking water contaminant monitoring list. BPA is not currently on the list, but could be added in the future as the Food & Drug Administration (FDA) is conducting research that could impact its listing, Jones said.

EPA is moving forward to address the chemical's risks after a lengthy debate within the government. A 2008 determination by a panel of experts assembled by NTP concluded that BPA poses "some concern for neural and behavioral effects in fetuses, infants, and children at current human exposures" to BPA, based on animal studies.

But the NTP results were at odds with earlier FDA findings that the chemical poses limited risks in food packaging. Critics of the FDA study, including House Energy & Commerce Committee Chairman Henry Waxman (D-CA), won a commitment from the Obama administration that they would reconsider FDA's earlier findings.

Earlier this year, FDA officials announced that while studies employing standardized tests show the chemical is safe at low exposure levels, officials have "some concern about the potential effects of BPA on the brain, behavior, and prostate gland in fetuses, infants, and young children" based on new studies that use novel methods to test for low-level effects. FDA said it is now supporting a shift to a "more robust regulatory framework for oversight of BPA," and will consult with other agencies, including EPA.

While EPA is now taking steps to address the chemical's risks, the American Chemistry Council (ACC) is touting new studies published recently by *Toxicological Sciences*. One study, published on the journal's Web site Feb. 17, found that pregnant rats and their offspring exposed to BPA showed no harmful effects. "This new study, which exposed pregnant rodents to a range of BPA dietary doses from low to high, concluded that BPA had no effects on brain development or behavior in their offspring that had been exposed to BPA in utero and throughout development," Stephen Hentges of ACC's BPA group said in a press statement.

The study dosed pregnant rats and their resulting pups through 21 days old with BPA at amounts of 0 to 2250 parts per million (ppm), according to the study abstract. The pups were tested with a series of neurological tests, including clinical observations and neuropathology. "For F1 offspring, there were no treatment-related neurobehavioral effects nor was there evidence of neuropathology or effects on brain morphometry," according to the abstract. "There was no evidence that BPA is a developmental neurotoxicant in rats."

The study also noted that the no observable adverse effect level (NOAEL) for developmental toxicity was 2250 ppm, the highest dose tested, well above the 75 ppm NOAEL the researchers observed for systemic toxicity.

Hentges also described a study published in the same journal last fall by EPA and North Carolina State University researchers as "examining potential effects on brain development and behavior at low doses," an investigation which he said addresses issued raised by NTP as appropriate for additional research.

The EPA study also dosed pregnant rats with BPA, in amounts of 2 to 200 micrograms per kilogram body weight per day from the first week of pregnancy through 18 days of nursing the pups. "BPA had no effect on any of" the measures the researchers

considered, including “a reduced (male-like) saccharin preference and absence of lordosis behavior, indications of defeminization of the” central nervous system.

But proponents of strict regulation of BPA are criticizing the new study. An Environmental Working Group (EWG) source argues that the new study only “looks for crude changes in the brain,” and “by design didn’t look at those tests” that would answer the concerns raised in NTP’s review. “They didn’t look at the key target of what was identified by Canada and the NTP,” the source says.

The EWG source also noted that both the new study and the EPA researchers’ study lacked positive controls, an issue raised by BPA researcher Frederick vom Saal, of the University of Missouri, in a Feb. 17 letter to the editor of *Toxicological Sciences*. Vom Saal argues that the EPA study “violated NTP recommendations for low-dose studies of endocrine disrupting chemicals” by failing to select the appropriate lab animal model based on responsiveness to the chemical being tested.

Vom Saal argues that such studies are “inappropriate in peer-reviewed journals” and recommends that journals require studies to have an “appropriate positive control” and “include appropriate doses of concurrent positive controls before publication. He adds that the EPA study “would have examined higher doses of BPA if they had followed” the approach of selecting appropriately sensitive lab animals with a positive control. -- *Maria Hegstad*

**Rejecting Industry Review Plan, EPA Defends Strict Arsenic Risk Study (*Inside EPA*)**

3/5/2010
EPA is rejecting industry calls for a broader scientific review of its draft assessment on arsenic’s cancer risks and defending the study that a key agency source says is largely based on a 2001 review of the metal’s risks by the National Academy of Sciences (NAS).

The EPA source says he is “disappointed” at industry and other critics for claiming the assessment is “somehow unexpected or going out on a limb,” saying EPA’s estimates of arsenic’s cancer risks are in the same “ballpark” as NAS’ 2001 study of the issue. “There’s nothing that should be a surprise to anybody.”

An industry source says critics of EPA’s study now have an uphill battle to convince the Science Advisory Board (SAB) to review the study more broadly than they have been asked to by EPA, adding that critics continue to mull their options on Capitol Hill.

But EPA Office of Research & Development (ORD) chief Paul Anastas says SAB, not EPA, makes the final decision on what it will review. “While we ask the SAB to respond to our charge questions, there is nothing that precludes SAB from responding to

comments from the public or other interested parties," Anastas said in a March 3 statement to *Inside EPA*.

At issue is EPA's draft "Toxicological Review of Inorganic Arsenic" that includes a cancer slope factor, a measure of a substance's cancer risk from lifetime exposure, of 25.7 mg/kg/day -- a 17-fold increase from the current safety standard and a seven-fold increase from a 3.67 per mg/kg/day standard EPA's water office uses for developing drinking water standards for arsenic.

The risk assessment, which the agency released Feb. 21, is based in large part on a controversial Taiwanese study -- the largest existing data set on arsenic exposure -- which EPA used to support its arguments in 2001 when the agency tightened its drinking water standard for arsenic to 10 parts per billion (ppb).

The NAS' report, "Arsenic In Drinking Water: 2001 Update," generally backed EPA's plan to set the 10-ppb standard and even opened the door to a stricter standard to protect against increased risk of developing bladder and lung cancer from arsenic exposure. The panel found that risks for cancer incidence are more elevated than EPA estimates.

Despite the NAS' findings, EPA's draft study has drawn broad criticism from the White House Office of Management & Budget (OMB), industry and some agency sources, who say it may fall short of addressing 2007 recommendations from the agency's SAB to thoroughly analyze risks of the metal, especially the risks at low doses.

While EPA has agreed to have the SAB reconsider the draft assessment, the agency limited the scope of the SAB review to a "focused" review on how EPA responded to key SAB recommendations in its 2007 report.

At a Feb. 26 meeting, an industry coalition concerned about the regulatory impacts of the assessment asked EPA research chief Anastas to expand the scope of SAB review to include a review of EPA's core science in the assessment, as well as emerging research. But participants at the meeting said the agency rejected industry's appeals.

The EPA source cites as support of the draft assessment the 2001 NAS review -- which endorses both the Taiwanese study and a strict linear dose-response model that extrapolates cancer risks down to very low doses. The NAS study included "linear statistical modeling approach that we have carried over and used in this assessment," the source says.

"While it's certainly a different number than what we have on [the Integrated Risk Information System (IRIS) database] right now, our major source for doing this work was the [NAS 2001] report," the EPA source says, adding that the NAS report, when converted to cancer slope factor, would put the risk at between 20 and 25 mg/kg/day.

The source also says the agency's analysis of a series of studies that analyzed lower dose exposure than the Taiwanese study was faithful to the SAB's 2007 recommendation the agency review those studies for its assessment.

"I think we followed the spirit of the recommendation in terms of looking at these studies quite carefully and making some comparisons where we can. But these studies are not strong studies either because they have methodological problems where it is not done in a reliable way or because the amount of risk that one was trying to detect really couldn't be seen in a small study. You need quite a large study to be able to detect risk, even at the higher levels," the source says.

"Those U.S. studies just didn't provide us with a valid basis to develop a risk assessment," the source says.

The source says the biggest question about the cancer risks of arsenic is "whether our fundamental science on arsenic is at a point where we can do anything more to figure out whether there really are risks at low dose and whether the linear dose-response model is appropriate," adding that NAS and SAB both identified research that "suggested" a nonlinear pattern but sided with a linear model in the face of continuing uncertainty.

The source also doubts emerging research on arsenic will confirm the non-linear model. "I think I've gotten a little glimpse of what they're talking about there and it doesn't look like it does to me."

At the Feb. 26 industry meeting with Anastas, scientist Samuel M. Cohen presented research purporting to rule out modes of action that would result in cancer risks at very low doses. Cohen's research shows direct DNA reactivity, the only possible mode of action that would result in cancer risks at very low exposure, has been ruled out.

Only indirect genotoxicity, mitogenesis and cytotoxicity and regeneration are remaining modes of action, Cohen argues, all of which provide non-linear dose-response models, meaning risks at low doses can be discounted.

One source familiar with Cohen's work says he is "well known" for his belief of dose-response thresholds for a range of chemicals. "That's not so much a criticism as saying he does have a point of view. The question now is whether it will really hold up to scrutiny now," whereas NAS and SAB concluded "the case hadn't been made" for a non-linear model.

**New Study On Atrazine Risk To Frogs May Influence EPA Scientific Review (*Inside EPA*)**

3/5/2010

A new study published by a controversial researcher finds the herbicide atrazine causes adverse sexual effects to male frogs and other amphibians, a finding that could influence EPA's ongoing scientific review of the widely used chemical's risks.

But agriculture industry groups are ramping up their arguments that further regulatory action from EPA on the substance could "de-stimulate" the farm economy during the recession.

The new study -- recently published in the Proceedings of the National Academy of Sciences by Tyrone Hayes, a University of California-Berkeley researcher -- found that the herbicide induced feminization in adult male frogs. "Atrazine-exposed [amphibian] males were both demasculinized (chemically castrated) and completely feminized as adults," according to the study abstract. "Ten percent of the exposed genetic males developed into functional females that copulated with unexposed males and produced viable eggs."

The exposed amphibians also exhibited depressed testosterone levels, decreased breeding gland size, suppressed mating behavior and decreased fertility, among other issues, according to the study. The study concludes that the findings "are consistent with effects of atrazine observed in other vertebrate classes," and "exemplify the role that atrazine and other endocrine-disrupting pesticides likely play in global amphibian declines."

Hayes is a longtime critic of atrazine. Last year, he was nominated to fill an open seat on EPA's Science Advisory Panel -- which is conducting an unusual review of the the chemical's risks midway through the agency's registration period -- but he drew strong industry opposition and was not chosen to serve on the panel. The panel is taking another look at the herbicide, which could set a precedent for how EPA weighs risks of pesticides.

Meanwhile, industry continues to advocate EPA continue to allow the use of atrazine. In a Feb. 18 press release, the Ohio Corn Growers Association urged EPA not to "de-stimulate" the economy with heavier regulation of atrazine, and argued that the risks of the chemical have already been studied. "It's the most studied herbicide that the EPA has already ruled as safe," Dwayne Siekman, the group's executive director, said in the statement.

And at EPA's latest SAP meeting last month industry argued against agency plans to use more human data in the latest review of the herbicide, asking EPA not to use human data when it contradicts traditional animal toxicology.

**Lawsuit says PCBs found in fish oil supplements (*Greenwire*)**

03/04/2010

Consumers buying fish oil supplements may be ingesting chemicals banned in 1979 along with the desired omega-3 fatty acids, say a group of environmental advocates who filed a lawsuit Monday aimed at requiring five manufacturers to warn consumers about the chemicals.

The suit names five makers of fish oil supplements found to contain polychlorinated biphenyl compounds, or PCBs; the drugstores CVS and Rite Aid that sell the oils; and Omega Protein Inc., which claims to be the world's largest producer of omega-3 fish oil.

The environmental groups, including the Mateel Environmental Justice Foundation of Eureka, Calif., filed suit in San Francisco Superior Court this week. Attorney David Roe contends there is a California law he helped write that requires consumers to be warned when products contain toxic ingredients above the limit deemed safe by regulators.

Roe says that some of the tested supplements exceed California's daily limit for PCBs by a factor of 10, putting consumers at risk of cancer.

The environmental groups targeted these companies based on the results of a survey conducted by the Environmental Defense Fund of fish oil purification practices at 75 companies.

The companies at issue are: Solgar, GNC, Twinlab, Now Foods and Pharmavite, which makes Nature Made fish oil supplements.

Pharmavite told the *Mercury News* it complies with all federal laws and industry standards (Jondi Gumz, San Jose *Mercury News*, March 2). **-- DFM**

**WATER**

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**EPA seeks more input on proposed water rules (*OCALA.com*)**

Staff writer
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The Environmental Protection Agency announced Thursday that it will extend the comment period for its proposed rules regulating nutrient pollutants in Florida waters, and that it will hold three additional public meetings during the week of April 12.
The written comment period is being extended for 30 days and will now end on April 28.
A full schedule of the additional public hearings ---- three were held last month in Tallahassee, Orlando and Palm Beach County --- has not been announced.

The EPA announced the additional meetings after agency officials met with the Florida congressional delegation. At the earlier EPA public meetings last month, hundreds of people, representing mostly agricultural interests and utilities, opposed the proposed numeric standards and instead wanted the Florida Department of Environmental Protection to establish standards.

**EPA Plan May Exempt Farms From Clean Water Chemical Spraying Permit (*Inside EPA*)**

3/5/2010
A top EPA pesticide official says the agency's draft clean water permit regulating chemical spraying operations -- which is scheduled for release this spring -- will only cover four categories of activities where substances are sprayed onto waters, effectively exempting many agricultural operations from the first-time permit requirements.

But the agency's plan is drawing concern from industry groups who fear it does not provide regulatory certainty for farmers who could now face citizen suits and other regulatory enforcement actions for discharging pesticides and other pollutants without a permit.

One industry source hopes the agency will make the exemption for farms explicit in the permit to provide regulatory certainty and a roadmap to lobby Congress to codify the necessary statutory provisions.

The agency's plan is also likely to be a concern for environmentalists who successfully sued the agency to regulate chemical spraying activities under the Clean Water Act. Since the 2009 court ruling, activists have already sued dozens of farm and other spraying operations to subject them to the permit requirements, litigation that may make it difficult for policymakers to now exempt the operations.

State water regulators have also raised concerns in the past that an outline of EPA's proposed permit issued late last year would not do enough to ensure compliance with many states' narrative water quality standards that require "no toxics in toxic amounts" (*Inside EPA*, Oct. 30).

Bill Jordan, senior policy advisor with EPA's Office of Pesticide Programs, March 3 told the spring meeting of the Chemical Producers & Distributors Association (CPDA) that the forthcoming draft National Pollution Discharge Elimination System Program (NPDES) general permit would focus on four areas of pesticide use that engender the most lawsuits, but not agricultural uses where there are fewer legal challenges.

Jordan said the four activities subject to the permit are mosquito control; control of aquatic weeds and algae; wide-area pest control programs, often using airplanes and covering wide swaths of land such as federal forests; and control of aquatic nuisance animals, like zebra mussels and Asian carp. The draft permit is slated for release for comment in May.

Jordan said the permit would not cover agricultural uses, confirming after the meeting that spray drift from pesticide applications would not be covered by the draft permit. Still, Jordan told the conference that agriculture groups could be in a “difficult position” with the permit because it may not provide the legal certainty industry is seeking. However, he added that EPA would be tracking stakeholder concern during the public comment period and the agency could expand the permit to cover agricultural uses if farm groups press for it.

But farm and pesticides sources say the move creates an uncertain situation for farmers, who would not be covered by the permit but may face legal challenge for not having a discharge permit for their chemical uses.

For example, industry attendees at the CPDA meeting suggested that the agency’s approach may leave agricultural pesticide users open to lawsuits by activist groups or possible enforcement actions by EPA. Jordan declined to predict what environmental groups might do, but said EPA’s “historical practice has been not to require NPDES permits for pesticide application.”

EPA is developing a general permit after the U.S. Court of Appeals for the 6th Circuit ruled in *National Cotton Council, et al. v. EPA* to vacate EPA’s 2006 rule exempting agricultural pesticide users, state pest controllers and others from spraying pesticides “on or near” waters without a NPDES permit. The Supreme Court last month declined to review the appellate ruling.

The appellate court held that chemical spraying amounts to the release of a pollutant from a point source subject to regulation, rejecting industry and Bush administration arguments that the release is from a nonpoint source that the water law exempts from permit requirements.

The ruling has created considerable concern for industry because they fear it could open the door to permitting other activities traditionally considered as nonpoint releases that are exempted from regulation, such as fertilizer applications, post-construction activities and harmful emissions from power plants that deposit on waters.

The permit EPA is developing is now needed to provide industry with a shield from citizen suits and other regulatory enforcement actions alleging that their spraying activities amount to an unlawful discharge. Last summer EPA won a stay from the court through April 9, 2011, allowing the agency to structure the permit program for states and other areas, such as tribal lands, that do not have delegated NPDES permitting

authority -- though the agency's permit will also provide a model to those states with delegated programs.

EPA has said in the past that the general permit will cover about 365,000 applicators in an estimated 506 million applications every year, though it is not clear whether that included farm operations. An outline of EPA's approach, issued late last year, said the agency would issue a general permit -- under which applicators would seek coverage -- but that the agency is also planning additional permits, including individual permits or another general permit for impaired waters, Tier 3 waters and "discharges not specifically addressed" by the general permit.

One industry source says EPA needs to be "transparent and forthcoming" in defining which groups might still be open to lawsuits and which groups need to apply for the new permit. EPA needs to say, "Here is the liability [and] here are the options," the source says, which will allow farmers to know whether or not they need a permit. Then the agricultural community could go to Congress for clarification about the concerns, the source adds.

EPA should also "frame that dilemma" about agricultural pesticides users having to choose between a permit or possible legal challenges "so that Congress understands that" and can clarify if a permit is needed, the source added, because Congress is currently not aware of the "potential liability of needing a permit when one doesn't exist."

While industry is seeking to have Congress address the issue, their efforts may be complicated by an election year fight in Arkansas. Two key lawmakers from the state -- Senate agriculture Committee Chairwoman Blanche Lincoln (D-AR), who is seeking to retain her seat, and Rep. John Boozman (R-AR), the ranking member on the House Water Resources & Environment Subcommittee and one of Lincoln's GOP challengers -- are at odds over how aggressively to address the issue (*Inside EPA*, Feb. 26). -- *Aaron Lovell*

**Activists Push To Retain EPA's TMDL Power In Chesapeake Bay Bill (*Inside EPA*)**

3/5/2010
Environmentalists are urging Sen. Ben Cardin (D-MD) and Rep. Elijah Cummings (D-MD) to ensure their Chesapeake Bay legislation authorizes a key plank of EPA's plan for cleaning up the Bay, saying that while the language is not necessary for the plan to go forward it will help avoid lengthy litigation over it.

The push comes after industry groups recently raised the specter of a lawsuit by reiterating previously thwarted legal challenges to EPA's authority to develop the plan, known as a total maximum daily load (TMDL), for the Chesapeake Bay and its tributaries, saying in recent comments that the agency cannot act before states first develop such plans.

Cardin and Cummings are said to be considering changes to their legislation reauthorizing the Chesapeake Bay cleanup program in preparation for markups in the next few months. Activists say retaining the TMDL authorizing language is a top priority.

A Cardin spokeswoman says the senator continues to meet with a broad range of stakeholders and “is working on a number of amendments that will strengthen and clarify provisions in the bill,” although the basic structure of the bill, including the TMDL language stays the same. The spokeswoman says Cardin hopes to move the bill “in the near future.”

The bill, S. 1816, says EPA must establish a Bay-wide TMDL by 2011 and includes detailed requirements for the types of pollutants for which the TMDL must include strict limits, among other things. Cummings is sponsoring companion legislation in the House, H.R. 3852.

EPA is already under court order to produce the TMDL under current law, and the agency is moving quickly to implement it. But proponents say authorizing the TMDL in S.1816 is crucial to practically eliminate any further legal challenges from industry,which activists fear would slow cleanup efforts. The explicit inclusion of the TMDL in the bill will ward off legal uncertainty by providing a clear congressional mandate for the plan, activists say.

EPA’s plan to develop and implement a Bay-wide TMDL is the centerpiece of the Obama administration’s strategy to manage nutrient pollution in the Bay, as outlined in documents to implement a May 2009 executive order on cleaning up the Bay.

But industry groups are taking aim at the agency’s intention to develop a TMDL for nitrogen and phosphorous pollution in the Chesapeake Bay, and then require states to develop watershed implementation plans to show their methods for meeting those reductions.

“The Act is very clear; it is the responsibility of the state to establish TMDLs following its identification of impaired waters,” a coalition of poultry producer trade associations says in Jan. 8 comments. “The statute does not provide authority for EPA to initiate the process of establishing the TMDL. Nor does it provide the authority for EPA to develop the TMDL while forcing the state to develop wasteload allocations with the threat of ‘consequences.’”

In 2000, the U.S. Court of Appeals for the 4th Circuit dismissed an industry challenge to a consent decree that requires EPA to set TMDLs for Virginia’s impaired waters, including the Bay, by 2011 -- one of the two settlement agreements on which the agency is relying in its Bay-wide TMDL development effort. But the court dismissed the case on standing grounds without addressing the substance of industry’s arguments.

In addition to pressing for congressional authorization of an EPA-developed Bay-wide TMDL, activists are also hoping that funding in the bill for farmers will help proponents

mollify strident opposition from agriculture groups. Environmentalists say farmers will still have to make the same pollution reductions regardless of whether the bill passes, but the bill's funding would make those reductions easier for farmers.

The Cardin spokeswoman says the bill would provide "significant new federal resources" to help farmers with technical assistance and "a robust interstate trading program." The funding would also help local governments to deal with the persistent problem of stormwater runoff from suburban and urban landscapes, as well as assisting soil and water conservation districts, local sportsmen's associations and universities in the cleanup effort, the spokeswoman says.

But the pitch appears to be falling on deaf ears as agriculture officials are reiterating their vows to oppose the legislation, dismissing the funding as insignificant. Industry and environmentalist sources also say the pitch is seen by some in industry as a means trying to "split" agriculture opposition.

**POTW Warns EPA Ammonia Limits May Violate Invasive Species Order (*Inside EPA*)**

3/5/2010
Denver's wastewater utility is warning that EPA's plan to set water quality limits for ammonia that would protect two invasive species "seems to counter" a Clinton-era executive order that bars agencies from protecting invasive species and may set a "dangerous precedent" for development of other water quality criteria in the future.

"Utilizing any invasive exotic species to set criteria implies that the species deserve protection by the EPA. This also sets a potentially dangerous precedent for future criteria development," Denver's Metro Wastewater Reclamation District said in Feb. 23 comments to EPA. *Relevant documents are available on InsideEPA.com.* See page 2 for details.

But the utility's call for EPA to instead set limits to protect native species would result in weaker limits than what the agency is proposing because the mussels are more sensitive to ammonia than native species.

Denver's comments reflect concerns from other wastewater treatment officials over EPA's use of invasive species to set water quality criteria though many utilities are raising additional concerns about how the new criteria will be implemented.

The utilities' concerns over EPA's use of invasive species in developing the criteria highlights the complications EPA faces in addressing invasive species. While in this case EPA is setting water quality limits to protect invasive species, the administration is embroiled in a fight with environmentalists over how to block invasive Asian carp from entering the Great Lakes.

Environmentalists are calling on the administration to close the Chicago navigational locks to prevent the carp from entering the Great Lakes, but the administration has declined and instead released a joint plan from EPA, the Army Corps of Engineers and other agencies to prevent the carp from entering Lake Michigan.

EPA's 2009 draft ambient water quality criteria for ammonia are risk-based measures that states will use to develop enforceable water quality standards and set discharge limits in Clean Water Act permits. The new draft criteria propose limits to protect freshwater mollusks from ammonia rather than protecting against harm to fish, as the current 1999 criteria do.

The draft criteria generally result in stricter limits than the 1999 criteria though EPA has proposed a bifurcated approach that sets stricter limits when the mussels are present and also provides a range of limits depending on water temperature. For those waters where the mussels are present, EPA proposes a criteria of 2.9 milligrams of ammonia nitrogen per liter (mg N/L), while for waters where the mussels are not present EPA is proposing a 5 mg N/L limit.

But in its comments to the agency, Denver's Metro Wastewater Reclamation District says EPA setting limits based on protecting two invasive species -- the Asian clam and New Zealand mud snail -- may violate Executive Order 13112 and appears counter to national policy goals of eliminating invasive species. "The use of these species, which could be considered biological pollutants, to set criteria for a chemical toxin seems counterproductive even if the toxicology studies are valid," the district says.

The district says these species appear on invasive species lists in a number of states, including Georgia, Massachusetts, Colorado, Florida, Montana, Utah, and Idaho.

EPA relied on toxicity data from several native species to set the criteria, but the most sensitive species for the criteria when mussels are present include the Asian clam, and the species considered for the criteria when mussels are absent include the New Zealand mud snail.

But the Denver utility says using these species appears to be counter to the 1999 executive order, which deals with the introduction of invasive species, the district says.

To address its concerns, the Denver utility recommends that EPA remove the invasive species from the calculations of the maximum amount of ammonia that sensitive species can be exposed to briefly without harm. Removing both the Asian clam and the New Zealand mud snail from the calculations and using the next most sensitive species would change the criteria for when mussels are present from 2.9 mg N/L to 3 mg N/L, an increase of 3 percent, the utility says. The criteria for when mussels are absent would change from 5 mg N/L to 6.5 mg N/L, an increase of 30 percent in the allowable limit, the utility says.

Removing the species would not affect the calculation of the highest concentration ammonia that sensitive species can be exposed indefinitely without harm “and would be the preferred solution to this issue,” the utility says.

If the agency does not remove the invasive species, EPA should “explicitly state that the species should not be used in the actual implementation of the criteria,” the utility says. For example, the implementation guidance should state that site-specific criteria protect only native species, the comments say.

**Environmentalists Challenge First Water Permit For Coal Gasification Plant (*Inside EPA*)**

3/5/2010
Environmentalists are challenging the nation’s first clean water discharge permit for a proposed commercial-scale coal gasification power plant, saying the permit issued by Kentucky sets a poor precedent for other states and EPA to regulate discharges from the plants, which produce fewer harmful emissions than conventional plants by gasifying the coal.

In a petition filed March 3 with Kentucky’s Office of Administrative Hearings, environmentalists seek state review of the permit, saying it fails to address a slew of environmental impacts from the plant, including that it has inadequate discharge limits; insufficient monitoring requirements; does not analyze whether water quality based effluent limits are appropriate; and fails to control high temperature discharges, among a host of other claims.

The environmentalists are urging the state to review the Kentucky Pollutant Discharge Elimination System (KPDES) permit, fearing its flaws may set a “bad precedent” for other states and EPA ahead of the agency proposing its own revised effluent limitation guidelines for power plants, including for gasification facilities.

The Kentucky Division of Water (DOW) issued the permit for the proposed Cash Creek Generating Station, a 565-megawatt merchant power plant being funded by D.E. Shaw and Goldman Sachs. KPDES permits are the state’s version of Clean Water Act national pollutant discharge elimination system permits (NPDES), which regulate point sources that discharge pollutants into water.

The petition says the KPDES permit “illegally fails to control discharges from the plant’s coal waste landfill and other sources and arbitrarily relies upon inadequate testing and monitoring data for such discharges. . . . DOW has a duty to apply the best available technology [BAT] to control effluents on a case-by-case basis.” It was filed by Sierra Club and Kentucky environmentalists.

Additionally, the challengers allege that Kentucky officials did not respond to their comments or follow public notice procedures. *Relevant documents are available on InsideEPA.com.* See page 2 for details.

The petition also notes that EPA has determined that its own effluent limitation guidelines for power plants, promulgated in 1982, are no longer adequate, and is slated to revise them, issuing an information collection request last October as an initial step. In the meantime, Kentucky has an "obligation to set case-by-case BAT limits for discharges from Cash Creek which were not covered by the guidelines. It did not set such limits," the petition says.

Kentucky finalized the KPDES permit for Cash Creek Feb. 1 after issuing a draft permit last year that activists highly criticized for setting a low bar for coal gasification plant water permits. "We don't know what an EPA [discharge] standard would look like [but] we would hope it would be more protective than what's going on here. The concern is to the extent [Kentucky is] doing this first, they will set an inappropriate bar. . . We don't want this [permit] to be the bad precedent out of the gate," an environmentalist said of the draft (*Inside EPA,* Sept. 11).

The source now says Kentucky DOW failed to adequately respond to environmentalists' concerns in the final permit. "We think they really didn't dig deeply. We provided them evidence of similar problems" at a smaller-scale coal gasification facility in Indiana known as the Wabash plant "and they decided not to look at it."

Kentucky in its response to comments in the final permit defends its decision not to consider the performance of other similar plants. "Permit limits are derived on a case-by-case, site-specific basis," the response says.

But the environmentalists' petition contends, "DOW explicitly disclaimed any obligation to analyze any data concerning the Wabash plant's water compliance history. Had it considered this data, it would have been aware that plants of Cash Creek's design and purpose have had serious water quality problems, warranting strict permit limits."

Additionally, the environmentalist says the state improperly interpreted the antidegradation analysis required to protect high quality waters by claiming it lacked data to determine whether the facility would degrade waters.

Kentucky's response to comments says, "No site-specific information pertinent to the KPDES permit was presented; therefore the division maintains its position regarding the antidegradation review."

The environmentalists' petition calls that analysis "circular. Under DOW's reading, any new source would be allowed to avoid antidegradation analysis until it began degrading the Commonwealth's waters, simply because source-specific effluent data would not be available until then."

The Kentucky DOW has 30 days to respond to the petition and then an administrative hearing will be scheduled.

A DOW source says the department is reviewing the complaint and will file a response to the administrative review board within the required time frame.

The proposed facility already has a Clean Water Act section 404 permit, necessary before it can fill wetlands for construction, but environmentalists also contested the facility's Clean Air Act permit, and EPA officials late last year required the state to consider natural gas in lieu of gasified coal in the permit, a process that may produce fewer emissions than gasifying coal (*Inside EPA,* Dec. 25). That reconsideration is now under way, the environmentalist says.

The source notes that Cash Creek was proposed in 2006 before new supplies of natural gas were discovered and "it doesn't make a lot of sense to use energy to make gas from coal when they could just be using natural gas. The plant sits on a natural gas line" and therefore should switch to using natural gas before it can get an air permit.

Further, the environmentalist says plant backers have gone to the Kentucky legislature in recent weeks asking them to include the energy from the plant in the state's under-development renewable energy standard in a bid to force utilities in the state to buy the power and bolster prospects for a profitable venture. -- *Dawn Reeves*

**DHS Crafting Chemical Security Bill That May Include Key Obama Priorities (*Inside EPA*)**

3/5/2010
The Department of Homeland Security (DHS) is crafting proposed legislation to overhaul and expand its chemical security rules that could include key Obama administration priorities, including mandates to switch to safer technologies, though it is unclear how the bill will differ from House-passed legislation with similar requirements.

Rand Beers, under secretary for the National Protection and Programs Directorate at DHS, told a March 3 Senate Homeland Security & Governmental Affairs hearing on chemical security that the department has completed a draft bill to overhaul its existing Chemical Facility Anti-Terrorism Standards (CFATS). Beers said DHS will soon circulate the draft to other executive departments and agencies, but has no clear time frame for releasing the proposed bill.

"The time frame for that process is entirely dependent upon the degree of controversy that draft legislative language creates. I wouldn't want to suggest that it be up in the next couple of weeks; I would hope that it could be up in the next couple of months," Beers told Sen. Joseph Lieberman (I-CT), chairman of the committee. *Relevant documents are available on InsideEPA.com.* See page 2 for details.

However, it is unclear how the administration's pending security bill will differ from H.R. 2868, a chemical security bill that passed the House Nov. 6 and has since been referred to the Senate Homeland Security & Governmental Affairs Committee. But the administration witnesses at the hearing stopped short of endorsing the House legislation, though they said Congress needs to pass a broader bill than S. 2996, which would extend DHS's program another five years.

While Beers and EPA Office of Water Assistant Administrator Peter Silva did not divulge the contents of the draft bill, their testimony at the hearing highlighted key priorities the administration wants in a security bill.

These priorities include requiring the highest-risk facilities to adopt inherently safer technology (IST), such as switching from chlorine to a substance that poses less of a risk to humans if released due to a terrorist attack. Unions and environmentalists similarly have long advocated for high-risk facilities to be subject to IST mandates.

Beers and Silva said the administration would like a reauthorized security program to include the authority for DHS and EPA to require IST at facilities that are assessed as being in the two highest-risk of four risk categories. The facilities would be allowed to consider factors such as cost, effectiveness and practicality in meeting an IST mandate.

The two lower-tiered facilities, by contrast, could be issued recommendations on technological switches that they could undertake to reduce their risks from an attack, Beers and Silva suggested in their testimony.

Then-presidential candidate Sen. Barack Obama (D-IL) also advocated for IST mandates. According to a summary of Obama's comments from 2006 to the present on chemical security compiled by Greenpeace, Obama said in remarks reprinted in the book "Change We Can Believe In" that he advocated a plan to, "Secure our chemical plants by setting a clear set of federal regulations that all plants must follow, including improving barriers, containment, mitigation and safety training, and where possible, using safer technology, such as less toxic chemicals."

The administration's witnesses also said that a top priority for chemical security legislation is to establish a program at EPA to regulate security at drinking water and wastewater facilities. Both facilities are exempt from DHS' Bush-era chemical security rules, and EPA and DHS advocated strongly at the hearing to end that exemption.

However, it is unclear to what extent the pending bill will differ from H.R. 2868, which includes many of the provisions that the Obama administration says are essential components of a security bill.

Sen. Carl Levin (D-MI) asked Beers whether the administration supports H.R. 2868. In response, Beers said the administration has not taken a position on the bill but implied that, by virtue of their intention to introduce legislation of their own, the administration might not agree with all aspects of the House legislation.

“We have not taken a position on that,” Beers said. “You can draw an interpretation [from the fact] that we plan to introduce our own legislation,” he told Levin.

Lieberman meanwhile declined to say whether he supported H.R. 2868, though he did expressly agree with the administration’s support to end water facilities’ exemption from security rules.

It is less clear whether Lieberman supports mandating IST, or simply supports IST as a voluntary effort. “Personally, I join with the administration in thinking that exemption [of waste facilities] leaves a troublesome security gap,” Lieberman said. “I believe that it is important to look at [IST] as part of a comprehensive security system, since they are the only foolproof way to defeat a terrorist determined to strike a chemical facility.”

At the hearing, some Republicans and Democrats advocated for bipartisan legislation they are sponsoring, S. 2996, which would extend the existing DHS program for another five years.

Sen. Susan Collins (R-ME), ranking panel member and sponsor of S. 2996, said in her opening statement that the existing DHS chemical security program is already providing the enhanced security desired and has not been fully implemented yet, and said the efforts by Democrats in the House to enact a new chemical security law would scrap the progress already made without any discernible advantage.

“Now we are at a juncture where we must reauthorize the program or -- as some have proposed -- scrap what has been a clear success and set off in a different direction,” Collins said. “I firmly believe that we should reauthorize the law. Simply put, the program works and should be extended.”

Beers and Silva said Congress needs to pass a more comprehensive chemical security bill rather than leave the existing framework in place, as proposed by S. 2996. -- *John Heltman*

**Bills offered in Congress to protect Great Lakes (*FOX 21 News*)**

Created *Mar 4 2010 - 2:32pm*
By JOHN FLESHER, AP Environmental Writer

TRAVERSE CITY, Mich. (AP) Members of Congress are proposing to pump nearly $4 billion in federal money into Great Lakes environmental programs over the next five years.

Identical bills introduced Thursday in the House and Senate would authorize spending $475 million per year on the Obama administration's Great Lakes Restoration Initiative.

That plan calls for stepping up efforts to fight invasive species, restore wildlife habitat and clean up polluted sites across the region.

The bills also would spend an additional $750 million a year on toxic sediment removal and $25 million annually for the Environmental Protection Agency's Great Lakes office.

President Barack Obama also is proposing big increases in spending to clean up and restore the lakes.

**Both Sides Cheer EPA Water Break In Florida, For Different Reasons (*Southeast AG Net*)**

by Gary – March 4th, 2010

By KEITH LAING – THE NEWS SERVICE OF FLORIDA
THE CAPITAL, TALLAHASSEE, March 4, 2010…….Both sides of a fight over new water quality regulations for Florida are cheering a decision by federal officials to extend the comment period on the proposal, though they did not see eye-to-eye on what the flood of extra time would mean for the plan.
The U.S. Environmental Protection Agency has extended the period for public comment on the water standards, which the agency has telegraphed would be toughened, for 30 days.

“This extension of the allotted comment period will allow DEP as well as Florida scientists and water quality managers to thoroughly engage in assessing and commenting on the proposed criteria,” state Department of Environmental Protection spokeswoman Dee Ann Miller said in a statement. “It is critical that those who are knowledgeable of Florida waters share information on the state’s unique ecosystems with EPA scientists to best inform their decisions in the future.”

State Rep. Dave Murzin, R-Pensacola, had asked the state’s Congressional Delegation to push for the delay so more residents could speak out against the proposed new rules. Murzin has held town halls in his district on the proposal independent of the EPA’s recent public hearings and said the decision by the EPA to agree was an apparent victory.

He said that 90 other state House members had signed onto the letter.

“Across the state, this could potentially quadruple the cost of water,” Murzin said in an interview. “That’s a lot to ask in downturned economy, so anytime we can forestall that, it is a good thing.”

But Florida Clean Water Network director Linda Young, who has argued that threats about increased costs associated with the EPA proposal have been exaggerated, also saw the decision to extend the comment period as a good thing.

“That’s the one thing everybody agreed on, that we needed more time,” she told the News Service. “I’m always a big advocate for public participation and anything that gives people the opportunity to have their voices heard.”

At issue is an EPA proposal to set limits on the amount of pollution in state bodies of water containing the chemicals phosphorous and nitrogen. The plan is the result of a lengthy legal fight between the state, which argues that the standards would be unfair because they would only be applied to Florida, and environmentalists, who sued state regulators for failing to enforce the federal Clean Water Act.

A federal court agreed with the environmentalists, issuing a consent decree that numeric water quality standards for inland waters had to be established, as opposed to existing “narrative” standards, which are enforced on a case-by-case basis. Under the EPA plan, Florida waters would be grouped with different nutrient allotments depending on the characteristic of the water.

The proposed standards, while not complete, have angered the state’s business and farming communities, who argue they would be expensive to comply with.

The Florida Department of Environmental Protection has sided with the state’s business and farming communities and had planned to discuss its own proposed numeric standards next week, but the department postponed the meeting until April 7 in light of the EPA extension Thursday.

The EPA plans to use the extra time to hold three additional public hearings on the proposed regulations. Hearings were held last month in the Panhandle, central and south Florida.

Both Young and Murzin see different uses for the extra time. Young said it would give environmentalists more time to dissect the EPA proposal and it would also give federal officials more time to respond to objections like the ones raised by Murzin.

“The rule itself is 75 or 180 pages, depending on which version you read, so a whole bunch of us are working together to try to do comments, get scientists (to testify) and figure out the loopholes they have built into it,” Young said. “The timing they (initially) gave us wasn’t enough to do that.”

Murzin, however, said the extra time would allow the EPA to reconsider its proposal.

“We’re basically saying give us a little bit more time and see if we can get some scientific evidence before we do something willy nilly,” he said.

Young said that time would eventually run out though, because the EPA was being compelled to act by the federal court.

“The EPA is trying to stay in line with the consent degree,” she said. “Polluters want to delay because they think somehow it will give them an opportunity to put political pressure on the Congressional delegation and whatever other avenues they are going through, but every Congressman in the world won’t be able to stop it. There’s a court order. It’s going to happen.”

**Voinovich introduces Great Lakes Protection Act (*WTOL 11*)**

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U.S. Senator George V. Voinovich (R-OH)
A news release by the office of Senator George V. Voinovich:

WASHINGTON, D.C. - U.S. Senator George V. Voinovich (R-OH), co-chair of the Senate Great Lakes Task Force and a member of the Committee on Environment and Public Works (EPW), introduced the Great Lakes Ecosystem Protection Act - a bill to protect and preserve the Great Lakes for future generations. U.S. Senator Carl Levin (D-MI), co-chair of the Senate Great Lakes Task force, is an original co-sponsor of this bill.

"Today's introduction of the Great Lakes Ecosystem Protection Act is a continuation of my decades-long legacy of protecting the Great Lakes," Sen. Voinovich said. "This legislation will ensure the vital resources necessary to protect and preserve the Great Lakes for future generations - it will also establish the advisory capacity necessary for federal agencies, local government and others to come together to share ideas and guidance and to prioritize funding needs."

The Great Lakes Ecosystem Protection Act would:

- Authorize the Great Lakes Restoration Initiative, an interagency effort led by the Environmental Protection Agency (EPA), which President Obama proposed in 2009
- Create two advisory groups reporting to EPA, including federal agencies, states, tribes, local government leaders and observers
- Authorize the Federal Great Lakes Interagency Task Force, created in 2004 by Executive Order, to allow federal agencies to continue to coordinate efforts
- Reauthorize the Great Lakes National Programs Office for five years. This office would be housed within the EPA and be the central point of contact for all Great Lakes issues; and
- Reauthorize the Great Lakes Legacy Program, which has successfully removed contaminated sediment from Areas of Concern around the United States for five

years. Almost 800,000 cubic yards of contaminated sediments have been removed since the program was created. Nearly 500,000 cubic yards of contaminated sediment has been eliminated so far in the Ashtabula River and similar processes have begun for the Ottawa and Maumee Rivers.

"The Great Lakes are a centerpiece of the American landscape, a unique and important natural resource to Ohio and the entire region - they must be protected not just for this generation, but for generations to come," Voinovich continued.

As a member of the Ohio House of Representatives, George Voinovich led a successful legislative effort to stop platform oil and gas drilling in Lake Erie. He was also a key player in improving Ohio's water pollution laws and a prime mover in getting Ohio involved in cleaning up its air and water, and saving Lake Erie. One of the first things Sen. Voinovich did when he came to the U.S. Senate, as a former chairman of the Council of Great Lakes Governors, was work on legislation that would direct states to reach an agreement on how to manage Great Lakes water. He also worked to design and enact the 1999, 2000 and 2007 Water Resources Development Acts which included the Asian carp dispersal barrier, the Great Lakes Fishery and Ecosystem Restoration program, and the John Glenn Great Lakes Basin program.

Sen. Voinovich helped enact the original Great Lakes Legacy Act of 2002, which has contributed significantly to the effort to clean up Areas of Concern in the Great Lakes. Today, he continues to work with Sen. Levin and the Great Lakes delegation to advance restoration efforts in this critical region during the 111th Congress.

The Great Lakes Ecosystem Protection Act was also introduced in the U.S. House of Representatives by Representatives Vernon Ehlers (R-MI), John Dingell (D-MI), Mark Kirk (R-IL), and Louise Slaughter (D-NY). Original sponsors in the Senate include Senators Carl Levin (D-MI), Amy Klobuchar (D-MN), Sherrod Brown (D-OH), Al Franken (D-MN), Debbie Stabenow (D-MI), and Dick Durbin (D-IL).

FACT SHEET: Great Lakes Ecosystem Protection Act

WASHINGTON, D.C. - Today, U.S. Senator George V. Voinovich (R-OH), co-chair of the Senate Great Lakes Task Force and a member of the Committee on Environment and Public Works (EPW), introduced the Great Lakes Ecosystem Protection Act - a bill to protect and preserve the Great Lakes for future generations. U.S. Senator Carl Levin (D-MI), co-chair of the Senate Great Lakes Task force, is an original co-sponsor of this bill. This bill would:

· Authorize the Great Lakes Restoration Initiative. In 2009, President Obama proposed $475 million in the Environmental Protection Agency's (EPA) budget for a new Great Lakes effort called the Great Lakes Restoration Initiative (GLRI). This is an interagency effort in which EPA receives funding for restoration work and provides funds to other agencies. This is a significant new restoration effort which should be authorized in law to ensure its continuation. Sen. Voinovich's bill authorizes the GLRI and asks for

implementation of the recommendations of the Great Lakes Regional Collaboration Strategy of 2005 and the Great Lakes Restoration Initiative Action Plan. The EPA ultimately determines how the GLRI funds are spent, but the bill requires the EPA to consider the recommendations of the Great Lakes Leadership Council. The bill authorizes $475 million per year for the GLRI.

· Authorize a New Advisory Entity. This bill would create the first standing advisory group to the EPA on Great Lakes issues, establishing a two-tiered advisory group:

· Great Lakes Leadership Council (GLLC): The GLLC would include federal agencies, states, tribes, local government and other observers. The GLLC would approve long term and annual goals, report progress to Congress, the President of the United States, and the general public to determine structure for participation in international forums and make budget recommendations.

· Great Lakes Management Committee (GLMC): The GLMC reports to the GLLC and provides recommendations on all issues listed above. In addition, the GLMC provides direction on planning, assessment and reporting efforts, tracks and assists in implementation, and engages in ongoing problem solving. Members of the GLMC include representatives of the four governmental groups in the GLLC as well as one representative from the International Joint Commission, Great Lakes Fishery Commission, Great Lakes Commission, industry, environment, agriculture and the science-academic community.

· Reauthorize the Great Lakes National Program Office. EPA's Great Lakes National Program Office (GLNPO) is the primary office handling all Great Lakes matters including the GLRI, the Great Lakes Water Quality Agreement, the Great Lakes Legacy Program, Remedial Action Plans at Areas of Concern and Lakewide Management Plans and its currently authorized grant program. GLNPO's authority expired in 2008 - this bill would reauthorize GLNPO for five years at $25 million per year.

· Reauthorize the Great Lakes Legacy Program. The Legacy Program was first authorized in 2002 and has been extremely successful at removing contaminated sediment from the designated U.S. Areas of Concern. The Legacy Program was reauthorized in 2008 for two years. This bill would reauthorize the program for five additional years and increase its funding level from $54 million to $150 million per year. This increase of funding was recommended by the Great Lakes Regional Collaboration Strategy Report so the contamination at Areas of Concern would be removed within 10 years. An increase in funding is also reflected in the Fiscal Year 2010 GLRI spending plan which provides $75 million to the Legacy program.

· Authorize the Federal Interagency Task Force. The Great Lakes Interagency Task Force (IATF), created by an Executive Order from 2004, brings together 11 U.S. Cabinet and Federal Agency heads to coordinate restoration of the Great Lakes. The IATF forces the federal agencies to coordinate more regularly. The bill would authorize the IATF as it currently exists.

**Environmental Protection Agency will begin second season of removing toxic sediment from the Fox River on April 5 (*Greenbay Press Gazette*)**

By Tony Walter • twalter@greenbaypressgazette.
com • March 5, 2010

The cleanup of toxic sediment from the Fox River
begins again April 5.

The second season of removing PCBs will start with dredging near the dewatering facility north of the Georgia-Pacific Broadway plant.

According to the design plan for the $700 million project, dredging is scheduled to continue for six more years and be followed by two years of capping leftover sediment on the river bottom.

Capping the sediment has been a controversial issue because critics believe it won't prevent the
release of PCBs in the future.

The Fox River cleanup now may include more dredging and less capping of PCB sediment north of the De Pere dam than was originally planned.

"We're in discussions about that now," said Jim Hahnenberg, remedial project manager for the U.S. Environmental Protection Agency's Region 5 office in Chicago.

"It might lower the costs so we're having the discussions to see if it's really true or not."

The cleanup orders issued by the EPA and Wisconsin Department of Natural Resources in 2007
included extensive capping, a decision that was expected to save about $200,000 in dredging,
treating and hauling costs.

Dredging sediment south of the De Pere dam is expected to be completed this year.

"Our goal is to also complete all the capping south of the dam this year too," said Ray Mangrum of Tetra Tech Inc., the company hired by NCR Corp. and Appleton Papers Inc. to supervise the dredging, dewatering and disposal of the PCB sediment.

Polychlorinated biphenyls were chemicals used in the production of carbonless copy paper and
dumped into the river as waste material from 1957 to 1971. The EPA halted the use of PCBs in 1977.

More than 541,000 cubic yards of sediment — the equivalent of 147,000 tons — were removed from the river in 2009, about 16 percent more than was expected to be taken out. In addition, 51 acres of river bottom was covered with sand to keep the sediment there.

"It was quite an achievement," Hahnenberg said. "It was the most dredged in a single season on an environmental project ever."

Hahnenberg said the goal for this year is to remove 550,000 cubic yards of sediment, with a c
ontingency plan in place to dredge more if possible.

Beginning in 2011, all dredging will take place north of the De Pere dam where the contamination is the heaviest.

The recent decision by U.S. Judge William Griesbach to throw out a lawsuit filed by NCR Corp. and Appleton Papers Inc. that sought to have area municipalities responsible for some of the cleanup costs won't change the cleanup schedule, Hahnenberg said.

**Dredging will resume in Green Bay harbor (*Greenbay Press Gazette*)**

Kagen assured that agencies will 'finish what they started'
By Tony Walter • twalter@greenbaypressgazette.com • March 5, 2010
Dredging in the Green Bay harbor will start again, U.S. Rep. Steve Kagen said Thursday.
The Appleton Democrat said officials from the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency said they would notify him next week when dredging of the navigational channel and turning basins will commence.

The agencies' assurance came during a meeting of the House Subcommittee on Water Resources and Environment, Kagen said.

"They both agreed they'll finish what they started and there's a commitment that the revenues will be provided," said Kagen.

The Corps announced last month that it planned to halt dredging in the navigational channel until 2017 because the EPA's dredging requirements were too costly.

The U.S. Department of Justice, representing the EPA and Wisconsin Department of Natural Resources, ordered the dredging stopped in August because it was interfering with the Fox River PCB cleanup project.

The EPA and DNR claimed that dredging of the channel and turning basins at Georgia-Pacific and the East River were stirring up PCB sediment in the river. The Corps, which has had a contract to dredge since 1986, uses mechanical dredging. The Fox River Cleanup Project uses hydraulic dredging.

The threat of halted dredging in the channel led the Brown County Harbor Commission to schedule an informational meeting Monday with terminal operators. The shipping business brings $75 million of business into the Green Bay harbor annually and is responsible for approximately 700 jobs.

Brown County Port Manager Dean Haen said the meeting will be held but said resuming the dredging would be welcome.

The Port of Green Bay to Northeastern Wisconsin and the state as a whole is significant to the region's economy, Haen said.

"It is untenable to allow that economic engine to be halted," he said.

**EPA's authority to clean up water should be restored (*Lancaster Eagle Gazette*)**

March 5, 2010
Recent decisions by the U.S. Supreme Court have undermined the ability of the U.S. Environmental Protection Agency to stop pollution of the nation's waterways. Congress should pass a Senate bill that would leave no doubt about the agency's authority to crack down on manufacturers, developers, and others guilty of discharging toxic wastes into wetlands and rivers.

For 30 years, the EPA and federal courts -- including the Supreme Court itself -- had broadly interpreted the Clean Water Act's jurisdiction over "navigable waters" to protect virtually all the nation's wetlands and waters, including tributaries of rivers. During that time, pollution levels fell dramatically and the quality of drinking water improved. Then the Supreme Court muddied the issue by taking a cramped, overly restrictive view of the law's wording. In a 2006 decision, the court said the EPA had authority in wetlands cases only if the wetlands form a "significant nexus" to "navigable" waters. The uncertainty surrounding this ruling has thrown a wrench into EPA's enforcement of the law.

According to EPA regulators cited by the New York Times recently, more than 1,500 major pollution investigations have been dropped or put on hold in the past four years. The Times report cited EPA data showing that about 117 million Americans get their drinking water from sources that, under the court rulings, could be excluded from Clean

Water Act jurisdiction. In Massachusetts, happily, the public enjoys an extra degree of protection thanks to a state clean water act that is more expansive than the federal law, but the state agency that enforces it has been under budget pressure.

A bill co-sponsored by Senator Benjamin Cardin of Maryland would end the ambiguity in the federal Clean Water Act in part by dropping the word "navigable." Called the Clean Water Restoration Act to emphasize that it simply returns to the EPA the power it had before the court rulings, the bill deserves quick approval by Congress. Even anti-government zealots must acknowledge it is no fun having a tea party with contaminated water.

*-- The Boston Globe*

**Claim: San Francisco giving gardeners toxic sludge (*Water World*)**

By EVELYN NIEVES

SAN FRANCISCO - San Francisco wears its environmental consciousness like a green badge of honor. Residents separate and recycle their food scraps. Streets close to cars so people can walk and bike them. A city department even gives away "high-quality, nutrient-rich, organic bio-solids compost" to any and all takers.

But hold on there: A public interest and environmental advocacy group says San Francisco's free compost, used by community, backyard and school gardens in the Bay Area, is processed sewage sludge - the product of anything flushed, poured or dumped into the wastewater system, including industrial, chemical and pharmaceutical toxins.

"This sludge belongs in a hazardous waste dump," said Ronnie Cummins, national director of the Organic Consumers Association, before he poured some of the compost on carefully laid out plastic sheeting at the steps of San Francisco City Hall on Thursday.

The protest, he said, was the launch of an all-out campaign the organic foods movement is planning to wage against the use of bio-solids compost.

The San Francisco Public Utilities Commission, which manages the city's sewage treatment, says the 1 percent of the city's 80,000 tons of sewage that is converted into compost each year is treated and tested to the point of sterility.

San Francisco isn't even the only California city to have bio-solid giveaways, according to the Organic Consumers Association. Los Angeles, San Diego, San Juan Capistrano, Santa Rosa, Fortuna, Carlsbad, and Calabasas do the same.

Not only that, sewage or bio-solids compost is packaged and sold in major house and garden centers across the country. And fertilizer made from bio-solids is used on millions of acres of land throughout the U.S. where plants are grown, according to a report by the U.S. Geological Survey. That fertilizer is not treated and heated to the point where it becomes compost and is not used for human food crops, though it is used for animal food crops.

San Francisco's bio-solids compost has become the focal point for the issue precisely because the city is so environmentally aware, say organic groups.

"San Francisco as the greenest large city in the country should be the first to stop this," Cummins said.

Federally mandated testing shows that the compost has far lower levels of nine pollutants than the Environmental Protection Agency deems acceptable, San Francisco Public Utilities Commission spokesman Tyrone Jue said.

"We're in the business of protecting public health and the environment," Jue said. "That's our mandate and our mission statement. That's what we do. If for even a minute we thought one of our activities was going against that mandate, we would absolutely stop doing it."

But the problem, say groups like the Organic Consumers Association and the Center for Food Safety, is that the EPA requires testing only for nine metals, when there are potentially thousands of chemicals in the compost.

The EPA is evaluating if more pollutants need to be regulated, and believes additional studies are needed, said Lauren Fondal, an environmental engineer for the EPA office in San Francisco.

"I don't believe there have been any major studies of all these chemical that we've begun detecting," she said.

There is no hard science that bio-solids compost is perfectly safe, the organic groups say, while there is anecdotal evidence that it is not.

In 2008, for example, a federal judge in Georgia ruled in favor of farmers who sued the U.S. Department of Agriculture when their cows became ill and died after eating silage grown on land upon which the compost had been applied.

"The EPA cannot assure the public that current land application practices are protective of human health and the environment," U.S. District Court Judge Anthony Alaimo.

Last fall, The Center for Food Safety, a watchdog group with offices in Washington, D.C., and San Francisco, tried to raise awareness of the "bio-solids" issue when it petitioned San Francisco to end the compost giveaways.

The city made no promises. But the PUC did stop calling its free compost "organic." Under USDA rules, no sewage sludge compost, or farms that use bio-solids, can be called "organic."

On Thursday, when the Minnesota-based members of The Organic Consumer Association held their "toxic sludge giveback" at City Hall, five protesters were flanked by about a dozen reporters and curious passers-by.

One of those watching was Jue of the PUC. He said that the city still considers the compost giveaways a pilot project. The city has held six giveaways since 2007. Jue said it has none planned for the near future.

"Of course, if the public doesn't want it, we'll stop," he said.

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