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

Monday, February 18, 2013

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

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## ADMINISTRATOR JACKSON

July 23, 2009, 8:35 AM ET

**Team Obama: Why Farmers Should Love the Climate Bill (*Wall Street Journal*)**

The fact that President Obama focused on health care to the near-total exclusion of his energy and climate push in his press conference last night has some folks wondering: "Should we get over ourselves and concede that health care takes priority over climate action?"

Not so fast. The Obama administration continued its offensive on the climate bill, but from a different quarter—trying to assuage the fears of the all-important farm-state senators who can make or break the climate push in the Senate.

A number of administration heavyweights—Agriculture Secretary Tom Vilsack, EPA administrator Lisa Jackson, and science advisor John Holdren—told the Senate Agriculture Committee to relax. Farmers will make out a lot better with climate legislation than without it, enjoying "significant net benefits."

Secretary Vilsack brandished a new report from the Agriculture Department. The upshot? Thanks to all the last-minute goodies included in the House climate bill, farmers stand to rake in a fortune from so-called carbon offsets. That extra income will more than compensate higher energy prices, he said.

To wit: Farmer's incomes will take a hit in the short term, falling by 1% through 2018. Things will get worse by 2027 (a 3.5% decline) and even worse by 2048 (a 7.2% decline.) That's because things like fuel and fertilizer will cost more under the climate bill.

But farmers' net incomes will keep rising, because they will be literally standing on a gold mine in the form of carbon offsets, which will become increasingly valuable. The goods:

EPA's analysis projects annual net returns to farmers of about $1-2 billion per year from 2012-18, rising to $20 billion per year in 2050. USDA's analysis strongly suggests that revenue from agricultural offsets (afforestation, soil carbon, methane reduction, nitrous oxide reductions) rise faster than costs to agriculture from cap and trade legislation. It appears that in the medium to long term, net revenue from offsets will likely overtake net costs from HR 2454, perhaps substantially.

It might be even juicier; the EPA's Ms. Jackson estimated the value of agricultural offsets at more than $3 billion in 2020.

And wait—there's more. "[W]e believe our analysis is conservative – it's quite possible farmers will actually do better," Secretary Vilsack said.
That's because farmers also stand to make a fortune off of other government energy policies, such as ambitious mandates for renewable energy and biofuels that will create lucrative, mandatory markets for crops and even agricultural waste.
Agricultural interests are skeptical of the USDA's findings, arguing that a lot of sectors will still take a beating under the new legislation.
But it seems clear the administration has figured out exactly where it needs to push to make sure the climate bill has a chance in the Senate.

Posted on Thu, Jul. 23, 2009

**Agreeing on energy choices (*Philadelphia Inquirer*)**

Outside Washington, the nation knows that together, we must do something.
By Lisa P. Jackson
Our nation's clean-energy future has been one of the most debated issues in Washington in recent months. As Congress works to pass a landmark energy and climate bill, the conversation has often fallen into a familiar pattern of right against left, and Democrats against Republicans - partisan divides that threaten to hold back necessary change.

But when I travel beyond the environs of Washington, I hear a different discussion.

People across the nation ask me about clean-energy jobs in their communities. They want to know how we can cut pollution. They are concerned that the changing climate means they won't be able to vacation on the same beaches in the years ahead, and they are eager to know if the factories in their cities can be saved by manufacturing wind turbines or solar panels. I meet Democrats and Republicans who agree that our dependence on foreign oil jeopardizes our economy and security.

These are issues that unite us as a nation - and have for years. It was Republican President Richard Nixon who formed the Environmental Protection Agency. And President George H.W. Bush based his energy policy on "reducing our dependence on foreign oil, protecting our environment, and promoting economic growth."

Today, there is still broad, bipartisan support for getting America running on clean energy. People are eager for Washington to break the old pattern and help them confront the economic, environmental, and security challenges we face - not as political parties, but as a nation.

Sparking a nationwide transition to clean energy can create millions of well-paying jobs that can't be shipped overseas, which will help rebuild the economy in every state. There is no red-state/blue-state divide when it comes to green jobs. A recent University of Massachusetts study showed that clean-energy investments would create the highest

concentrations of jobs in traditionally Republican states, such as Kansas, Texas, Georgia, and Tennessee.

Clean energy can also cut dangerous pollution in our communities. It can bring relief to the millions of American children with asthma and cut smog levels that double the risk of premature births. It can reduce the prevalence of cancer and other diseases linked to pollution from burning fossil fuels. That will improve overall health and lower the amount we spend on health care each year - another goal we all can support.

Clean energy is also the key to turning the tide on climate change. Our nation is already suffering through historic droughts, more destructive hurricanes, and agricultural pests and infectious diseases spreading into new areas. Further changes in the climate pose real threats to our coastlines, family farmers, and the environment.

Finally, with home-grown energy sources, we can stop sending billions of dollars overseas and help stabilize our economy at home. Over the first half of this year, the price of a barrel of oil has nearly doubled. Those kinds of fluctuations raise the costs for businesses to move products and for drivers to fill up their gas tanks, putting greater stress on the economy.

But this is about more than just oil; it's about global stability as well. Violence over resources, displaced refugee populations, poverty-driven instability, drought, and famine will only worsen as the climate changes and the environment is degraded.

The alternative is to put our ingenuity to work. Clean-energy technologies can create educational and economic opportunities where none existed before, including new markets for American goods.

Clean energy is to this decade what the space race was to the 1950s and '60s, and other nations are seizing the moment, leaving America behind. Germany has surged ahead in solar manufacturing, Japan is leading the world in hybrid cars, and China has stepped up efforts to produce electric vehicles. And when those cars come to market, Korean companies will be well ahead of our own in the development of batteries and fuel cells.

Clean energy needs strong incentives and support if we are to lead the new global economy, and that's what the clean-energy bill before Congress provides. It's up to Democrats and Republicans across the nation to let lawmakers know that we need to confront economic, environmental, and security issues that affect us all. When it comes to clean energy, the American people need to show they aren't concerned about whether we follow Democrats or Republicans, as long as we lead the world.

Lisa P. Jackson is the administrator of the federal Environmental Protection Agency and a former
commissioner of the New Jersey Department of Environmental Protection.

Posted: July 23, 2009

**EPA Administrator Lisa Jackson Acknowledge The Need To Clean Up Vieques (*AlterNet*)**

San Francisco,CA
EPA Administrator Lisa Jackson acknowledged the need to clean up the island of Vieques in her address at the national convention of the League of United Latin American Citizens (LULAC) last week.

In her speech at LULAC, Jackson explained that EPA wants "to have a few long-overdue conversations, and get moving forward together on critical environmental issues." She noted the "tragic consequences" of "what happens when you are on the margin of the environmental conversation."

Hitting the nail on the head, she continued, "We see it on Vieques Island, where we need the continued involvement of the community of people who live on that island, to ensure it is cleaned up."

The people of Vieques would like nothing more than to ensure that their island is cleaned up, and quickly. The U.S. Navy's 60-year bombardment of the island left behind a toxic legacy of contamination and disease that has so far been largely neglected by the government. Vieques residents suffer from astronomical rates of cancer, birth defects and other pollution-related illnesses, and most do not have access to appropriate health care facilities to address their needs.

The responsibility of ensuring a clean up of the island rests on the shoulders of EPA Administrator Jackson, who must follow through on President Obama's campaign pledge to address the health crisis among Vieques residents and to pursue a full, timely and just resolution to the ongoing contamination problems.

There is a strong and growing public outcry for justice for Vieques, as evidenced by the recent resolutions from the United Nations and both houses of the Puerto Rican legislature supporting the people of Vieques in their struggle with disease, contamination and neglect.

Last Thursday, Vieques Mayor Evelyn Delerme Camacho called on President Obama to fulfill his campaign pledge, and urged the administration to settle two lawsuits filed by the island municipality and its residents against the U.S. Navy for health damages resulting from the Navy's six decades of bombing. Mayor Delerme Camacho noted that the contamination has devastated the island's tourism and fishing industries, and worsened the quality of life for all residents.

Lisa Jackson mentioned yesterday in her speech at the Department of Justice that she understands the "effects that these [environmental contamination] cases can have on a community."

Jackson told the DOJ lawyers that, beyond the "very clear message that EPA is back on the job" which she has delivered frequently in recent public addresses, she wants the public to know that "EPA is leading the way." She pledged a renewed commitment to "the rule of law," and stated "science must once again be the determining factor in EPA decision making."

Jackson's remarks to DOJ and LULAC are an encouraging indication that she plans to make good on the agency's mission of safeguarding human health and the environment.

But the people of Vieques are still waiting for the newly restored EPA to address their plight. Doing the right thing in Vieques would serve as a great example of EPA's renewed commitment to science and the rule of law.

Thus far, the Obama Administration has demonstrated a warped sense of honoring this commitment. The Department of Justice recently flaunted the archaic defense of sovereign immunity in an attempt to thwart the federal lawsuit claims of Viequenses.

The White House must intervene to ensure that the Navy is held accountable for their decades of damage, and the people of Vieques receive their due justice.

And Administrator Jackson should demonstrate her new pledge to lead by moving quickly to make President Obama's campaign promise to clean up the island a reality.

Administrator Jackson and President Obama, the ball is in your court now.

**Follow Brendan DeMelle on Twitter: www.twitter.com/bdemelle**

7/24/2009

**Equity Advisors Urge EPA To Ramp Up Diesel Risk Studies, Monitoring (*Inside EPA*)**

EPA's environmental justice advisors are urging the agency to quickly revisit its 2002 assessment of the risks posed by diesel exhaust, a move that would help the agency better quantify cancer risks nationwide since a recent air toxics study precluded consideration of the health effects of diesel particulate matter (PM) due to insufficient data.

Developing a risk value would also allow EPA and states to evaluate the negative health effects of ports and freeways on nearby communities.

A just-released report by a special panel of the National Environmental Justice Advisory Committee (NEJAC) examining the impacts of goods movement outlines a host of new initiatives in addition to the risk assessment that the panel says EPA should undertake to mitigate the health effects of diesel emissions on environmental justice communities, including increased monitoring, an inventory of potentially impacted communities, new rules to drive cleaner engines and incentives to finance an engine fleet modernization effort.

The NEJAC panel released its final report at the July 21 full committee meeting, which the committee plans to publicly review July 22. The report is the first from NEJAC under the Obama administration and comes amid EPA Administrator Lisa Jackson's appearance before the panel, where she reiterated her commitment to place environmental justice at the forefront of agency decision-making.

"Environmentalism doesn't come in any shape or color," Jackson said at the meeting, adding that environmental justice is a "force multiplier," and that in order to fulfill its obligations to protect human health and the environment, the agency demands a "robust environmental justice program."

The call for a new diesel risk assessment appears to have broken a logjam in the panel over how to address diesel emissions, allowing panelists to sidestep a thorny debate over whether to call for stricter emissions standards. Instead, panelists called for the agency to re-investigate its health risk assessment for diesel exhaust, pursuant to the agency's own recommendation that it do so when it issued its current risk assessment study in 2002. The report also says more recent research suggests that the agency should reconsider developing an exposure value for diesel exhaust that considers health risks besides cancer.

"Considering research that has occurred in the interim, and evaluating the need for further research, EPA should . . . reconsider adopting a unit risk value for diesel exhaust," the report reads. "In its scientific review, EPA should consider other heath outcomes from diesel emissions, including cardiovascular and respiratory illnesses." *The report is available on InsideEPA.com.*

The report also calls for increased local monitoring because central site monitors do not adequately reflect the higher levels of exposure that communities face in proximity to goods movement. In addition, fine particle measurements do not fully reflect the levels of diesel emissions to which residents are exposed, the report says.

The study further suggests that health impact assessments (HIAs) should be conducted prior to the construction of any new or expanding major transportation hubs that might be covered under the National Environmental Policy Act (NEPA), citing the existing practice of some EPA regional offices to require HIAs for certain "ports and freeway

expansion projects." HIAs measure the impact of a given project on a number of variables, including air and noise pollution and other quality-of-life impacts like limited access to parks.

The recommendations come as EPA has recently acknowledged that it lacks sufficient data to adequately quantify the risk of exposure to diesel exhaust. EPA says the latest version of its National Air Toxics Assessment (NATA) -- for 2002 data released June 24 -- very likely understates average cancer risks from directly inhaling air toxics in the United States because the data exclude the effects of diesel PM, which is among the most dangerous source of pollutants. EPA says in its NATA fact sheet that it does not have sufficient data to develop a quantitative estimate of the carcinogenic potency for diesel PM, although the agency "has concluded that diesel exhaust is among the substances that may pose the greatest risk."

The NEJAC goods movement report also suggests that the agency take on the task of developing an inventory of communities nationwide that are or could be adversely impacted by goods movement by port and rail, thus creating a tool to identify impacted areas and develop better policies to mitigate those impacts.

"EPA should establish . . . a list of the largest ports and rail yards in the United States, and complete the analysis of demographics near port and rail facilities that was begun in conjunction with the 2007 Locomotive and Marine Engine Rule," the report reads. "This will allow EPA to better understand the goods movement locations where significant environmental justice concerns may exist, even though community residents may not have raised concerns."

Coordination with other federal agencies is also necessary, the report says, in order to fund and undertake research projects that can fill in gaps in a report by the Health Effects Institute published in May that studied traffic-related emissions exposures. Those gaps include exposure to coarse, fine and ultrafine particulate matter; toxicological studies; epidemiological studies on affected communities; and cumulative impact studies related to goods movement activities.

The report suggests EPA develop a "three-way funding partnership with" the National Institutes of Health and the Department of Transportation and should "include community-driven research and participation, including outreach and education." -- *John Heltman*

## Exelon, PSEG, and Raytheon Meet GHG Reduction Goals (*EP Magazine*)

**Jul 24, 2009**

The U.S. Environmental Protection Agency's Climate Leaders program announced July 21 that Exelon Corp., Public Service Enterprise Group (PSEG), and Raytheon Co. have found cleaner sources of energy, reduced energy consumption, increased production of

renewable energy, and retired old equipment--all in an effort to reduce their contributions to climate change.

"We congratulate the members of the partnership upon meeting their goals to confront climate change," said EPA Administrator Lisa P. Jackson. "They're proving that they can be both industry leaders, and leaders in the fight against climate change."

Fifteen companies (including American Packaging Corp., Capital One Financial Corp., Caterpillar Inc., Clorox Co., CSX Transportation Inc., Design Continuum, Ecolab Inc., FetterGroup, Genzyme Corp., Mack Trucks Inc., Nortel, Novelis Corp., Pfizer Inc., Raytheon Co., and Sun Microsystems Inc.) have set new goals. EPA is also welcoming 60 new Climate Leaders to its ranks.

As the country's largest GHG goal-setting program, Climate Leaders is an EPA industry-government partnership that works with companies to develop comprehensive climate change strategies. Launched in 2002, the program has expanded from 11 charter members to 284 companies that represent more than 8 percent of total annual U.S. greenhouse gas emissions. Program partners represent a broad range of industry sectors and companies with a combined annual revenue equal to 12 percent of the U.S. gross domestic product.

7/24/2009

**Fighting 'Acute' NO2 Proposal, Industry Decries Inadequate EPA Review (*Inside EPA*)**

The National Association of Manufacturers (NAM) is challenging EPA's conclusion that a new primary standard for "acute," or short-term, exposures to nitrogen dioxide (NO2) is necessary to protect sensitive groups.

NAM has quietly submitted a petition to EPA under the Data Quality Act asking the agency to publish underlying data for an analysis it performed on the effects of NO2 exposure, which helped form the basis of the agency's conclusion that a first-time acute NO2 national ambient air quality standard (NAAQS) is needed to protect human health.

The challenge to EPA's basis for the acute portion of the proposal comes as other industry groups are raising broader questions about the adequacy of the agency's scientific review for its overall proposed NAAQS for NO2.

Currently, no areas in the United States violate the existing NO2 NAAQS, which was set in 1971 at 53 parts per billion (ppb) on an annual average.

However, EPA Administrator Lisa Jackson June 26 proposed to set a new 1-hour NO2 NAAQS between 80 and 100 ppb, which if finalized would put many areas of the country out of attainment and impose strict NO2 reduction requirements, largely on mobile sources, which are the biggest source of the emissions.

Industry groups are broadly challenging the basis of the scientific conclusions, saying EPA has not complied with transparency requirements in its assessment. EPA is holding an Aug. 3 public hearing in Arlington, VA, where industry concerns will likely be raised.

Industry groups have been consistently critical of EPA's stated need for a new short-term standard over the course of the NO2 NAAQS review, saying scientific evidence does not justify such a standard or the significantly stricter measures it would mandate to control the pollutant.

For example, a short-term standard set at 100 ppb would effectively mean that some area-wide concentrations would have to be limited far below that due to large emissions of the pollutant from roadways, according to the EPA proposal. "If NO2 concentrations near roads are 100 percent higher than concentrations away from roads, a standard level of 100 ppb could limit area-wide concentrations to approximately 50 ppb," the proposal says.

NAM in a June 2 Data Quality Act petition asked EPA to publish a meta-analysis it performed on various studies of the effects of NO2 exposure, which statistically combines the results of various studies to determine a common effect. *The petition is available on InsideEPA.com.*

For the review, EPA updated a meta-analysis of controlled human exposure studies. The meta-analysis results suggest that short-term exposures between 30 minutes and three hours at near-ambient concentrations of NO2 between 200 and 300 ppb "can alter airway responsiveness in people with mild asthma," EPA says in its proposal. The meta-analysis also indicates that ambient NO2 concentrations can increase risk of death by nearly 4 percent per 30 ppb increment over a 1-hour averaging time.

NAM is calling on EPA to release the underlying data in the meta-analysis in order to justify its proposal and comply with the transparency mandate of the statute.

"Rather than being transparent, the process by which EPA performed this meta-analysis is entirely opaque. The failure of EPA to provide any details concerning the methodology used to prepare this meta-analysis, or otherwise to subject the methodology it used to any form of scientific review, constitutes a severe violation of the EPA Guidelines," the NAM petition says. "EPA must prepare and release a report that includes a detailed description and justification of the methodology used in the unpublished 'meta-analysis' of the relationship between short-term NO2 exposure and non-specific airway responsiveness."

NAM is also raising concerns about the entirety of the review, which it says was subject to change throughout the process, compromising the conclusions.

"In the case of the current periodic review for the NO2 NAAQS, the generic five-year process for periodic review envisioned by the 2006/2007 policy was compressed to four

years, and the anticipated 19 months between issuance of a draft [integrated science assessment (ISA)] and the final ISA was reduced to 11 months. When combined with EPA's decision to make late modifications and changes to the methodology EPA used for the ISA, this accelerated schedule has contributed to the deficiencies in information quality that are the subject of this" request for correction.

The petition does not make mention of the last-minute decision by EPA to withdraw an advance notice of proposed rulemaking (ANPR) for the rule, which was just before NAM issued the petition. Administrator Jackson's decision to withdraw the ANPR, which was based on the conclusion that it was largely politically driven and not based in science, also subsequently drew industry criticism for quashing debate on the standard.

7/24/2009

**Refinery Dispute Marks Early Battle Over Use Of Biomonitoring Data (*Inside EPA*)**

Local environmentalists are calling on EPA to support an unpublished academic biomonitoring study that found significantly elevated blood levels of benzene near Corpus Christi, TX, refineries, saying the study will demonstrate the insufficiency of ambient air quality monitors that underestimate exposures by design.

The debate over benzene levels -- which could inform the risk assessment for EPA's pending air toxics rule for refineries -- highlights the kind of dispute regulators may face as activists and some lawmakers pressure the agency to increase its use of biomonitoring data in regulatory decisions.

In a July 13 letter to EPA Administrator Lisa Jackson, activists call for EPA to support a study conducted by the Texas A&M School of Rural Public Health that found benzene in the blood of Corpus Christi residents at levels that were more than twice as high as the blood of people who are occupationally exposed to the chemical. *Relevant documents are available on InsideEPA.com.*

The environmentalists' calls were prompted by a recent presentation by industry consultants that criticized the biomonitoring study, saying the blood levels the study purports to have found are "implausible" given the ambient air quality levels documented in what they say are more-rigorous monitoring data from the area's extensive monitoring network.

Environmentalists and their supporters in Congress have been seeking to increase use of biomonitoring data in regulatory decisions, saying it shows the extent to which humans are contaminated. Last month, for example, the Government Accountability Office (GAO) urged EPA to seek new authority to require industry to disclose biomonitoring data when regulating harmful industrial chemicals -- a recommendation EPA rejected but which Democratic senators have said they plan to provide the agency.

GAO quoted the Centers for Disease Control & Prevention saying that “biomonitoring measurements are the most health-relevant assessments of exposure because they measure the amount of the chemical that actually gets into people from all environmental sources (e.g., air, soil, water, dust, or food) combined.”

But industry officials oppose use of the data, saying it does not demonstrate hazards. Instead, industry officials are seeking to determine how biomonitoring data can be used in risk assessments rather than as a stand-alone determinant of hazards.

The dispute in Corpus Christi -- which has one of the highest concentrations of refineries nationwide -- comes as EPA is set to re-propose this month the contentious refinery residual risk rule, which is intended to limit health risks from air toxics after implementation of the agency’s Maximum Achievable Control Technology (MACT) rule from refineries.

The rule will determine whether the remaining risk warrants issuance of a more stringent national emission standard for hazardous air pollutants (NESHAP). The Bush EPA issued a final NESHAP rule for the sector in the last days of the previous administration, boosting emissions requirements for cooling towers based on new data and adding a new emissions control option for refinery storage tanks, but making few other changes to the existing standards.

But the Obama administration delayed the rule in response to concerns from environmentalists that the agency had not adequately considered the risks posed by the facilities. In comments on the Bush administration’s proposal, environmentalists even submitted a preliminary version of the biomonitoring study -- conducted by researchers at the Texas A&M School of Rural Public Health -- to draw attention to the risks posed to nearby communities from the facilities, though the study concluded that a variety of potential sources could have caused the toxic exposures.

In comments to the docket, several national environmental groups called on EPA to require fence-line monitoring around refineries to gather better data but stopped short of calling for use of biomonitoring data as a stand-alone risk factor.

The agency did not respond to a request for information on its plans for releasing the new refinery proposal. And in response to a request for comment on the letter, an agency spokeswoman said, “We received the letter and will respond accordingly.”

But in one indication the agency may be concerned about the accuracy of emissions data, the agency has granted a data quality petition from the City of Houston to reconsider its method for estimating refinery emissions, a move that could result in more stringent risk calculations.

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

**In The Margins:Mandate for more ethanol in gasoline would benefit our Corn Belt and our country (MLive)**

Posted by chughes July 24, 2009 05:39AM
The Bay City Times
Original story posted Friday July 17, 2009

CARO -- The next time you fill up your gas tank, take a look at the sticker on the pump. It probably says your gasoline is blended with 10 percent ethanol, made from corn grown in the United States.
The ethanol industry wants to raise that blending amount to 15 percent.
BCT: No problem.

*For those of us in and near the Corn Belt, ethanol has long been used to boost octane levels in gasoline and to help it burn more cleanly.*

David Gloer, general manager of POET Biorefining in Caro, says the change would bring more jobs and investment to communities in the Thumb and throughout the state and country, instead of sending more money overseas to buy foreign oil.

*BCT: More jobs, more money for our communities and less involvement in the dirty world of international oil markets -- the promise of homegrown fuels such as ethanol remains unchanged, and still very desireable.*

Without an increase, the U.S. ethanol industry remains at a standstill, Gloer said.

"The ethanol industry is capable of producing more ethanol than (currrent) demand," he said. "The ethanol industry will not grow" without a bump in the blending rate.

*BCT: Then make it so.*

Growth Energy, an ethanol trade group, has asked the U.S. Environmental Protection Agency to raise the 10 percent standard, which has been in place for decades.

It's likely to happen later this year, with buy-in from officials including former Iowa governor and U.S. Agriculture Secretary Tom Vilsack, who has endorsed an initial increase to 12 or 13 percent.

The federal government has mandated that ethanol use in the U.S. grow to 36 billion gallons a year by 2022, up from 9 billions a year in 2008, according to the EPA.

*BCT: Then it's time to get cracking.*

*In fact, why not aim to hit that 36-billion-gallon target, with increasing blending rates until we get there in 2022?*

The Caro plant employs 45 people, and makes about 54 million gallons of ethanol a year from 18 million bushels of corn.

It also kicks out high-protein animal feed as a byproduct of ethanol production, to the tune of about 168 tons a year, Gloer said.

Growth Energy estimates increasing the blend rate to 15 percent would create 136,101 new jobs and inject $24.4 billion a year into the American economy.

*BCT: As gung-ho as we are about making our own fuel from our good earth, these kinds of fairly specific estimates are always suspect.*

*More jobs than the few we have now, and less dependence on currupt foriegnb governments for oil are strong enough arguments to displace gasoline with ethanol.*

"We spend roughly $100 million a year" in Caro, Gloer explained, contracting with more than 400 farmers for corn and spending other money in the community.

With an increase in the blending rate, the local plant has the potential to expand, he said.

Most ethanol in the U.S. is made with corn, a process that's been criticized for driving up food prices.

*BCT: Initially, that did happen, but corn prices evetually came down, and stabilized above their long-depressed levels when ethanol wasn't a factor.*

Environmental and other groups also have opposed a blending rate increase, saying regulators should wait until cellulosic ethanol, from crop waste and grasses, is commercially available.

Gloer says the time is now.

"The only technology that exists today to economically make ethanol is corn," he said.

*BCT: He right. Let's ride the horse we have -- corn ethanol -- rather than wait who knows how long for a better one to come along.*

Gloer contends that research into cellulosic ethanol also will cease if the blending rate remains at 10 percent.

The 15 percent proposal has the support of the Michigan Environmental Council, the state's largest such group.

Policy Director James Clift said the Lansing-based group supports the measure as long as it's part of a move toward fuel with lower carbon emissions.

"Ethanol alone isn't going to solve our dependence issue on foreign oil, and it's not going to solve the carbon climate change issues, either," Clift said.

*BCT: Completely solve, no. But, combined with other energy alternatives to burning oil dug out of the ground, it is a move in the right direction.*

He said ethanol has a slightly lower carbon footprint than regular petroleum, but there needs to be a long-term, national commitment to more green fuels across the board, including cellulosic ethanol and different types of biodiesel.

*BCT: Agreed. The long-term goals should be clean, efficient, renewable -- dare we say cheap?-- forms of energy.*

Gloer says more ethanol won't harm engines or increase gas prices, because ethanol already lowers the price by about 35 cents per gallon.

Some newer vehicles are designed to run on gasoline blended with 85 percent ethanol. But even conventional vehicles can run on up to 30 percent ethanol without harming the engine, Gloer said.

*BCT: Backyard mechanics take note: Your engines have been built for a long time now to tolerate ethanol blends.*

*Ethanol is such a good fuel that IndyCar Racing now uses 100 percent ethanol exclusively in its high-power engines. Maybe one day we all will fill up with that kind of pure, top fuel.*

A preliminary Department of Energy study released in 2008 found that a 15 percent blend produced similar emissions and exhaust temperatures compared to conventional gasoline.

Gloer thinks concerns about ethanol's connection to food prices are unfounded. Farmers are growing additional corn for the ethanol industry, not diverting their yields to sell to plants like the POET facility, he said.

POET, the world's largest ethanol producer, has 26 corn-based plants in the U.S., including the Caro facility. The Caro plant is one of five ethanol production facilities in Michigan.

*BCT: The bloom went out of ethanol a few years ago, when experts argued that there are better sources than corn for making the fuel. That's true, there are. But we can't grow sugar cane here, as they do in Brazil.*

*For now, we have to work with what we have, and that's corn.*

*If and when scientists can figure out how to economically and commercially convert grasses or other vegetation into cellulosic ethanol, we'll move toward that source.*

*Ethanol needs a boost in demand to remain a growing industry that can continue to displace at least some of the oil burned as a transportation fuel. A mandate for a higher percentage of ethanol in motor fuel can do that.*

*For more jobs, more money here, where we make ethanol and grow the corn, and toward more energy independence.*

**America's Clean Energy Future (*Review Messenger*)**

Make no mistake, our grandchildren will have the final say on whether or not we met the challenge of creating a new clean-energy economy, or if we failed – succumbing to political special interests promoting misinformation for short term gain. That is why I held off on supporting the American Clean Energy Security Act, HR 2454, until it was certain the bill would meet the challenges facing our nation.

The debate over the necessity to develop clean, alternative sources of energy is over. Last summer's $4 dollar a gallon gasoline demonstrated again, as in 1972 – 74, how dangerous it is to remain dependent on foreign oil. The scientific community has overwhelmingly supported the premise that greenhouse gases generated by human activity are causing global warming. In 2007, the Supreme Court ruled that greenhouse gas emissions are a danger to the public health and welfare, making it clear that the Environmental Protection Agency has the authority to regulate them. The EPA will cap greenhouse gases regardless of what Congress does.

The clean energy bill before the House was surrounded by a maelstrom of misinformation. Opponents claimed that it would cost the average American family $3,000 a year, failing to mention that they were using an outdated figure that did not account for changes that were made to the bill to bring that cost down. The Congressional Budget Office's final analysis put the real cost at $175 per household, per year, by 2020. Energy savings generated by more efficient appliances required by the act which would add up to $4,400 per family by 2030.

Critics also claimed that this bill would harm the economy; not true. In fact, it is fair to say that our nation's economic future depends on our ability to shift to alternative fuels. Creating jobs in wind, solar, clean coal and other new energy industries will generate millions of new jobs that cannot be outsourced or shipped overseas. A single wind turbine contains up to 400 tons of steel, along with 8,000 parts including copper wire, gear boxes and electronic controls.

I withheld support for the clean energy bill until a number of refinements were made to

ensure that key economic sectors in Northeastern Minnesota would not be negatively impacted. Our state is heavily dependent on coal for the production of electricity for lighting and heating our homes, and powering key industries like the taconite industry. Timber producers that use biomass to produce their own power would have been unreasonably disadvantaged in the initial versions of the bill. Allowances were made for these important industries to ensure that Minnesota and the Midwest do not carry an unfair burden.

A new clean energy economy must also make it economically feasible for natural resources industries to embrace new technologies. Setting arbitrary caps without making allowances for unique regional and economic conditions will drive high energy industries such as steel production and manufacturing overseas.

Nineteenth century solutions, like drilling for more oil, are no longer adequate to address the problems we face today. America has a unique opportunity to develop new technologies for new energy producing industries that will operate more cost effectively; this is what America does best.

When my grandchildren are grown, I expect they will look back on this bill as an important first step in dealing with the global problems that threatened our economic future and the livability of our planet. I hope they will say that America looked ahead to meet the challenge of the 21st century.

## AIR

### Ga. company agrees to penalty over air pollution (*Associated Press*)

By BRETT BARROUQUERE , 07.23.09, 05:31 PM
LOUISVILLE, Ky. -- A Georgia company has agreed to pay $337,500 for violating air pollution laws at its western Kentucky aluminum processing plant, a penalty the Environmental Protection Agency calls the largest of its kind in the southeastern United States.

The U.S. Justice Department and the Kentucky Energy and Environment Cabinet filed the lawsuit against Carrollton, Ga.-based Southwire Co., on the same day it filed the settlement in U.S. District Court on Thursday. Kentucky and the federal government will evenly split the penalty.

The company, which operates a plant in Hawesville, Ky., admitted to at least two violations of the Clean Air Act in 2006, by putting too many pollutants into the air from the facility.

Laura Niles, a spokeswoman for the Environmental Protection Agency in Atlanta, said the settlement is the biggest in the South for violations of the Secondary Aluminum Maximum Achievable Control Technology regulations at a single facility.

Gary Leftwich, a spokesman for Southwire, told The Associated Press the penalties stem from poor record keeping by the company in 2005 and 2006. An audit by the Kentucky Energy and Environmental Cabinet Department of Air Quality found that Southwire did not properly test, monitor or keep records of certain emissions in accordance with the Clean Air Act at the Hawesville facility, which is about 77 miles west of Louisville.

"It's one of those things that slipped by us and it shouldn't have," Leftwich said.

As a major source as defined by the Clean Air Act, the secondary aluminum production facility must comply with all pertinent regulations at the federal, state, and local levels pursuant to the law.

The Kentucky Department of Air Quality confirmed in August 2007 that Southwire, which makes 1 million pounds of aluminum rods a day at the Hawesville plant, came into compliance with air pollutant levels from the secondary aluminum production facility.

July 23, 2009

**Southwire fined $337,500 for violating air pollution laws in Western Kentucky (*Louisville Courier-Journal*)**

EPA: Penalty is South's biggest
By Brett Barrouquere
Associated Press
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**Under new standards, pollutant level could rise (*Salt Lake Tribune*)**

West Bountiful » But refinery says emissions going down due to new burners.
By María Villaseñor
The Salt Lake Tribune

Updated:07/23/2009 06:45:50 PM MDT
On paper, the levels of pollutants the Holly Corporation oil refinery is allowed to emit from two heaters could increase if the Utah Division of Air Quality approves new standards.

But in actuality, says a Holly representative, emissions from those two heaters are actually going down, since the old burners were replaced.

For West Bountiful Mayor James Behunin, whose city neighbors the refinery, that notion "is a bit confusing to everybody: how a decrease can be an increase. ... The bottom line: Is this plant going to be putting out more emissions as a plant than it has in the years past? Both DAQ and Holly are saying 'no."

While it's possible emissions from the two combustion heaters are actually less, said DAQ environmental permitting engineer John Jenks, it's impossible to know how much less, since the Environmental Protection Agency didn't have performance tests or emissions limits on the old boilers.

The DAQ is accepting public comments on the proposed changes, which stem from a 2008 agreement between the Holly refinery in Woods Cross and EPA, which included Holly's commitment toward making $17 million in improvements.

The EPA's reviews of Holly's nationwide facilities -- not the Woods Cross refinery specifically -- prompted the changes that have also affected other plants, Jenks said.

Jenks noted the refinery is not being allowed to increase its entire plant's daily or yearly emissions, despite the change to the boilers. Those heaters, Jenks said, are mostly fueled by natural gas but can also burn plant gas created in the refining process.

As the EPA mandated new requirements, the old burners were replaced with new models, which had EPA estimates emitting far lower levels of nitrogen oxides, said Mike Astin, Holly's environmental manager.

But once the EPA tested those new burners, emissions were higher than expected, he said, but still less than the old burners' emissions.

"The simple story is the level of permitted emission is rising, but the actual emissions are going down," Astin said, of the proposal to allow an annual increase of 39.9 tons of nitrogen-oxides emissions.

Still, Behunin awaits the data detailing actual decreased levels of pollution. Behunin said Holly representatives agreed to send the information after meeting with the West Bountiful City Council earlier this week.

"I would like to say that the folks at Holly are very much working hard to upgrade their facility," Behunin added, "and by upgrading their facility, it should reduce the pollutants coming out of that plant."

Holly's general emissions are being reduced, Astin said, and more improvements will continue through 2012.

A few southern Davis County residents and grassroots environmental groups have been reviewing the proposed changes for the refinery.

As dense as the permitting document's language is, Utah Physicians for a Healthy Environment president Brian Moench hopes the changes aren't an attempt to finagle a future increase in emissions, since studies "clearly suggest the levels of air pollution that we already have are a medical concern."

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City aims to monitor own air quality

There's an air monitoring station in Bountiful next to Viewmont High School, but that doesn't seem to accurately reflect the conditions in his community, said West Bountiful Mayor James Behunin. His city is farther away from the foothills and closer to industrial zones than that station is.

To better test the air, West Bountiful recently included in its budget purchasing and installing six air monitors around the city. Though the roughly $1,500 monitors might not be as sophisticated as state equipment, it will help the city better understand the effects of refineries and industries nearby.

To make a comment
The DAQ will receive comments on the proposal until Sept. 9. A location and date for a public hearing are still being determined. The proposed changes for the Holly oil refinery can be viewed at
http://www.airquality.utah.gov/Permits/Report_NSR_Public_Comment.htm

7/24/2009

**Installed Economy, Pact Limits Emissions For Shuttered Plant Startup (*Inside EPA*)**

With industrial facilities shuttering due to the stalled economy, the Justice Department is including language in a pending consent decree that would prevent harmful emissions from two now-shuttered cement kilns in the event the facilities re-open in the future.

This comes as EPA enforcement offices are facing increasing requests to ease cleanup settlements in order to lessen firms' financial burdens during the recession. An industry source says the issue demonstrates the inappropriate timing of the agency's stringent new air toxics proposal for the sector.

A recently announced consent decree filed in the U.S. District Court for the Eastern District of Michigan under the Clean Air Act includes a prohibition on restarting the kilns without recieiving approval from EPA and complying with certain conditions.

The Department of Justice in a July 13 *Federal Register* notice announced that it is accepting comments on a settlement negotiated with Holcim Inc. over alleged violations of the sector's existing National Emission Standards for Hazardous Air Pollutants, the facility's Title V operating permit and the Michigan State Implementation Plan at the company's Dundee, MI, facility.

"The proposed Decree resolves the Defendant's violations by implementing injunctive relief which will ensure, if operating the kilns at the Dundee facility, the Defendant will

not exceed the opacity limitation at the main stack and will not exceed the applicable baghouse inlet temperature for the kilns," according to the July 13 notice.

The company decided while negotiating the settlement terms to permanently shut down both kilns at issue in the allegations in response to significant decline in the demand for cement products. The settlement imposes civil penalties on the company, as well as injunctive relief in the event that the company decides to restart operations of the kilns. *The settlement is available on InsideEPA.com.*

Linked to the adverse economic impacts facing companies, EPA is receiving a growing number of requests to re-open enforcement settlements, potentially putting pressure on past agency commitments to continue strict enforcement in the face of the downturn, according to a presentation at a June 11 meeting of senior enforcement officials in Washington, DC (*Inside EPA*, June 12).

One industry source says the recent Holcim settlement illustrates the cement industry's argument that EPA's May 6 maximum achievable control technology (MACT) proposal to restrict air toxics emissions from the sector is so strict that it would constrain domestic cement supply and disincentivize investments in cement capacity expansion.

"This allegation has to do with a violation of the current Portland Cement MACT rules, which are generally regarded as being fairly reasonable and not excessive," says the source. The settlement illustrates the unhealthy state of the cement industry and the industry's argument that now is not the time to be imposing new environmental requirements, "especially draconian air pollution control requirements" such as those contained in the new MACT proposal, the industry source says.

Environmentalists could not be reached for comment.

7/24/2009

**California Launches Controversial GHG Rule For Waste Recycling (*Inside EPA*)**

California air and waste officials this week launched a controversial rulemaking to mandate commercial waste recycling statewide to reduce greenhouse gas (GHG) emissions, a move that could serve as a national model as other states and the federal government look for novel approaches to improving efficiencies and reducing emissions. But some business and industry representatives are already questioning the legal authority of the California agencies to develop the regulation under the state climate change law, AB 32, potentially foreshadowing legal challenges.

Officials say they believe California is the first state in the country to pursue mandatory statewide commercial recycling, though individual municipalities have undertaken their own ordinances in recent years. Many of the Golden State's GHG regulations being

implemented under AB 32 are considered models for other states and the federal government.

Commercial recycling could potentially reduce 5.5 million metric tons of carbon dioxide (CO2)-equivalent emissions annually in California, according to officials with the California Air Resources Board (CARB) and California Integrated Waste Management Board (CIWMB), the two agencies developing the regulation. This would be a small but important piece of the state's overarching effort to reduce about 176 million metric tons of GHG emissions by 2020 under AB 32, which represents a reduction to 1990 levels, according to state officials.

This GHG-reduction assumptions are based on a theoretical program that would mandate the recycling of cardboard, lumber, glass, plastic, paper and metals at businesses with more than 100 employees, as well as "multi-family complexes" of more than five units, including mobile home parks, according to a CIWMB white paper. These entities -- including 24,000 businesses with more than 100 employees in the state -- would have to divert half of their current waste to reach the 5.5-million-ton GHG-reduction estimate, the paper says. This scenario represents just one option that could be chosen by regulators.

Recyclable materials have an "intrinsic energy value" that displaces fossil-fuel energy requirements when the materials are introduced back into the manufacturing cycle, according to the paper. "This in turn reduces energy use and GHG emissions from multiple phases of product production, including extracting raw materials, preprocessing and manufacturing."

CARB required the development of the commercial recycling rule in its December 2008 AB 32 "scoping plan," which serves as a regulatory blueprint for the law. Initially, CARB included commercial recycling as a voluntary requirement; however, after battling among stakeholders, CARB agreed to make it a mandatory regulation in the final version of the scoping plan. CARB and CIWMB are required to adopt the regulation by the end of next year.

CARB and CIWMB officials July 20 held a joint meeting to kick off the regulatory effort, consisting of a discussion with key stakeholders over proposed options for the major provisions of the rule. These include: which businesses and multi-family units would be required to comply, from all to those with a certain number of employees or size, or a certain level of waste generated; the recyclable wastes to target, which may include construction and demolition waste and food waste; and how to enforce the regulation, including either through local governments, franchise haulers, or the state.

Opponents of the regulation -- mainly local chambers of commerce and some state business and industry organizations -- have argued the program is likely to be too costly and will further penalize already troubled California businesses during a recession. They are also challenging the legal authority of the CIWMB or CARB to adopt a commercial recycling regulation. They claim that neither AB 32 nor any current state statute

provides this authority, and that new legislation would have to be passed to make it legal.

There are several pending bills in the state legislature to provide this authority, but it is unclear whether they will succeed. CARB and CIWMB officials nevertheless maintain they currently have the authority under AB 32 to adopt and enforce the regulation.

Howard Levenson, CIWMB program director, said at the July 20 meeting that despite the legislation, CARB and CIWMB will be seeking a joint legal agreement for moving forward. This could be a memorandum of understanding or similar agreement, he said. He also clarified that "even if our board approves a regulation, it may be CARB that ends up making the final adoption and approval of that."

Robert Callahan, a lobbyist with the California Chamber of Commerce, questioned whether either CARB or CIWMB has completed a legal analysis on the authority question, in terms of addressing the pending legislation.

Levenson responded that the agencies' legal offices have been discussing the issue, but that there is not a written legal analysis at this point "that I'm aware of."

Fearing limited EPA response

**Activists Launch New Bid To Win Broad Repeal Of Bush Drilling Policy (*Inside EPA)***

Environmentalists are challenging another permit for an oil-and-gas operation in an effort to win a broad repeal of a controversial Bush administration policy that allows multiple sources, such as wells and processing plants, to be disaggregated in order to avoid the need for a major source permit and stringent emissions controls.

Activists say the suit is intended to continue "chipping away" at the policy in the event the Obama EPA makes a narrow finding on the issue in a decision due Sept. 14.

EPA in June agreed to enter a consent decree requiring it to respond in mid-September to a petition from WildEarth Guardians asking the agency to reject a Colorado-issued permit to Anadarko Petroleum Corp. because it relies on the disaggregation policy. Activists are hoping EPA will take a broad stance against the policy, first articulated in a memo authored by former acting EPA air chief William Wehrum in 2007.

However, in case the agency upholds the memo or only narrowly responds to the Anadarko permit without broadly addressing the policy environmentalists are continuing to challenge other permits that rely on disaggregation.

One environmentalist says, “I understand the political reality. It’s probably difficult to strike out a memo like that,” not only because of strong opposition from the powerful oil and gas sector but also because it can be difficult to win broad reversals of permitting policies.

EPA under both the Bush and Obama administrations has tended to respond to permit challenges on the narrowest grounds possible, the source says.

For example, the Anadarko consent decree at issue is actually WildEarth Guardians’ second attempt to challenge the permit -- the Bush administration responded to the group’s first petition by sending the permit back to the state for a better explanation of its disaggregation decision, the source says. But the state came to the same conclusion to allow disaggregation, and the group again petitioned EPA to reject the permit, the source says.

Additionally, the Obama administration has also reached a narrow decision on a permit petition the group sent to the agency to object to a CEMEX cement plant permit on issues unrelated to disaggregation, with EPA responding in April by remanding a portion of the permit to the state again for further explanation, the source explains.

On the disaggregation challenge, “We’re not sure we will get the answer we want, so we want to make sure we are in a position to keep chipping away at it,” the source says.

As part of this strategy Wildearth Guardians along with several other groups July 2 petitioned EPA to object to a Wyoming-issued permit for an Encana oil and gas plant, opposing the permit’s approach to disaggregation, monitoring and other issues. *The petition is available on InsideEPA.com.*

While the Wyoming permit does not specifically cite the Wehrum memo, it does rely on one of the arguments used in the memo that says because the Clean Air Act does not require aggregation for hazardous air pollutants, Congress did not intend to require aggregation under the new source review (NSR) program for criteria pollutants, the source says.

Multiple challenges can bolster activists’ chances to whittle away at the policy because they can can draw on different facts -- for example documentation of the proximity and interdependency of wells and processing facilities -- which could help create a situation where EPA cannot limit its findings on the issue, the source says.

In the Wyoming case, the state has extensive documentation that the wells surrounding the facility are linked to the processing plant, which shows interdependency -- a key issue in aggregation decisions, the source says. “It gives them a high hurdle. They are going to have to come up with an amazing explanation,” to argue emissions from the wells and plant should not be aggregated, the source says.

Multiple challenges also show the policy, and more generally emissions from oil and gas operations, are hurting communities across the West, the source says.

However, even if EPA does stop short of overturning the memo, the agency could still make findings that would decrease its impact, the source says. For example, the agency could reject the memo's claims that the prohibition against aggregation of air toxics emissions in section 112 of the air act also extends to the NSR program, the source says. The agency could also make a more general finding that states must conduct a case-by-case aggregation analysis, the source says.

7/24/2009

**EPA Staff Suggest Strict New Short-Term SO2 Air Quality Standard (*Inside EPA*)**

EPA staff are suggesting that the latest scientific evidence justifies a new 1-hour limit on sulfur dioxide (SO2), which which would likely be dramatically more stringent than the current 24-hour and annual limits.

Lydia Wegman of the Office of Air Quality Planning & Standards told a July 21 meeting of the Children's Health Advisory panel that the staff reached the conclusions in the risk and exposure assessment (REA) and the integrated science assessment (ISA) documents which the agency released earlier this year in preparation for the ongoing review of the primary SO2 national ambient air quality standard (NAAQS), which will help determine if a revision to the current standard is justified.

The staff conclusion that stricter standards are warranted on the criteria pollutant falls in line with conclusions the agency has recently reached in other NAAQS reviews. For example, EPA recently proposed to strengthen the primary nitrogen dioxide NAAQS with a first-time one-hour exposure standard based on the latest evidence, but industry is opposing it as not justified by the science (*see related story*).

On the primary SO2 NAAQS, EPA has come to similar early conclusions. Staff "believe the evidence supports a 1-hour standard in the range of 50 to 150 parts per billion (ppb)," Wegman told the EPA advisors. "EPA staff believe that the health evidence from the ISA and analysis from the REA supports a 1-hour standard" within that range, according to her slide presentation.

The current primary, or human health-protective, SO2 NAAQS is 140 ppb on a 24-hour average and 30 ppb on an annual average.

EPA completed its second-draft REA for the review in March. EPA will next finalize the REA and publish a separate staff assessment that EPA will use to form the basis of its proposed rule.

7/24/2009

**Industry calls EPEA Plan To Prevent Ecosystem Acidification Illegal (*Inside EPA*)**

A major industry group is calling on EPA to abandon its plan to set a secondary national ambient air quality standard (NAAQS) to prevent ecosystem acidification, calling the agency's plan to set a new indicator for the secondary NAAQS for nitrogen oxides (NOx) and sulfur dioxide (SOx) to protect ecosystems -- rather than to clean up airsheds -- illegal under the Clean Air Act.

The Utility Air Regulatory Group (UARG), a litigation group representing electricity generators, says in July 17 comments on EPA's second draft risk and exposure assessment (REA) that EPA lacks authority to set a NAAQS that is based on ecological indicators and instead must limit the NAAQS process to air quality.

EPA's June 5 second draft REA lays out in more detail how it is conducting its first-time combined review of a secondary NOx and SOx NAAQS, including the justification that reduced NOx and SOx can help reverse major ecological harms that occur when the pollutants deposit on land and in waterbodies. But industry's comments also provide more detail about why such an approach is unlawful given air act constraints. The issue has been at the fore of the review since EPA launched its first combined NAAQS review last year.

UARG's comments cement the legal challenge EPA has acknowledged it would likely face in modifying the secondary standards for the pollutants to address growing concerns about the emissions causing major ecological harms.

The industry group says the statute plainly prohibits the agency from setting a standard that could potentially mandate reductions of air pollutants on the basis of the harm they do to soil and water. The industry opposition to the approach comes as the federal appellate court that reviews most EPA rules has in the past several years repeatedly rejected EPA's attempts to reach beyond the plain language of the statute in order to more creatively address emerging environmental problems and solutions.

"The REA indicates that EPA is considering a substantial modification to a fundamental design feature of the NAAQS program -- the replacement of 'air quality indicators' with 'ecological indicators' for purposes of determining NAAQS compliance. . . EPA has failed to demonstrate that this seismic shift in its regulatory program is within the agency's legal authority," the UARG comments say. "EPA must, therefore, revise its proposed approach in light of this fundamental flaw." *Relevant documents are available on InsideEPA.com.*

The comments say EPA has concluded before that it does not have the authority to address acidification through air standards. UARG cites EPA's 1995 decision not to

tighten the secondary NOx standard, after the agency concluded that Congress had not intended the standard to be used to address acidification, leading the agency to refrain from revising the secondary standard in that review, according to the comments.

UARG also cites Congress' creation of the acid rain program specifically to address acidification and says "a new acidification-based program is beyond the scope of the current law."

"EPA must revise its current approach to reviewing and potentially revising the secondary NAAQS for NOx and SOx to ensure that any agency action taken as a result of this review comports with the law. In its current form, the REA cannot support a legally-acceptable secondary NAAQS revision," the comments say.

**Carper Bid To Set Clean Air Limits In Climate Bill Faces Steep Hurdles (*Inside EPA*)**

Sen. Tom Carper (D-DE) will seek to add his three-pollutant (3P) power plant bill to reduce emissions of nitrogen oxides (NOx), sulfur dioxide (SO2) and mercury to pending climate change legislation in the Senate -- reviving a longtime effort to move utility clean air legislation that is again expected to face steep if not impossible hurdles, sources say.

One major new impediment is EPA's ongoing effort to craft new rules for the pollutants, which some sources say could deplete Congress' appetite for addressing the issue. "There's not an imperative at this point for Congress to step in and legislate while EPA is on the verge of starting a new rulemaking," one industry source says. "Congress can take a wait-and-see attitude . . . Heaven knows Congress has enough on its plate right now."

Additionally, environmentalists are opposing mercury provisions in the Carper approach because they prefer stringent EPA rules to reduce mercury and other air toxics. The Clean Air Task Force (CATF), for example, recently suggested to Carper that it would only support mercury provisions as a legislative backstop to require power plant mercury cuts if EPA fails to issue a rule or if it gets tied up in litigation, as long as the backstop mandates EPA's strict emissions limits.

Additionally, Carper will likely face opposition in the Senate by those who think adding 3P to broad, economy-wide climate legislation will make a complicated matter even more complicated. A second industry source says Carper's approach "adds another whole layer of complexity to an extremely complex bill," while another source says it appears that Carper is "trying to sabotage his own bill" because it would get bogged down in climate legislation that may not pass.

Staff for Environment & Public Works (EPW) Committee Chairwoman Barbara Boxer (D-CA) could not be reached for comment on whether she supports a 3P utility addition to the climate bill.

A Carper source confirms the senator will “try” to add the 3P power plant component to climate legislation but declined to discuss specific strategy, saying it was premature because staff has yet to draft a new multi-pollutant amendment.

Carper, who chairs EPW’s clean air panel, is pushing the legislation to provide legal certainty to EPA as it works to revise the Bush-era clean air interstate rule (CAIR) and clean air mercury rule, which were both rejected by a federal appeals court. EPA air chief Regina McCarthy told a Carper hearing on the issue July 9 that the agency is on working on an expedited schedule to promulgate replacements for the two rules (*Inside EPA*, July 17).

While Carper has yet to publicly offer legislative language, sources expect the bill to require utility-specific mercury controls mandating at least a 90 percent reduction at each plant. It will also likely allow trading of NOx and SO2 in a way that could help EPA overcome the court ruling rejecting CAIR which said EPA may not have authority to allow trading.

But Carper is still working to craft new language. The senator floated a draft outline a few weeks ago that one source says “was so preliminary it was almost meaningless.” A second source says the language was a condensed version of an earlier draft of his Clean Air Planning Act (CAPA) that omitted details about allocations, targets and timetables, and that staff is now making adjustments “to incorporate technical assistance comments they solicited from EPA.”

Carper has significantly strengthened mercury provisions from when he first introduced CAPA in 2003. The first version allowed mercury trading while later versions offered a hybrid approach requiring plant-specific controls but also allowing some trading. The new version will ban trading but will likely not go as far as EPA is planning in its maximum achievable control technology (MACT) rule that could require up to 95 percent mercury cuts as well as address hydrogen chloride and other significant utility toxics.

Carper said at the recent hearing that he is continuing to work with Sen. Lamar Alexander (R-TN) to develop the bill despite reports that Alexander’s office is off the bill, due to the departure of a key staffer. Alexander’s office could not be reached for comment.

Whatever the requirements in Carper’s bill, it could also face opposition from within EPW, where ranking member Sen. James Inhofe (R-OK) and Sen. George Voinovich (R-OH) say they are working on a “clean” CAIR fix to codify the version of the rule promulgated by the Bush administration.

The Carper plan will also likely face opposition from the utility industry, despite the fact that it could provide certainty over EPA rules and allow more flexibility on air toxics.

One informed source says that if Carper's plan reflects targets and timetables from his 2007 legislation -- imposing a 2 million ton cap for SO2 and a 1.6 million ton cap for NOx within six years -- it would be impossible to meet. "The power sector would not be too supportive of those targets and time frames."

Even supporters of the bill acknowledge that Carper faces almost impossible odds of tacking the language to climate legislation. A source close to Carper adds a big concern is that "when you put [multi-pollutant provisions] on the table at the same time climate is on the table in the Senate, the way deals are going these days, the 3P aspect could be compromised pretty significantly." The source says it would be surprising if the 3P bill comes up when EPW marks up the climate bill, slated for late September.

"Some people are advocating to get [the language] ready and if there's a chance to do it at the last second without compromise, maybe, but it is more likely be a meaningful piece of legislation when EPA comes out with its MACT proposal a year from now. It would integrate CAIR and MACT in a 3P approach," the source says.

Another source working with Carper's office on the 3P language says while the approach is "good public policy, at issue is whether, politically, it has a chance of succeeding. Given the fact that the climate bill already is facing some huge obstacles, adding mercury and these other provisions onto climate is just going to create another mountain to overcome. I think the chances of them succeeding are very small, but I don't begrudge them for trying."

This source and others say Carper's difficulty is illustrated by the fact that Congress last year was unable to pass a clean CAIR fix despite widespread support from environmentalists, states and industry.

However, another source notes key differences in the makeup of EPW compared to the last Congress that may help Carper move his bill, including the fact that it has 11 Democrats and eight Republicans. "Out of deference to Carper and Alexander, there is an interest in seeing whether something can be done in committee," the source says. "If a senior member of the committee and a subcommittee chair say this is important, [it deserves consideration]. Carper didn't get it last time around, and he's back."

Carper's plan for mercury may be the trickiest aspect of the bill. It is already attracting opposition from CATF and others. "With respect to mercury, CATF strongly supports EPA's recently announced intentions to complete a MACT rulemaking for all coal and oil-fired power plant hazardous air pollutants," the group testified to Carper's committee July 9. "Congress can, however, provide and important 'backstop' to that effort, by requiring a 95 percent plant-by-plant mercury emissions reductions at all currently existing coal-fired power plants if the rule is not in place by 2012."

A state source concurs that a MACT would be preferable “not just because it is a different administration but also because there is the wealth of experience from a number of states that went ahead with more stringent rules. . . . . The MACT is based on the average of the top 12 percent of best performers and now there are plants that are controlled” for mercury that can be configured into that average. -- *Dawn Reeves*

7/24/2009

**IMO Delay On Ship GHG Cuts May Force Issues In Copenhagen Talks (*Inside EPA*)**

The International Maritime Organization’s (IMO) recent decision to delay adopting mandatory greenhouse gas (GHG) emission reductions from ships may force United Nations (UN) negotiators at Copenhagen, Denmark, to address the issue, even though many stakeholders see the IMO as the most appropriate body to reduce the industry’s emissions because it would apply the same limits to all ships regardless of country of origin.

IMO’s difficulty in reaching agreement on GHG cuts may be in part because developing countries are balking at the idea that an IMO agreement would force them to reduce shipping GHG emissions, unlike the Kyoto protocol -- which a Copenhagen deal would replace -- that sets eased requirements for developing nations, according to several sources. But other sources say the delay is typical of any major IMO emissions policy.

Whatever the cause, environmentalists are urging the IMO to address GHGs, warning that inaction will shift attention to reducing shipping GHG emissions to the UN’s December meeting in Copenhagen where negotiators hope to hammer out a post-2012 GHG reduction treaty.

The IMO’s Marine Environment Protection Committee met July 13-17 in London to discuss a range of environmental issues related to shipping, including GHG emissions. The group agreed to voluntary measures to determine and verify the energy efficiency of ships, and outlined best practices for the fuel efficient operation of ships.

The organization also had preliminary discussions on market-based measures, including a U.S. proposal to mandate efficient design and allow ships to trade efficiency credits, and a proposal by Denmark to impose a GHG fee on ship fuel, but the group did not come to any agreement on the issue.

Environmentalists say voluntary measures are not sufficient, and argue mandatory GHG cuts from ships are cost-effective. For example, efficient design can reduce GHG emissions 10 to 50 percent and efficient operations can reduce emissions by another 10 to 50 percent, one environmentalist says.

Activists also argue that ship GHG emission cuts are long overdue, because the Kyoto protocol tasked the IMO with reducing shipping GHG emissions 12 years ago, but IMO has yet to mandate the cuts.

Some shipping industry groups also support mandatory GHG measures. INTERTANKO, an international association of independent tanker owners, says in a June 9 statement that it "strongly supports the ongoing development by the IMO of regulations that would result in measurable reductions of GHG emissions from ships."

The environmentalist says the delay of mandatory GHG cuts is typical of any effort to reduce other emissions under IMO. For example, the source says it took a great deal of pressure from stakeholders for the organization to adopt a measure offered by the United States to tighten emissions limits for sulfur dioxide and nitrogen oxide.

However, the delay is at least in part due to opposition from developing countries that argue developed countries should be responsible for GHG reductions, a second environmentalist says. Developing countries are concerned about taking action under IMO because the agreement would be binding on all countries, especially since the Kyoto protocol sets different requirements for developed and developing countries, the source says.

But a third environmentalist says that the different requirements for developed and developing countries in Kyoto may not be included in a Copenhagen agreement, and that any ship emission requirements at Copenhagen may be independent of country-specific obligations.

7/24/2009

**Voinovich Details Potential Revisions To Pending Cap-And-Trade Bill (*Inside EPA*)**

Sen. George Voinovich (R-OH) -- seen as one of the few GOP senators who might support climate legislation -- recently detailed changes he wants made to the recently passed House cap-and-trade bill before he would consider voting for any such legislation, arguing the proposal needs to have what he called more achievable emission reduction requirements, emission targets that synchronize with the development of carbon capture and storage (CCS) technology, a more effective cost-containment mechanism, and no "redundant" renewable and efficiency mandates.
At at July 15 public meeting on "The Future of Coal" in the context of H.R. 2454 -- the American Clean Energy and Security Act of 2009 that is being reviewed by Senate leadership -- Voinovich detailed his concerns with the climate bill, arguing it "failed on nearly all counts" to meet criteria for his support. The roundtable discussion was held by Environment & Public Works clean air and nuclear safety subcommittee Chairman Thomas Carper (D-DE) and Voinovich, the subcommittee's ranking member.

“Because of coal’s unique role as our country’s most abundant, reliable and domestically available resource, any policy that does not ensure a continued role for coal in our nation’s energy mix is fundamentally short-sighted and not consistent with the realities of our nation’s economic and energy needs,” Voinovich said.

But he noted that he does “support efforts to reduce greenhouse gas (GHG) emissions” and said his staff “has spent more time on this issue than [that of] maybe any other Republican senator.”

To ensure that climate policy does not cause fuel switching from coal to natural gas, rapid electricity rate increases, or “economic dislocation,” Voinovich said the emission reduction requirements must be “consistent with the development and deployment of sources of low carbon energy, particularly [CCS],” adding that CCS incentive programs in the bill are insufficient.

He said “the primary cost containment mechanism, offsets, is speculative at best” and will have the net effect of sending billions of dollars overseas, adding that industry needs a “stable and predictable price over the lifetime of the program.”

Furthermore, he took issue with the legislation’s renewable electricity standard (RES) and energy efficiency resource standard, arguing they were duplicative of the carbon cap. “This creates overlapping and redundant reductions,” he said, arguing they will also unnecessarily raise consumer costs.

He also suggested he has concerns with the cap-and-trade program’s preemption clause, which currently provides for federal preemption of state requirements for the first five years of the program. “We only have five years,” he told Chris Hobson of Southern Company, one of the largest U.S. electric utilities, asking, “Do you think that it should have permanent preemption, to have certainty that you are not going to end up five years down the road” and then be faced with a conflicting state standard?

Hobson responded that it was “absolutely critical...that we don’t get pancaked between new regulatory programs at the federal level or individual state programs.”

Lastly, Voinovich said the House bill puts manufacturers at a disadvantage to overseas competition, and said it needs “a mechanism that acknowledges this is a global problem and does not send jobs oversees to countries that have no” similar carbon regulations, a key concern of energy-intensive U.S. manufacturers.

Environment & Public Works Committee Chairwoman Barbara Boxer (D-CA) announced that she plans to unveil her Senate climate change bill in early September, and expects to have at least one Republican cosponsor. Sources say Voinovich is one of several moderate Republicans that Democrats are targeting to support climate change legislation.

## ASBESTOS

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### Pennsylvania Reps Reach Out to EPA Regarding Asbestos Contamination (*Mesothelioma.com*)

New Haven,Connecticut
Harrisburg, Pennsylvania - July 23, 2009
Three Pennsylvania state representatives have written formal letters to the U.S. Environmental Protection Agency (EPA) asking the agency to reconsider the plan for dealing with the massive asbestos contamination spanning three townships north of Philadelphia. The EPA plans to deal with the asbestos at the BoRit site that spans Ambler, Upper Dublin, and Whitpain townships by capping the area with dirt. But some Pennsylvanians are concerned that this method will not be effective.
The asbestos poses a serious public health risk, as airborne asbestos particles can cause mesothelioma and other respiratory conditions if inhaled. The three letters come just weeks after Pennsylvania Senator Arlen Specter made a similar plea to the EPA. State Senator Stewart Greenleaf sent his letter to the EPA, addressed to the Acting Associate Administrator Joyce Frank, who is with the EPA's Office of Congressional and Intergovernmental Relations.

Part of his letter reads: "On behalf of the nearly 2,000 community members who have signed a petition supporting removal, treatment and/or recycling of the asbestos pile in Ambler, I ask for full remediation of the site, which includes the removal and recycling of asbestos."

State Representative Rick Taylor argued that the dirt capping method was not adequate, saying "The dirt capping option will not effectively protect the citizenry and does not seem to be a long-term solution to a problem which directly affects citizens in the 151st Legislative District and Montgomery County."

State Representative Michael Gerber also wrote a letter to the EPA, which was mailed on July 13th. All letters reference the petition signed by local group Citizens for a Better Ambler, which has now received over two thousand signatures from people who disapprove of the dirt capping method.

## BUDGET / STIMULUS

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**Illinois gets $7.4M to clean up leaking tanks (*Associated Press*)**

**Story also appeared: *WAND TV, Belleville News Democrat, CBS2 Chicago***

Associated Press - July 24, 2009 4:14 AM ET
CHICAGO (AP) - Illinois is getting a big infusion of money to help clean up leaking underground storage tanks that can contaminate soil and water.
The U.S. Environmental Protection Agency says it's disbursing more than $7.4 million in federal stimulus funds to Illinois for the projects.
There are potentially hundreds of leaking underground tanks in Illinois, many at old gas stations.
The Illinois EPA says it plans to investigate or clean up at least 28 abandoned sites with the federal money.
Joyce Muni (MYOO'-nee) manages cleanup projects for Illinois. She says if a city has an abandoned storage tank site, officials should let her know.
On the Net: http://www.epa.state.il.us/land/economic-stimulus/index.html

**CONTRACTS**
**==========**
Jul 24, 2009 5:18 am US/Central

**City Awards Contracts To Demolish Michael Reese (*CBS2 Chicago*)**

2016 Olympic Village Is To Be Built On Site
CHICAGO (STNG) —
The Mayor Richard M. Daley-chaired Public Building Commission Thursday took a giant step toward building the $1.1 billion Olympic Village on the Michael Reese Hospital site -- alternately viewed as the riskiest element of Chicago's bid and its most significant legacy.

The PBC awarded $11 million worth of contracts to a pair of companies responsible for building abatement and demolition.

Brandenburg Industrial Service Co. ($7.98 million) and Heneghan Wrecking Co. ($3.19 million) will get control of the 37-acre hospital campus Friday and begin the painstaking survey work. The companies must file a detailed work plan by July 30.

Building abatement and interior demolition is expected to begin next month. Only then can structures be torn down, probably sometime this fall.

The plan calls for 28 of 29 buildings on the Reese campus to be demolished -- everything but the hospital's historic main building.

Local residents concerned about contamination and construction debris have been assured that U.S. Environmental Protection Agency standards will be followed.

"The site is going to be fenced. There will be security there. Every precaution is being taken to secure the site and keep it contained during this process," said Molly Sullivan, a spokesperson for the city's Department of Community Development.

"Extensive abatement is needed. We knew that going into this. But professionals have been hired to do this work. They will be complying with environmental standards. We expect things will go smoothly."

Ald. Toni Preckwinkle (4th) said she had a two-hour meeting with Prairie Shores residents on Tuesday night to address their concerns and allow them to question Chicago 2016 officials.

"I'm fairly confident they're going to be extraordinarily careful about this," she said. "We're going to take the buildings down. There might be some dust issues. But they're doing monitoring of air quality all around the site. Believe me, every effort is going to be made so there is no negative publicity."

Brandenburg has promised to share 44.6 percent of the work with minorities and women. Heneghan will set aside 46.9 percent. The Reese demolition is expected to create 150 jobs, 22 of them filled by community residents. Fifty percent of the work will be performed by Chicagoans.

The city's $86 million purchase of the Reese site was salvaged, only after the property owner agreed to restructure the agreement to accommodate soaring demolition and environmental clean-up costs.

The mayor's original plan called for Medline Industries to make a "charitable contribution" of $20 million that was supposed to be enough to cover demolition, environmental cleanup and five years of interest payments on the loan.

Instead, demolition and cleanup costs were projected at $32 million and rising. Medline agreed to raise its "charitable contribution" to $32.5 million.

The Union Labor Life Insurance Co. and the AFL-CIO investments trusts have signed a "letter of commitment" to pump $500 million into building the Olympic Village.

Olympic Village projects in London and Vancouver have run into trouble because of the worldwide credit crunch, forcing both cities to ride to the rescue.

The union's investment could help shield Chicago from a similar disaster. It also increases the chances that City Hall will succeed in unloading the Reese property to a master developer during the five-year window when neither principal nor interest payments are due on the 15-year, $86 million loan.

Daley plans to forge ahead with the new lakefront community -- with a mix of affordable, market-rate, student and senior housing -- with or without the 2016 Summer Games. The union's investment would be contingent on Chicago winning the Olympic sweepstakes.

**ENVIRONMENTAL JUSTICE**

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7/24/2009

**EPA Eyes Use Of GHG Offsets To Ease Environmental Justice Concerns (*Inside EPA*)**

EPA is looking to address the concerns of environmental justice activists who oppose cap-and-trade proposals by allowing companies that would be required to reduce their greenhouse gas (GHG) emissions to be granted offsets in some cases for also reducing traditional air pollutants and toxins, an EPA official says. The use of offsets would provide facilities covered by cap-and-trade requirements an incentive to reduce emissions rather than simply purchase credits as feared by environmental justice (EJ) activists.

Rob Brenner, director of policy analysis and review at EPA's Office of Air & Radiation, said at a July 22 meeting of the National Environmental Justice Advisory Committee (NEJAC) that the agency is committed to addressing low income and minority communities' concerns and that the historic agency priorities of air, water and waste pollution reductions are not obscured by the agency's new focus on GHGs. Opposition to cap-and-trade proposals by EJ activists poses a particular political difficulty for EPA and Congress in developing a national climate change policy.

Brenner told the panel that climate change mitigation presents an opportunity to address systemic problems in many communities that are disproportionately impacted by emissions from highways, ports, and industrial facilities. EPA strategies could include providing GHG offsets for companies that reduce air quality emissions and provide other community benefits such as building efficiency renovations, because such efforts would have both climate and health benefits.

"I am hearing [from the committee members] a recognition that if we are going to deal with the very significant issues in environmental justice communities, we need to set good standards and implement and enforce those standards," Brenner said. "But also we have to deal with infrastructure development and economic opportunities within these communities. We need to be smart about opportunities to collaborate with other agencies and when new opportunities come up -- climate change for example --

[consider whether there are] opportunities to invest in environmental justice communities and produce offsets," Brenner said.

Brenner told the committee that EPA is seeking to create "opportunities to subsidize those kinds of control programs to get both health and climate change benefits." Brenner also said weatherization and early action credits could incentivize companies to provide community benefits by reducing criteria pollutant emissions such as nitrogen oxide (NOx), sulfur dioxide (SO2), particulate matter (PM) and air toxics, even as they meet their GHG reduction requirements.

In addition, Brenner said EPA is working to coordinate the host of regulations it currently has before it in order to set out before companies all the operating and environmental performance requirements they will have to meet by deadlines in the near future. "It's very important that each company sees the full set of requirements," including air toxics and performance standards, in addition to water and waste standards, Brenner said.

"That's when the company will make good decisions, when you look at the full set of requirements," Brenner said. Such decisions could include shutting down old facilities and building new, cleaner units, according to Brenner. "It is very important for EPA to show them what the rules are going to be for the future to guide decisionmaking. New facilities are much cleaner. It's the old, grandfathered facilities that pose the greatest risk," Brenner said.

Several NEJAC members welcomed Brenner's comments as assurance that EPA would not leave behind its unfinished task of reducing air quality emissions amid its ramped-up focus on GHGs. For example, NEJAC member Elizabeth Yeampierre of a Brooklyn, NY, environmental justice group said her members are concerned about NOx, SO2 and PM, even as the New York mayor is launching a new effort to achieve big reductions in GHGs in the city in the coming years.

"The mayor's plan needs to be on hot spots," Yeampierre said, citing plans to build clean-burning power generators in places where dirty units are already a problem for local residents. She said a plan to incentivize air pollution reductions along with GHG reductions would be welcome because the companies "are only going to do it unless they get paid for it."

One member said a plan to provide community benefits in places where facilities will not be reducing emissions under a cap-and-trade program would help increase public sentiment in favor of the program. "Cap and trade could feel like a shell game" to local residents, but any system should ensure that the some initiatives are done locally to offset any increases, such as bus retrofits, said Judy Henneke of Texas.

She used the example of a refinery expansion that was necessary to produce ultra low sulfur diesel fuel, which had negative local impacts but was necessary for the greater good of reducing overall emissions. "The benefits of reductions should be felt in that community," Henneke said.

Brenner expressed optimism that now is the time to make big changes at EPA that will have dramatic benefits in historically underrepresented communities. “There are certain windows of opportunity to get things done, and this is one of those,” Brenner said. -- *Jenny Johnson*

7/24/2009

**EPA Outlines Criteria For Ensuring Equity Considerations In Rulemakings (*Inside EPA*)**

EPA’s upcoming guidance for including analyses of disproportionate impacts in its rulemakings will likely include criteria staff must meet before finalizing a rule, including detailing how its considerations of environmental justice issues affected the outcome of the rule.

The agency is currently conducting environmental justice impacts analyses on its controversial definition of solid waste (DSW) rule and its formaldehyde risk assessment, which the agency will use to inform the guidance, EPA officials told a July 21-22 meeting of the National Environmental Justice Advisory Council (NEJAC) in Arlington, VA.

“We want to see how [the guidance] would work in the real rulemaking environment,” Mike Burns of EPA’s Office of Pollution Prevention & Toxics told the committee at a July 22 meeting. Burns is chairing an EPA workgroup that is shaping the environmental justice rulemaking guidelines, which EPA plans to publish in draft form in the fall.

Burns told NEJAC that the guidelines will ask three questions of EPA staff shaping new rules across the agency: what did you do to address potential environmental justice concerns with the rule, how did you engage populations most impacted by the rule, and how did that engagement affect the outcome of the rule. The equity rulemaking workgroup is coming up with process guidance that lay out what kinds of questions, analysis and information should form the staff’s engagement of the issue during rulemakings, Burns said.

EPA waste chief Mathy Stanislaus announced to NEJAC July 21 the agency’s plans to conduct an environmental justice analysis of the agency’s DSW rule to determine whether it will result in disproportionate impacts on disadvantaged communities.

Stanislaus added that the analysis is expected to provide a model for similar studies of other EPA policies in the future.

NEJAC member Sue Briggum of Waste Management offered EPA the committee’s technical analysis of how best to address environmental justice issues in the DSW

rulemaking. Jim Jones, the director of EPA's pesticides program, said EPA would be interested to meet with the members to learn more about their analysis.

EPA's announcement of its DSW analysis could ease concerns from environmentalists, who claim in a pending lawsuit that the DSW rule violates a Clinton-era executive order requiring agencies to evaluate the environmental impact of their regulations on low-income and minority communities (*Inside EPA*, Feb. 6).

The Bush administration finalized the DSW rule late last year in an effort to promote broader industrial recycling. By amending the definition of solid waste, the agency is also changing what is considered a hazardous waste subject to strict requirements.

But environmentalists are concerned that because the rule change will ease some waste management requirements, it could expose local communities to more hazardous materials.

In response to the activist lawsuit, the Obama EPA announced in May that it was seeking public suggestions on how to revise the rule (*Inside EPA*, May 8).

At the July 21 NEJAC meeting, Stanislaus said EPA has decided to conduct the analysis based on public comments.

"Based on public submissions on the rule and comments made at a public meeting last month, we share stakeholder concerns that the agency did not adequately address environmental justice in the rulemaking," Stanislaus said. "I am committing to you today that we will be conducting an environmental justice analysis of the rule before deciding how to move forward."

Several environmental justice advocates at a June 30 public hearing urged EPA to abandon the rule entirely, suggesting that the rule's deregulatory provisions would lead to a disproportionate increase in pollution in low-income and minority communities located near waste facilities.

Stanislaus said EPA is committed to involving NEJAC in the analysis process, although it remains unclear what the analysis will entail.

"We will involve all interested stakeholders as well as all who will be potentially impacted by the rulemaking," Stanislaus said. "As we conduct this analysis, we will also utilize the expertise of EPA and external experts on how to do environmental justice analysis. In fact, I expect that after working on this together, we will learn a great deal about how to do a quality analysis, and I hope that this can be a model for the future."

**FUEL**

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**EPA To Include Algae Biofuel In RFS In Response To Growing Interest (*Inside EPA*)**

EPA will include a greenhouse gas analysis for algae-based biofuels in its final rule to implement the renewable fuels standard (RFS) in response to growing interest in the renewable feedstock, including recent announcements by Exxon-Mobil and Dow Chemical that they are undertaking separate projects to help commercialize algae-based fuel technology.

Algae is a particularly tempting feedstock choice because it can be engineered to sequester large amounts of carbon dioxide (CO2) and because algae-based biofuel has a similar molecular structure to gasoline, allowing it to be used in the existing transportation infrastructure.

These qualities could help the fuel sidestep controversy associated with corn-based ethanol, which some say cannot meet the CO2 reduction goals of the RFS and which, due to its corrosivity, can impact engines, pipes and fuel pumps.

EPA fuels official Sarah Dunham said the agency considers algae “a promising feedstock” that will be included in the final RFS rule. EPA issued its RFS proposal earlier this year to expand biofuels use in line with congressional mandates, and is taking comment on the proposal through Sept. 25. Dunham was speaking to a July 16 meeting of a National Academy of Sciences panel on reducing greenhouse gas emissions from the transportation sector.

Algae-based fuels could be considered under the advanced biofuel or bio-based diesel portion of the RFS, according to the proposed rule. Advanced biofuels such as algae-based fuel and cellulosic ethanol are expected to supplement or possibly replace corn-based ethanol.

EPA had originally planned to wait to include algae-based biofuels in the RFS, arguing improvements in harvesting, dewatering and lipid extraction were needed to make the fuel economically competitive with other feedstocks, according to the proposal.

But the agency’s expected inclusion of algae in the RFS may help boost efforts to commercialize the technology of farming algae, using it to sequester CO2 and then turning the algae either into a biofuel or a chemical.

For example, Exxon July 14 announced its plan to invest $600 million in producing transportation fuel from algae in a partnership with Synthetic Genomics. The partnership would represent Exxon’s first foray into renewable fuels and could help stymie criticism that the company has dismissed concerns about global warming. Synthetic Genomics

founder, J. Craig Venter, told the *New York Times*, “Algae is the ultimate biological system using sunlight to capture and convert carbon dioxide into fuel.”

Additionally, Dow announced June 29 a partnership with startup Algenol Biofuels to build a demonstration plant that would use algae to turn CO2 into a vehicle fuel or an ingredient in plastics. The process also produces oxygen, which would be used to burn coal more cleanly, allowing sequestration of the CO2 produced from the coal to be used to grow more algae. The Department of Energy (DOE) is also considering providing economic stimulus funding for the demonstration plant, that could produce 100,000 gallons of fuel a year, according to news reports.

On a July 20 conference call on development of algae for fuels and chemicals, sponsored by the Biotechnology Industry Organization, leading experts in the field discussed challenges and opportunities for commercializing the technology and how algae-based fuels can play a key role in climate change legislation pending in Congress because of its reliance on CO2. *Relevant documents are available on InsideEPA.com.*

On the call, Ed Legere of Algenol Biofuels said the pending climate bill could vastly help spur the technology. “The game is changing politically and that makes a market for micro-algae,” he said, adding that any cost imposed on CO2 is “an opportunity for algae companies.”

Noting that CO2 capture and sequestration (CCS) systems to bury CO2 underground is an extremely expensive process fraught with technical and legal challenges that does not put the CO2 to use, Legere said using CO2 to produce algae-based fuel could be a win/win situation. For example, a power plant could put in an adjacent algae farm and use the CO2 to grow the fuel or use the algae to make other useful products, rather than spending $500 million for a CCS system that simply buries the CO2. A bonus is that the CO2 used for algae does not need to be compressed, saving additional money.

“Forward-thinking companies are already looking at this,” he said. “If cap-and-trade is a reality at $30 a ton [of CO2 emitted], then large emitters are looking at hundreds of millions in costs coming their way.”

However, Legere admitted that using CO2 generated from power plants to grow algae is still a long way off and that algae biofuels developers initially will seek to use CO2 streams from industrial processes that are cleaner than coal, with fewer toxins, and have a manageable flow rate of 5 to 100 tons an hour, rather than the 400 tons an hour released by a typical 500-megawatt coal plant.

Also on the panel, Steve Gluck of Dow noted that government support is vital to algae developers, who still need to overcome challenges of scale.

Legere said in terms of renewable fuels the best thing the government can do “is not try to pick winners, so whatever policy they put in place they don’t pick who should benefit and who shouldn’t.”

Gluck added that Dow is seeking to put algae on a level playing field with other fuels and hopes the government will be “responsive and quick” in deciding whether to allow genetically modified hybrid algae to be grown for fuel.

Additionally, Tom Byrne of XL Renewables said it appears the government is behind algae. In addition to EPA including it in the RFS, DOE July 15 announced up to $85 million in economic stimulus funding grants to develop algae-based biofuels, including the possible funding for the Dow demonstration plant. “So the U.S. is jumping behind it . . . seeing the potential. They understand not all the questions are answered yet but see it can be achieved,” Byrne said.

XL Renewables has a 1.5-acre demonstration algae production facility in Arizona. Byrne said capital costs including harvesting and processing equipment are about $40,000 per acre while the company is harvesting about 25,000 tons of algae per acre but hopes to boost that to 100,000 tons. Additionally, he said algae-based biofuel would cost about 30-cents a gallon.

7/24/2009

**Critics of EPA’s Pending E15 Decision Hint At Possible Legal Challenge (*Inside EPA*)**

A broad coalition of groups opposed to a biofuels industry petition to allow up to 15 percent ethanol (E15) in gasoline, an increase from the current E10 cap, is charging that the industry has failed to demonstrate the higher blend will not damage emissions control devices -- an argument that could preview a possible legal argument should EPA approve the request.

While the biofuels group acknowledges the likelihood of litigation in the event EPA grants the petition, the issue may not get to court as Congress could take the issue out of EPA’s hands. Senate Agriculture Committee Chairman Tom Harkin (D-IA) told reporters last week that he wants to add language to pending climate legislation requiring EPA to raise the cap to E15 to overcome “strong bias” against ethanol among EPA staff.

“I know we have enough data where going to 15 percent blend has absolutely no effect on the present state of internal combustion engines,” Harkin told reporters July 16. “In fact, there’s data that shows you could go as high as 20 or 23 percent. But if we at least go as high as 15 percent, that would give us half again as much of ethanol use in this country. That’s good for the environment. It’s good for cutting down on imported oil.”

At issue is a high-profile request by Growth Energy for EPA to waive the Clean Air Act’s current E10 cap on conventional gasoline to allow blends of up to E15 in order to overcome a so-called ethanol blend wall. The industry is seeking the change in part to drive increased demand for the fuel, which is facing a glut due to oversupply. Allowing

mid-level ethanol into the marketplace is also seen by proponents as a bridge to move from current reliance on corn ethanol to cellulosic and other advanced biofuels, as well as a boost for “green” jobs.

But a host of groups is concerned about increasing the cap. Engine and vehicle manufacturers, for example, fear the fuel will damage engines, leaving them vulnerable to third-party tort suits, while environmentalists fear increased ethanol use will increase ozone emissions levels.

EPA received thousands of comments on the waiver request by the July 20 deadline and by law must make a decision before the end of the year.

Opponents, including health, environmental and consumer groups, engine and auto makers, the oil industry, petroleum marketers, convenience store owners and many non-corn state lawmakers, all say the testing submitted by Growth Energy to support the waiver request does not meet the Clean Air Act mandate that petitioners demonstrate that higher blends will not damage emissions control devices.

“We argue that Growth Energy failed to show that E15 could be used without increased air pollution or possible damage to emission control systems,” the health, environmental and consumer group coalition, led by the American Lung Association, wrote in July 20 comments. “Growth Energy has provided no data of testing specifically designed to demonstrate engine performance and emission control system over its useful life comparable to that required for vehicle certification.” *Relevant documents are available on InsideEPA.com.*

But Growth Energy and other proponents say the testing shows no damage to emissions controls up to E15. “The waiver application included numerous independent and peer-reviewed studies that demonstrate that ethanol blends up to 15 percent do not cause or contribute to the failure of emission control devices to meet Clean Air Act standards. In fact, the studies demonstrate that fuels containing up to 15 percent ethanol are indistinguishable in use and emissions from ethanol-gasoline blends containing 10 percent ethanol, blends that have been safely and successfully used for over 30 years in the United States in millions of vehicles,” the group’s July 20 comments say.

Under the air act fuels waiver process, EPA is only allowed to consider a new fuel’s effect on emissions control devices and cannot hinge its decision on a host of other factors raised by many groups, including safety, infrastructure availability, pump certification, potential to damage engines, warranty concerns, misfueling issues and liability.

Specifically, section 211(f)(4) of the air law requires waiver applicants to establish that new fuel blends will not cause or contribute to a failure to achieve emission standards of any emission control device or system over the useful life of engines that will use the new fuel.

New York in earlier comments opposing the waiver said higher ethanol blends are shown to cause the failure of onboard diagnostic systems, which EPA mandates in passenger vehicles to monitor emissions controls (*Inside EPA*, July 10).

EPA is reportedly considering granting a partial approval that would limit blends higher than E10 only to vehicles that meet the agency's Tier II emissions standards in model year vehicles 2004 and newer (*Inside EPA*, May 29).

But groups are also opposing that possible approach. The health and environmental groups' comments say a partial waiver could lead to "real consumer problems -- including putting the wrong type of gasoline in the wrong car." The Engine Manufacturers Association adds that EPA "has no legal authority to grant such a 'partial waiver' under the section 211(f)(4) waiver process."

July 20 comments by the Alliance for a Safe Alternative Fuels Environment (ALLSAFE), which includes auto, truck, motorcycle and small engine makers, add, "If EPA wants to pursue such a 'bifurcated fuels' program with different ethanol blends for different products, then EPA should initiate a separate major rulemaking process under section 211(c), rather than bootstrapping these broad issues into the narrow section 211(f)(4) waiver-review process."

Additionally, the National Association of Convenience Stores, which has expressed concern over pump certification and liability -- issues EPA cannot legally factor into its waiver decision -- writes in July 20 comments, "Unfortunately, fuels with greater than 10 percent ethanol content -- without fundamental statutory or regulatory changes in the law -- simply cannot take place."

Many other groups focus on a lack of testing. For instance, the American Petroleum Institute in July 20 comments says, "While the studies included in the petition generally do not show significant adverse effects of E15, we do not believe that they provide sufficient credible scientific and technical support for the granting of the waiver in whole or in part. It is our judgment that EPA should reject the current Growth Energy E15 waiver application because the technical justification is inadequate."

The California Air Resources Board (CARB) echoes that position. "Growth Energy has not provided sufficient evidence to support a demonstration that E15 will not cause or contribute to engines, vehicles or equipment failing to meet their emissions standards over their useful life," CARB says in July 16 comments.

Also opposing the waiver are a number of cattle and poultry groups that worry E15 will spike corn prices, and the Department of Homeland Security, which is concerned about potential for the new fuel to cause fires in marine engines.

A broad coalition is also urging EPA to approve the Growth Energy waiver, including former House Speaker Newt Gingrich (R), a coalition of House members led by Rep. Stephanie Heseth-Sandlin (D-SD), Sen. Byron Dorgan (D-ND), the Midwestern

Governors Association, the Renewable Fuels Association (RFA), the American Coalition for Ethanol and the environmental group New Fuels Alliance (NFA).

Also the North American Equipment Dealers Association has split with other industry groups to support Growth Energy, writing in June 16 comments, “We strongly disagree with opponents of the waiver and their contentions that science-based information to support higher ethanol blends is lacking or that higher blends will contribute to the failure of motor vehicle engines, pollution-control equipment or similar gasoline-powered equipment.”

The Midwestern Governors and NFA also focus on the economic aspects of approving the waiver, including providing a transition to advanced biofuels. NFA writes, “While NFA understands that EPA’s assessment of the waiver request will be based largely on environmental and performance metrics, it is important to note that a waiver approval would have significant impacts on economic development, energy security and other critical national priorities. We hope that EPA will consider the vast array of ancillary benefits to increasing the blending capacity of renewable fuels produced in the United States.”

Additionally, RFA in its July 20 comments says EPA should approve E12 if it determines E15 is not viable. The air act “authorizes use of E12 regardless of EPA’s determination on E15, and EPA should affirm in any final action that such blends are authorized,” RFA writes.

Growth Energy held a July 15 conference call with reporters where CEO Tom Buis stressed President Obama’s support for biofuels, though he also noted that even if EPA approves the waiver, the transition would not happen instantly. “If it goes in our favor, chances are there would be a lawsuit,” he said.

Growth Energy declined to comment on whether it would sue over an EPA denial. -- *Dawn Reeves*

**GENERAL**

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

Article published Jul 24, 2009

**Portwalk work concerns raised (*Foster's Daily Democrat*)**

PORTSMOUTH — Concerns from local and state archaeologists have prompted a federal preservation leader to ask the Environmental Protection Agency to look into whether developers of the Portwalk project followed due process in acquiring permits to begin work on the former Parade Mall site.

Local archaeologists say they have concerns the project could disturb buried artifacts that could shed light on a once-bustling North End, but a spokesman for the developer says they have followed the process and have undertaken a study showing the project will not compromise anything of historical significance.

Complaints from local residents led the Federal Advisory Council on Historic Preservation to send a letter to Roger Janson of the Boston office of the Environmental Protection Agency. The July 20 letter questions the EPA's process in concluding the Portwalk project complies with section 106 of the National Historic Preservation Act.

It states the ACHP has concerns Port Walk developer Cathartes Private Investments already has begun work on a Maplewood Avenue site characterized as having a "high potential" for containing archaeological sites dating back to the 17th century.

Federal law under section 106 requires that certain projects go through a study of what historical artifacts might be compromised by a certain development.

The ACHP is asking the EPA to inform them of what steps they have taken to ensure the Port Walk project meets section 106 requirements.

A call to Janson — a municipal permit chief for the EPA's Boston branch — about where the EPA stands on the ACHP request resulted in a voice mail indicating he is out of the office for the week.

Calls to the Boston EPA office went unreturned as of Thursday afternoon.

Edna Feighner, review and compliance coordinator for the state's Division of Historical Resources, has become involved in the process and also has been asking EPA officials about what safeguards they took to ensure the project met guidelines before moving forward.

Feighner is among those who say they want the project halted until they can get more answers about what artifacts might be under the ground and whether the developer followed the proper process.

Feighner said she began getting calls from concerned residents long before the project began, but noted some residents became particularly fired up when Port Walk crews began demolishing the Parade Mall last month.

Cathartes Private Investments is building a multiuse development on the site. It eventually will include commercial spaces, high-end residences, retail shops and a hotel.

Some local archaeologists say they have concerns the project will compromise buried artifacts dating back to the 1700s.

Ellen Marlatt, an archaeologist with Portsmouth-based Independent Archaeological Consulting LLC, said the building of the nearby Sheraton Harborside Hotel produced a study showing the area is "rich" with archaeological finds ranging from ceramics and glass items to the remains of home-based businesses that thrived in Portsmouth's North End throughout the 1700s up to the industrial age.

Marlatt said the Deer Street area on the development site is known to have been the former home of French, Portuguese and Irish immigrants who lived and worked along the Piscataqua River.

"It was a neighborhood, but it wasn't just residential. People had their shops and trades right in their homes," Marlatt said.

Marlatt said the current project could impact important finds that could further tell the story of Portsmouth's history and how people lived.

"These are questions we don't know until we could do some more archaeology. I would like to see whatever resources aren't already destroyed get recorded before we lose them entirely," Marlatt said.

Martha Pinello, the former director of archaeology at Strawbery Banke for 21 years, agrees the project should be put on hold.

Pinello expressed concern that the EPA didn't review the project completely. She said it remains to be seen if anything of importance is under the site, but the regulatory process usually allows time for a study of a development site.

Pinello said she believes the site might have key artifacts that could reveal more about how Portsmouth residents lived in the late 1800s up until World War I — a period she described as yet to have a lot of meaningful study.

"For the sites we look at, each has revealed information about how people lived and what they used in their daily life that is not held in museums and private collections. There is potential for those resources to be at the Parade Mall site," Pinello said.

She added that archaeological finds are a "nonrenewable resource."

"Once they are gone ... they are gone. Citizens need to ask questions," she said.

She said she understands an archaeological dig can't happen before every project is undertaken, but questions the process in the Port Walk development.

"I think people are perplexed," she said. "How can we spend all this time excavating under State Street at the African Burial Ground and at the wharf at Strawberry Banke, and these guys can blow through anything?"

Scott Tranchemontagne, a spokesman for the Portwalk project, said the developers have been sensitive to the historical aspect of Portsmouth and followed the permitting process completely.

He said the developer has worked with the EPA and has never been told the section 106 requirement pertains to them as they are not a federal agency and aren't receiving any federal funding.

"Our construction doesn't trigger a historic review," he said.

He said Cathartes Private Investments hired Victoria Bunker Inc., a New Durham-based archaeological consulting firm, to review the property in 2007 and noted the findings showed no reason to slow construction.

He said Bunker's review showed it was "highly unlikely" there would be Native American artifacts on the site and separately determined that below the former Parade Mall is remnants of old buildings consistent with "urban fill."

He said Bunker instructed that construction crews should pause if they find something while doing any site work, but noted they haven't to date.

He stressed that the current phase of the project doesn't involve any significant digging because the project is set to be built on a slab. He further noted the project won't disturb anything that wasn't already compromised by the 1970s building of the Parade Mall.

"We are pushing around dirt and fill that has already been pushed around," Tranchemontagne said.

He said the developers have heard no concerns from residents and are sensitive to Portsmouth's link to the past.

"We definitely respect the history of this area. Everyone knows this was a vibrant community in Portsmouth's North End for some time. The bottom line is we looked into it and did a lot of due diligence as to whether it applied to section 106," Tranchemontagne said.

Feighner said she is continuing to contact the EPA and recently talked to their Boston bureau chief to further discuss a permitting process that she believes need to be made more stringent.

7/24/2009

**EPA Faces Major Questions In New ‘Cost-Benefit’ White Paper (*Inside EPA*)**

EPA FACES MAJOR QUESTIONS IN NEW ‘COST-BENEFIT’ WHITE PAPER

As EPA completes a white paper on its method for estimating the economic benefits of its regulations, experts say the agency will face questions about which kinds of benefits studies to use, how to aggregate studies and what role the so-called value of statistical life (VSL) method should play in determining the benefits of key programs.

Under the VSL approach, EPA assigns a fixed value to human life and then calculates the total value of lives saved by environmental rules for use in cost-benefit analysis of the programs. The resulting cost-benefit analysis is important as it can inform the stringency -- and costs -- of regulations.

The updated white paper on VSL is being prepared in conjunction with a revised version of an agency document, *Guidelines for Preparing Economic Analyses*, which is currently under review by the agency's independent Science Advisory Board (SAB).

According to a July 8 notice in the *Federal Register*, EPA's National Center for Environmental Economics (NCEE) is working on the paper, which will propose a revision of the VSL based on new scientific literature, as well as past advice from SAB's Environmental Economics Advisory Committee (EEAC).

An EPA spokesperson says the agency is still working on the VSL paper, which will be sent to SAB to review this fall.

SAB has begun requesting the nomination of additional experts to participate in a review of the white paper on VSL, according to the notice. "NCEE has requested an SAB peer review of the white paper, which will include a description of the approach used for deriving estimates for mortality risk valuation, a list of selection criteria detailing how the Agency selected studies for inclusion in the analysis, and the VSL that results from the revised approach," the notice says.

The paper could deal with a number of controversial issues surrounding VSL. For example, stakeholders disagree over the use of revealed preference studies or stated preference studies, according to a source with the Institute for Policy Integrity (IPI) at New York University, which largely supports the use of cost-benefit analysis in regulatory review. Revealed preference studies are based on actual decisions made by people in the workforce, while stated preference studies are based on studies comprised of hypothetical decisions made by survey respondents.

For example, in February 26 comments filed on the guidelines, the American Petroleum Institute (API) said that estimates derived from survey-driven, stated-preference studies "can be highly speculative, subject to manipulation, and highly uncertain, with the potential to significantly distort net-benefit estimates."

Many support the use of revealed preference studies because they measure actual behavior and because they allow researchers to see trends because they are based on more data than the small groups often used in stated preference studies, the IPI source says. Still, stated preference studies are becoming more experimental in their design,

while revealed preference studies are increasingly taking concerns about representation into account, which could lead to increased convergence between the two, the source adds.

But a source with environmental think tank Resources for the Future (RFF) says new behavior economics literature seems to support the use of stated preference studies, which allow for a controlled environment that can help study subjects make more rational decisions, unlike the real-world market environment that is the basis of revealed preference studies.

Revealed preference studies can also have an inappropriate context for VSL, the RFF source says. For example, they are often based on workforce data, which skews towards younger, healthier people, and while the deaths discussed in the studies are accidental and instantaneous, deaths from air pollution are not.

“The SAB does, however, agree that meta-regression is a useful statistical technique for identifying various aspects of study design or population characteristics that are associated with differences in VSL estimates,” according to the group’s final report. “Once important sample characteristics, model and estimation factors affecting the VSL have been identified, the Agency must determine a set of criteria for what constitutes a set of acceptable empirical studies of the VSL.”

Other contentious issues surround the use of VSL, including whether EPA should differentiate VSLs by demographic groups. “Is one VSL the right way to go across demographic characteristics?” the source says. “Is one VSL the way to go for different contexts,” like air pollution, transportation issues or cancer?

There is also a debate between the use of VSL versus other methods, such as the value of a statistical life year (VSLY), sometimes referred to as the value of statistical year lost due to premature mortality. In early 2008, SAB determined that scientific research does not support using VSLY in cost-benefit calculations of agency programs.
*-- Aaron Lovell*

**MINING**
**==========**

**EPA recommends denying Lake Belt mining (*Pit & Quarry*)**

Jul 23, 2009
Pit & QuarryThe U.S. Environmental Protection Agency (EPA) recommends denying nine mining applications affecting 6,800 additional acres of wetlands in Miami’s Lake Belt region.

In a letter to the U.S. Army Corps of Engineers in early July, EPA expresses concerns about the environmental impacts associated with the proposed limestone mining. This includes the potential to “significantly degrade aquatic resources,” EPA said in the letter. The region forms the buffer between the Everglades Ecosystem and the urban development of Miami.
According to the EPA letter, the nine applications would expand mining activities of APAC-Southeast Inc., Florida Rock Industries Inc., Kendall Properties and Investments, Rinker Materials of Florida Inc., Sawgrass Rock Quarry Inc., Tarmac America LLC, White Rock Quarries and Opa-Locka West Airport.

The latest decision in the ongoing legal battle came in January, when a judge ruled against the Corps of Engineers and the mining companies, setting aside 10 of the existing mining permits covering hundreds of acres. The industry appealed the judge’s partial mining ban, with oral arguments scheduled in October.

Lake Belt mining permits were originally issued for 5,400 acres in 2002.

Jeff Biggers
Author, The United States of Appalachia
Posted: July 23, 2009 11:16 AM

**Abetting Historicide: Does Nancy Sutley’s Regulatory Banter Cover Up Crimes Against Coalfied Residents? (*Huffington Post*)**

Mired in the acrobatics of regulatory doublespeak, the Obama administration's increasing oversight of the unbearable daily toll on Appalachian coalfield residents from mountaintop removal begs the question: Are Obama's well-meaning but irresolute environmental administrators abetting the crimes of human rights violations and historicide?

Whether they are unaware of decades of regulatory circumvention by Big Coal or not, one extraordinary fact about the Obama administration is certain: While American citizens continue to lose their homes, health, jobs and heritage to regulatory manipulations by mountaintop removal operators in Appalachia, not one top level Obama administrator has bothered to visit and see the urgent human rights and health care crisis in the coalfields.

In effect, the mountaineers have been removed from the mountaintop removal debate.

Take Nancy Sutley, whose Council on Environmental Quality recently announced "unprecedented" actions to "regulate" mountaintop removal and "minimize adverse environmental consequences." For all of her good intentions, Sutley has never publicly mentioned or recognized the decades of human suffering, daily rounds of ammonium nitrate/fuel oil blasts, toxic dust, contaminated water, harassment and violence,

desecration of cemeteries and national heritage sites, and the de facto forced relocation of American citizens from mountaintop removal operations in Appalachia.

Is it perhaps because she has never been to a mountaintop removal site?

Or that she has never sat in the home of coal miners like Steve and Lora Webb in Boone County, West Virginia, as a 2,000-pound ANFO blast exploded nearby?

Overwhelmed by the blasting of a nearby Massey Energy mountaintop removal operation, the Webbs now have 60 days to leave their beautiful home and century-old roots--their multi-generational heritage and mountain homestead, and extraordinary cultivation of rare medicinal plants.

In a Coal Valley News interview last fall, the Webbs recounted their six-year nightmare of environmental regulatory loopholes and governmental inaction living near a mountaintop removal operation:

"It was like an earthquake," the couple says, describing the deep tremors caused by blasting on the mountain adjacent to their home..."When they set off their explosives, you get a whole storm of dust that covers everything - the cars, the houses, the trees. It looks like ash or a fallout," Steve Webb said, sharing that he has also witnessed rocks hitting trees and the asphalt road. "If a child happened to be out in the road playing when they set the blast off, they would have been injured," Webb said, recalling one particularly strong blast that occurred several months ago.

Legally sanctioned through federal and state environmental regulations, the great American pastoral for the Webb family will be erased from existence in two months.

The complete Coal River News interview is here:
http://www.ohvec.org/newsletters/woc_2008_12/index.html

The Webbs are one example of many, many centuries-old families that have been legally hounded out of the mountains by Big Coal manipulations of environmental regulations.

And yet, EPA's Acting Assistant Administrator Michael H. Shapiro, in announcing the EPA's sign-off on 42 of 48 mining permits, wrote last spring: "I understand the importance of coal mining in Appalachia for jobs, the economy and meeting the nation's energy needs."

Environmental protection somehow didn't include the human needs of the coalfield residents.

More so, Shapiro demonstrated an incredible lack of understanding about Appalachian coalfield history, or the reality that mountaintop removal coal accounts for less than 5-7 percent of our national coal production, and that unemployment and poverty rates have

skyrocketed in the most heavily strip-mined areas of eastern Kentucky and West Virginia due to mechanization and mountaintop removal operations.

As former West Virginia Congressman Ken Hechler noted in 1971, in his battle against the 1977 Surface Mining Act that granted federal sanctioning to mountaintop removal, the devastation of strip mining on his region's broader economy was inevitable:

"What about the jobs that will be lost if the strippers continue to ruin the tourist industry, wash away priceless topsoil, fill people's yards with the black much which runs off from a strip mine, rip open the bellies of the hills and spill their guts in spoil-banks? This brutal and hideous contempt for valuable land is a far more serious threat to the economy than a few thousand jobs which are easily transferable into the construction industry, or to fill the sharp demand or workers in underground mines."

In truth, strip mining more than strips the land; it strips the traces of any human contact. It results in a form of historical ethnic cleansing. Consider the Kickapoo State Recreation Area, an area today of wooded hills and riparian bottomlands off the Middle Fork of the Vermillion River in eastern Illinois, and the historic place of the birth of commercial strip mining of coal in the United States in the 1850s.

While the recreation site is now lauded by environmental regulators for its reforestation (albeit slight in diversity compared to the virgin forests) and fun recreational sites as the first state park developed from denuded strip-mined pits, it remains a haunting reminder of the removal of the Kickapoo and their ancient settlements, and the historic role of Kennekuk, the Kickapoo diplomat who lived in the area.

The Kickapoo villages were churned into ashes and spoil piles, stagnant mine ponds and pits; the first mechanized strip mining machines rattled their blades across the land cleared of virgin forests, creeks and 1,000-year-old Native settlements until 1939.

Unlike the dogwoods and the duck ponds, the Kickapoo will never return. Even worse, their history has been relegated to the heap pile of a vanished past.

The impact of mountaintop removal on historic and contemporary Appalachian settlements and coalfield communities is no less tragic. It has not only destroyed the natural heritage. It has deracinated the Appalachian culture, depopulated the historic mountain communities, and effectively erased important chapters of Appalachian history from the American experience.

With over 500 mountains destroyed, the central Appalachian coalfields and hollows are systematically being turned into boarded-up ghost towns and overgrown broken cemeteries.

Even the cemeteries are being wiped off the maps. Last weekend in Boone County, West Virginia, Danny Cook and several of his family members discovered access to their family cemeteries on Cook Mountain apparently had been intentionally blocked.

Horizon Resources LLC is operating a surface mining operation on the mountain.

According to state law, coal companies mining near cemeteries must allow family members access to those cemeteries. A detailed account of the scene on Cook Mountain, with photos, is online at: http://climategroundzero.org/2009/07/civil-war-era-cemetery-under-direct-threat-from-massey-mtr-site/.

Cook was attempting to visit the grave of his ancestor, Civil War veteran William Chap, who served in the forces to end slavery, including the estimated 3,000 slaves that worked in the coal mines and salt wells in the Kanawha River Valley alone.

The destruction of cemeteries and heritage sites, and historic communities--including the recent decision to take off the strip-mine-threatened Blair Mountain in West Virginia from the National Registry due to regulatory procedures--is part of a process of what some academic observers call "historicide," the eradication of people from history, or at least killing their presence in history.

As one of the last holdouts on Kayford Mountain in West Virginia, an area that has been decimated, Larry Gibson's tenacity to defend his mountain heritage and cemeteries in face of regulatory machinations has become legendary, though not without a price. The story of his hollow's depopulation and destruction, and razed cemeteries, is here: http://www.stopmountaintopremoval.org/larrys-story.html

Historicide sounds over the top to some. But this severe interpretation of history is not easy to disregard when all that remains of your heritage and your family's 200 years of important American history is a shattered cemetery surrounded by out-of-state coal company fences and do-not-enter signs.

In an exclusive interview with Grist last month, Sutley's fuzzy understanding of the human costs of mountaintop removal was painfully clear, as she adhered to Big Coal's marketing phrase of "mountaintop mining" instead of "mountaintop removal" that has been used by residents and writers for three decades. Sutley declared:

"I think everybody acknowledges it, the President has said it, everybody we talk to acknowledges that there are serious impacts associated with mountaintop mining and we have to address that. Going forward we have to look at what we can do under existing authority to strengthen the oversight of these projects and to see that we are using those authorities fully to try to address the environmental impacts of mountaintop removal mining. So, does it mean fewer projects, I don't know the answer to that. But it will mean that we will deal with the environmental impacts of those projects."

Sutley's line is worth repeating: So, does it mean fewer projects, I don't know the answer to that.

Here is the clip of Sutley:

On the heels of Sutley's indecision, Clay's Branch, West Virginia, coalfield resident Bo Webb (no relation to the other Webbs) received notice that the violations noted by federal regulators would be circumvented by a WV state decision. Webb was told on Friday: While operators were ordered to stop blasting in Clay's Branch until they placed all the material, rocks, flyrock, boulders, downed trees and all back on their permitted area, the WV Department of Environmental Protection reviewed solution is to blast down to the next seam of coal, blasting closer to residents so they can get to all the material that is off the permitted area.

In a letter published in the Huffington Post, Webb lamented:

"My family and I live in southern West Virginia, beneath a mountaintop removal site. I am forced to breathe silica dust everyday because of the blasting that is taking place right above me. Fly rock has landed in my garden. A boulder the size of a car hood came off there and stopped just short of my garden. The sediment catch ditches are full, again. The middle of the hollow is sliding in. The beautiful creek where I used to catch fish bait and along its sides dig ramps, mushrooms, and ginseng, is buried with rock, dirt and knocked down trees. The spring that we used to love to get water from is buried. The well water is sunken and muddy.

My house and my nerves rattle each day around 4 o'clock when the out-of-state Massey Energy company sets off yet another series of blast. And every evening I am reminded that my family has been on this mountain since around 1830 -- long before Massey Energy invaded from Richmond, Virginia; it's as simple as that."

http://www.huffingtonpost.com/jeff-biggers/urgent-july-4th-declarati_b_224864.html

For those who know history, Sutley's rhetoric is part of another regulatory story--decades of regulatory circumvention. This is the truth: Until mountaintop removal is abolished, environmental regulations will fail to protect the health and welfare of coalfield residents.

Returning to his own Appalachian woods in the 1970s, environmental writer Edward Abbey concluded:

"Something like a shadow has fallen between the present and past, an abyss as wide as war that cannot be bridged by any tangible connection, so that memory is undermined and the image of our beginnings betrayed, dissolved, rendered not mythical but illusory. We have connived in the murder of our own origins."

July 24, 2009

**Mine evaporation pond capping project explained, but residents express concerns (*Reno Gazette Journal*)**

*By Keith Trout*
*News Editor*

Over 25 people attended a two-hour meeting Tuesday night to discuss a planned evaporation capping project and other issues of concern to residents regarding the Yerington Mine.

The meeting was called by the Yerington Community Action Group and featured U.S. Environmental Protection Agency officials and a pair of EPA consultants who gave presentations on the mine's evaporation pond removal project.

Nadia Hollan Burke, Remedial Project Manager with EPA Region 9 (Superfund) over the Yerington Mine remediation project, was joined by her superior, Roberta Blank, as EPA representatives. Also giving a presentation was Victor Early, senior engineering geologist wih Tetra Tech, a consultant for EPA, who was joined by Tetra Tech's Doug Herlocker, an air quality specialist/environmental project manager.

Hollan Burke, the site lead, began with an overview presentation on the pond project, which involves capping the ponds with vat leach tailing material from the mine site, in essence removing the ponds.

The concern with the ponds is the sediment remaining in the pond bottoms is contaminated and bring a concern for dust blowing from the site, and for wildlife.

However, residents were more concerned about groundwater issues (see other story), which this essentially project doesn't address.

A public meeting has been scheduled for Sept. 24 (7 p.m., Yerington Elementary School) to discuss groundwater.

Several neighboring residents, though, were concerned this project is only an interim project rather than a more permanent remedy, that this could be wasting money.

Hollan Burke, though, said they wanted to do something to address the dust and wildlife problems (mainly from drinking contaminated water that pools in wet periods in some ponds) and it would take longer to come up with a permanent solution.

She said birds are exposed to low pH surface water ponding and contaminated sediments and there have been bird deaths since 2006.

However, at one point Justin Whitesides, Yerington Paiute Tribe environmental manager, said in talking with the U.S. Fish and Wildlife Service they are pleased with some current bird deterrent methods, which includes a horn sounding.

Hollan Burke said the other concern is to humans from fugitive dust leaving the pond area, noting the evaporation ponds seem to be a significant source of the dust.

She noted metals and radiological contaminants (uranium) detected in perimeter dust monitoring isn't an immediate health concern for healthy populations but can cause problems for persons with respiratory issues and it is a nuisance.

She said groundwater is a concern but it is being addressed by bottled water available to residents (although there were many complaints about this program) and monitoring wells installed north of the site (groundwater migrates to north), while they are looking at immediate concerns with the pond project, and this would contribute to a final remedy.

The evaporation ponds are in three conditions, lined (1 inch of asphalt), unlined and so-called Thumb ponds.

The planned cap according to the plan developed by ARC will consist of 18 inches of vat leach tailings (VLT) placed over the pond areas. Hollan Burke said this will result in about 840,000 cubic yards of cap material.

Residents were concerned about potential contamination in the tailings but Early said it has been tested.

In addition, a wet area on the east side of sulfide tailings area will also need to be capped.

As for why VLT is being used, Hollan Burke said it has low leachability and poses little threat to groundwater. She said it has been leached out and there was low potential to leach out more metals/contaminants.

The material is also cost-effective due to its abundance and proximity to the pond areas. However, the total price tag has still be estimated at $6 million.

Hollan Burke said this project would go faster than normal although some residents wondered why it was going so fast and might be too fast. ARC will proceed with remedial investigation for a final remedial options, including the final cover materal to protect groundwater in the long term.

The current workplan is to be finalized in late summer 2009, with construction at the ponds to start in early 2010 on line ponds and mid-2010 on unlined ponds.

YCAG has formally expressed concern with this project, citing the high contamination in the ponds and failure to address long-term threats to groundwater.

July 24, 2009

**Meeting scheduled to focus on groundwater issues related to mine (*Reno Gazette Journal*)**

Staff Report
A promised public meeting to address groundwater issues related to the Anaconda/Yerington mine has been scheduled for Thursday, Sept. 24.
The meeting conducted by the U.S. Environmental Protection Agency, lead agency in the mine cleanup, is scheduled at 7 p.m. in the Yerington Elementary School multipurpose meeting, the site of the last public meeting in January regarding the mine remediation project.

Groundwater issues were brought several times by residents at the January public meeting and a meeting especially on groundwater issues, where contamination of domestic wells to the north is the major concern, was promised to residents.

Then a fact sheet from the EPA on the Anaconda/Yerington mine issued in March 2009 focused on groundwater issues, including an expansion of groundwater monitoring at the mine and areas to the north (groundwater migrates to north) and discontinuance of a pumpback well system that begin in the 1980s in order to conduct further testing.

However, the meeting on the groundwater hadn't been conducted as of May when a mine stakeholders meeting was conducted here. At that time it was announced some personal issues involving David Seter, an EPA remedial project manager over groundwater issues, would delay such a meeting and eventually that waiting until September instead of August would allow for more test results to be known.

Concerns have been expressed about turning off the pumpback system but EPA officials and consultants don't feel a one-year halt will pose short- or long-term risks to the groundwater. And while the system if off, water and contaminant levels can be measured and expansion of he monitoring well system (more sampling sites installed) would allow for filling in data gaps regarding the shallow groundwater to the north, the EPA announced.

**PESTICIDES**

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7/24/2009

**Lawsuit Could Force EPA To Weigh Off-Farm Pesticide Exposure (*Inside EPA*)**

The Center for Biological Diversity (CBD) is threatening to sue EPA for failing to consider the adverse effects of pesticides on polar bears, a threatened species, a move

that could force the agency to consider ways to limit pesticides from drifting off farms where it enters the food chain and threatens endangered species.

“The issue is not pesticides being used in proximity [of an endangered species,] but pesticides being used in a way that they are escaping the farm and entering the food web,” says a CBD source, who adds, “That issue will be squarely before EPA.”

In a July 8 notice of intent to sue, CBD charges that the agency has not used its authority under the Endangered Species Act (ESA) and the Federal Insecticide, Fungicide & Rodenticide Act to protect the polar bear, which was listed as an endangered species in May 2008.

The notice was sent to EPA Administrator Lisa Jackson, acting Region X administrator Michelle Pirzadeh, Secretary of the Interior Ken Salazar and U.S. Fish and Wildlife Service director Rowan Gould. *The letter is available at InsideEPA.com.*

Following a string of high-profile lawsuits about the effects of pesticides on listed species, especially salmon, EPA is under a court order to consult with the Fish & Wildlife Service and National Marine Fisheries Service about the risks of a slew of pesticides, after a federal district court found in 2002 that EPA had failed to protect salmon from pesticides under the ESA.

But this latest possible suit could broaden the scope of the consultations to take into account more indirect effects of the pesticides on species, since the chemicals are being used far from the habitat of the polar bears.

**SUPERFUND**

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7/24/2009

**Health Care Debate Likely To Delay Superfund Tax Reinstatement Push (*Inside EPA*)**

Congressional efforts to reinstate the Superfund taxes on industry will likely be put on hold until later this year after lawmakers resolve the current debate on health care reform, according to a key House supporter of legislation to reinstate the taxes.

Rep. Earl Blumenauer (D-OR) told *Inside EPA* recently that the House Ways & Means Committee -- of which he is a member and which has jurisdiction over the Superfund taxes -- is currently “up to [its] elbows in healthcare.” Blumenauer said the Superfund bill, H.R. 564, is something he is optimistic the committee will take up “when the dust settles.”

“It shouldn’t be rocket science” to advance the legislation, Blumenauer said, adding that the committee will be dealing with several other “semi-related” infrastructure and tax appropriations issues this year and that it recently had its first infrastructure-related hearing -- on highway and transit investment needs.

“They’re dealing with a broad agenda,” Blumenauer said of the committee. “We’re going to be patient and let them know [the Superfund bill] is there.”

Given President Obama’s support for reinstating the taxes -- his 10-year budget plan calls for the reinstatement in 2011 “when the economy improves” -- Blumenauer said he is optimistic the current Congress would act on the legislation. Though he had also introduced the legislation in the last Congress, that effort was largely symbolic due to the Bush administration’s opposition to the measure, Blumenauer said.

**EPA sets plan for cleanup of toxic air in Mountain View's MEW Superfund site (*Mercury News*)**

By Diana Samuels
Daily News Staff Writer
Posted: 07/24/2009 12:01:52 AM PDT
Updated: 07/24/2009 12:01:53 AM PDT
Twenty years after the Environmental Protection Agency came out with its first plan to clean up contaminants at Mountain View's "MEW" Superfund site, the agency has released its proposal to handle the latest problem caused by those contaminants: toxic vapor rising up into commercial buildings and residences.
The MEW site — bordered by East Middlefield Road, Ellis Street, North Whisman Road and Moffett Field — used to be home to industrial companies and government agencies such as the Navy. They used chemicals in their operations that still remain in the groundwater, primarily the solvent trichloroethene (TCE).

The site now contains more than 60 commercial buildings and 80 residences.

In 1989, the EPA set a plan to clean up the soil and groundwater at the site by excavating soil, installing slurry walls to contain the groundwater and other methods. The soil cleanup has been completed; efforts to clean up the groundwater continue.

But in 2002, the EPA began studying the sites to determine whether those toxins from the groundwater were rising into the air inside the buildings. After studying 47 commercial buildings and 31 homes, the EPA determined that while there were no immediate health concerns for those living and working in the buildings, action is needed to protect residents and workers from long-term exposure.

The agency recently released its plan, and held a public meeting Thursday night to solicit public comment.

The public comment period will continue through Sept. 8.

The EPA recommends that existing commercial buildings continue using their heating, ventilation and air conditioning (HVAC) systems to exchange indoor air with outdoor air.

"If the HVAC system is operated at a high enough level, it causes the building to be under positive pressure, preventing contaminants from the subsurface from entering the building," the EPA's report says. "At lower levels it acts to dilute the concentration of VOCs that have already entered the building."

For homes and new commercial buildings, the EPA suggests installing a "sub-slab ventilation system." That system would go beneath the foundation of a building (or would include the installation of a membrane if the building did not have a slab foundation already), and would use a fan or blower to suck soil gas from beneath the foundation and vent it out into the air.

The agency estimates the set-up cost of a sub-slab system at $175,000 for a commercial building and $25,000 for a residence. EPA Project Manager Alana Lee said Thursday they hadn't yet determined who would be asked to pay for these cleanups, though the technology companies that leaked the toxins into the ground have generally been considered the responsible parties.

The EPA hopes the city will enact an ordinance to help mandate the cleanup, and Lee said that option is being discussed with the city.

A couple of dozen people, including MEW property owners and local environmentalists, attended Thursday's public comment meeting, though few spoke.

Developer John Lovewell, who said he'd worked with several properties in the area, said the community there has worked hard to redevelop what is now known as the "Mountain View Triangle."

"We must all be careful that any new measures do not create an impression of the Mountain View Triangle that aren't actually warranted by its present conditions," Lovewell said.

For more information on the EPA's plan, see www.epa.gov/region09/MEW.

E-mail Diana Samuels at dsamuels@dailynewsgroup.com.

**EPA wrapping tests at eastern Ill. Superfund site (Associated Press)**

**Story also appeared: *Belleville News Democrat***

- July 24, 2009 4:14 AM ET
TILTON, Ill. (AP) - The U.S. Environmental Protection Agency is finishing up its last round of soil tests near a Superfund cleanup site in eastern Illinois.
EPA Project Director Colleen Moynihan says the agency will release the results of the tests on the former zinc plant in Tilton later this year. Tilton is just south of Danville near the Indiana border.
The agency is trying to determine how far chemicals from the old Hegler Zinc site leached into surrounding property.

Part of the site is now owned by KIK Custom Products. Moynihan says that company has agreed to test the water in nearby Grape Creek.

Information from: Commercial-News, http://www.dancomnews.com

**TOXICS**
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July 24, 2009

**Essex, Richmond farmers hope to spread treated sewage (Burlington Free Press)**

*By Matt Ryan*
*Free Press Staff Writer*

ESSEX JUNCTION -- People who support using treated sewage for fertilizer are bracing for a messy showdown with the opposition.

Farmers in Essex and Richmond intend to spread biosolids, a byproduct of wastewater treatment facilities, on their fields as early as next spring. Through an arrangement with the Essex Junction Wastewater Plant, the Chittenden Solid Waste District and New England Organics of New Hampshire, Whitcomb Farm in Essex Junction and Farr Farm in Richmond would receive human refuse-turned-fertilizer free.

"It's another small thing farmers are doing to stay viable," Lorenzo Whitcomb of Essex said.

However, fears persist that biosolids contain harmful chemicals, which could end up in crops and ground water.

The Toxic Action Center, based throughout New England, has partnered with the Vermont Public Interest Group to tackle environmental issues. Although VPIRG could not be reached for comment, the Montpelier-based organization said in its 1999 annual report of biosolids, "this sludge is contaminated with heavy metals and other toxics."

"The Toxic Action Center is opposed to (biosolids) because of the toxics, like heavy metals and pharmaceuticals," community organizer Jessica Edgerly said of her organization.

Edgerly said she approves of recycling sludge, but that the technology is not yet there. The Toxic Action Center opposed the use of biosolids as fertilizer in Maine, based on scientific evidence gathered from academic and government sources, Edgerly said.

The U.S. Environmental Protection Agency maintains biosolids that meet its regulations are safe for fertilizer. About half of all biosolids are recycled to land and are used on less than 1 percent of the nation's agricultural land, according to the EPA.

New England Organics, which would transport the biosolids, is going through the permit process with the Agency of Natural Resources. Before applying biosolids to land, the company needs the agency's approval, and needs to alert the public, specifically the people living next to the farms. Whitcomb's farm, with 400 acres of crop fields, has 200 abutting landowners.

Tom Moreau, general manager of CSWD, anticipated a backlash in a July 16 update to the district's boards, warning "this proposal will most likely create some controversy."

The proposed source of biosolids, Essex Junction's Wastewater Plant, has the technology to provide fertilizer fit for farms, Moreau said.

"Do I feel like it's safe to put on land? Yes," he said.

Moreau added a "slight caveat," saying he did not know how, if they ended up in the biosolids, some exotic chemicals, on a parts per trillion level, might affect people long-term.

Like Moreau, Jim Jutras, manager of the Essex Junction plant, said the facility's biosolids are safe for fertilizer use.

Farmers living within the CSWD's service area used biosolids as fertilizer before but stopped in 1995 when a $4.7 million sludge-to-fertilizer plant in South Burlington closed.

After the plant closed, New England Organics began transporting the district's biosolids to Canada for composting. However, in April 2007, Canadians opted out of their contract with New England Organics, choosing instead more local biosolids, said Mike Hodge, the company's senior program manager. Since then, Chittenden County's waste has been going to a landfill in Coventry owned by Casella Waste Systems.

The district pays New England Organic $64 a ton to move biosolids to the landfill. Moving the stuff to farms would cost $58.13 a ton, plus at least $6,500 for on-site testing, Hodge said.

If approved, the arrangement would only affect the Essex Junction and Richmond farms, Hodge said.

"It's not like any farmer could get it," Hodge said. "The farmers that we've chosen have been carefully chosen."

Whitcomb grows corn and alfalfa on his farm in Essex Junction, which his family has owned for generations. Biosolids are his cheapest fertilizing option, he said.

"It's economically viable for us, but it's also good for the community," Whitcomb said.

Whitcomb said using biosolids would better localize the food making process.
Contact Matt Ryan at 651-4849 or mryan@bfp.burlingtonfreepress.com. To get Free Press headlines delivered free to your e-mail, sign up at www.burlingtonfreepress.com/newsletters.

**EPA to remind Mo. remodelers about lead dust (*Associated Press*)**

**Story also appeared: *Nebraska TV***

- July 24, 2009 5:14 AM ET
KANSAS CITY, Kan. (AP) - The Environmental Protection Agency is sending Missouri remodelers reminders about a federal rule aimed at protecting children from exposure to lead dust.
The dust can be generated during renovations, repairs and painting projects and is harmful to children.
The EPA regional office in Kansas City, Kan., will send postcards this month to about 3,400 remodeling and painting contractors in Missouri reminding them of the necessary training and certification.
The federal rule requires sets standards for contractors and construction professionals who work in housing built before 1978 or in facilities occupied by children.
On the Net: http://www.epa.gov/lead

**State Lines (*Greenwire*)**

Del., La., N.Y. and S.D. (07/23/2009)
DELAWARE: U.S. EPA has proposed paving over the most contaminated section of the abandoned Metachem Products chemical plant near Delaware City -- an option that

would cost between $12 million and $19 million. The agency has scheduled a July 28 public meeting to discuss the recommendation (Jeff Montgomery, News Journal, July 22).

**LOUISIANA:** New Orleans-based Clean Gulf Associates recently purchased a $6.5 million Basler BT-67 turboprop aircraft, which will aid in oil-spill cleanup along the Gulf of Mexico by dropping dispersants over spilled oil (Jen DeGregorio, New Orleans *Times-Picayune*, July 21).

**NEW YORK:** Daily tests of the Hudson River showed PCB levels reaching between 385 and 426 parts per trillion at Thompson Island and in Schuylerville earlier this month, prompting U.S. EPA to modify how it is dredging. The agency blamed the spike on an abnormally high concentration PCBs near Rogers Island (News10.com, July 22).

**SOUTH DAKOTA:** A federal grand jury returned a four-count indictment against Greenpeace and 11 individuals on Tuesday on charges stemming from a political demonstration that took place on Mount Rushmore earlier this month (Associated Press, July 21). **-- JK**

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

**Teachers to study Lake Huron aboard EPA vessel (*Associated Press*)**

**Story also appeared: *Chicago Tribune, MLive***

6:26 PM CDT, July 23, 2009
BAY CITY, Mich.
Call it The Love of Learning Boat.

Fifteen teachers from seven Great Lakes states are preparing for a weeklong Lake Huron Shipboard and Shoreline Science workshop aboard the Lake Guardian, a U.S. Environmental Protection Agency research vessel.

The 180-foot ship is to depart Saturday from Detroit and visit ports of call on the Detroit River, Lake St. Clair, St. Clair River and Lake Huron ports of call.

The Michigan contingent includes four teachers from Detroit and one each from Flint and Carson City. They'll be joined by teachers from Illinois, Indiana, Minnesota, New York, Ohio and Pennsylvania.

Michigan Sea Grant educators will help the teachers create classroom lessons based on what they learn about ecology and lake systems during the voyage, which is to end

July 31 in Alpena.

Information from: The Bay City Times, http://www.mlive.com/bay-city

7/24/2009

**Industry Cites New Rulings In Push For Review Of Pesticide Permit Suit (*Inside EPA*)**

Farm, pesticide and forest industry groups are urging an appellate court to consider recent high-profile Clean Water Act (CWA) decisions -- including a June high court ruling -- in deciding whether to review its decision that effectively mandates that EPA permit for the first time hundreds of thousands of pesticide spraying activities on or near waters.

The industry groups are citing two cases to argue that the court should grant EPA deference to exempt pesticide spraying activities from permit requirements, according to a set of recent industry briefs. *Relevant documents are available on InsideEPA.com.*

In one of the cases, *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*, the Supreme Court ruled June 22 to grant EPA deference to issue a less-strict "dredge and fill" permit for an Alaskan gold mine than activists had sought. And in the second case cited in the industry brief, the U.S. Court of Appeals for the 11th Circuit ruled June 4 in *Friends of the Everglades et al. v. South Florida Water Management District* to grant EPA deference to exempt water transfers from discharge permits.

But environmentalists say the recent decisions were over different issues.

Industry groups have filed a petition seeking *en banc* review, asking the full 6th Circuit to reconsider the decision from a three-judge panel in *National Cotton Council, et al. v. EPA*. The ruling vacated EPA's 2006 rule exempting agricultural pesticide users, state pest controllers and others who spray pesticides on or near water from having to obtain a National Pollutant Discharge Elimination System (NPDES) permit.

Industry groups fear the ruling's reasoning broadens the definition of what is considered a "point source" subject to permit requirements, opening the door to permitting activities that were previously considered to be exempt as nonpoint sources, such as fertilizer applications.

EPA, however, is opposed to the industry's *en banc* petition and has won a two-year stay from the court to develop a general permit. EPA officials said recently they plan to develop a general permit that will provide significant flexibility to sprayers (*Inside EPA*, June 26).

Environmentalists who successfully overturned EPA's exemption are also opposed to additional review.

But the court has not yet ruled on the industry's April 9 request for the review, which industry officials say is an unusually long time to consider the request.

While the 6th Circuit has been considering the *en banc* petition, CropLife America, which represents pesticide manufacturers, the American Farm Bureau Federation and the American Forest and Paper Association have filed joint briefs calling the court's attention to the other rulings as new reasons to grant EPA deference to exempt pesticides spraying from NPDES requirements

In *Coeur Alaska*, the high court granted EPA and the Army Corps of Engineers deference to categorize mining tailings and other pollutants as "fill material" exempt from strict discharge limits under the CWA. In Justice Anthony Kennedy's majority decision, he argued the CWA and EPA's regulations over which section of the law was controlling -- the strict discharge standards under section 402 or the more lenient "dredge and fill" requirements under section 404 -- were ambiguous. As a result, the decision granted the agencies deference to issue the more lenient permit.

In a July 7 brief in *Cotton Council*, the industry groups argue *Coeur Alaska* is "instructive regarding the level of scrutiny necessary to properly determine whether EPA's interpretation of the CWA is permissible and therefore entitled to deference."

Specifically, the brief alleges that while in *Coeur Alaska*, the high court found Congress had not "directly spoken" to the "precise question" at issue in the case, the 6th Circuit in *Cotton Council* "never posed the question" of whether Congress had spoken to the precise question.

Second, the brief argues that because the more lenient permit upheld in *Coeur Alaska* would allow mine waste dumping that would "kill all of the lake's fish and nearly all of its aquatic life," the 6th Circuit was wrong in *Cotton Council* to base its decision in part on the environmental harm the pesticides spraying would cause.

That the Supreme Court allowed a mine dump waste killing all the aquatic life in a remote subalpine lake "calls into question the [6th Circuit's *Cotton Council* decision's] reliance on general statutory provisions, such as 'to prevent harmful discharges,' to support its view" requiring NPDES permits for pesticides spraying, the industry brief says.

The June 11 brief from industry also cites the 11th Circuit's ruling in *Friends of the Everglades*, which upheld a controversial Bush-era EPA rule exempting water transfers from CWA permit requirements, creating an apparent split among appellate courts that environmentalists said may have to be resolved by the Supreme Court.

The 11th Circuit's decision found EPA made a "reasonable" decision to exempt water transfers from permit requirements and should be accorded deference. Previously, EPA had only followed an informal policy to exempt water transfers, which was not due deference, the 11th Circuit argued.

The industry brief argues the 11th Circuit's ruling is particularly relevant because it overruled several other appellate courts and even itself on the same water transfer issue.

The industry brief also highlights the issue of a statute's purpose in constructing its meaning in specific areas, similar as the groups argued for *Coeur Alaska*.

"Where the statute was susceptible to more than one reasonable interpretation, the court refused to resolve the ambiguity based on the CWA's 'broad and ambitious' purposes," the industry brief says, noting that the 11th Circuit in *Friends of the Everglades* ruled that despite the CWA's "lofty goals . . . it is not difficult to believe that the legislative process resulted in a [CWA] that leaves more than one gap in the permitting it enacts."

However, the National Environmental Law Center is opposing the industry arguments in a series of recent responses, arguing the circumstances in the two cases cited by industry are not relevant to *Cotton Council*.

In a July 13 response, environmentalists say *Coeur Alaska* does not apply to *Cotton Council* because Congress had spoken to the "precise question" at issue in the case. "[W]hile the court in *Coeur Alaska* found ambiguity in the 'tension' between" which section of the CWA to apply, "no such 'tension' exists here because *nothing* in the [CWA] purports to exempt from NPDES regulation pesticides discharge to or over water," the brief says.

The activist brief also argues that the Supreme Court's upholding of such harmful practices in *Coeur Alaska* "does not repudiate the long-standing interpretive rule . . . that statutes should be read in accordance with their policy objectives," in this case protecting the environment, the brief argues.

Environmentalists also challenged application of the *Friends of the Everglades* ruling in a June 15 response. The environmentalists' brief says *Friends* regarded ambiguity about whether water transfers were the "addition" of a pollutant to jurisdictional waters rather than, as in *Cotton Council*, supposed general ambiguity over "discharge of a pollutant."

"Industry's suggestion that pesticides residues do not come 'from' point source pesticides applications is flatly untenable," the brief argues. -- *Jonathan Strong*

7/24/2009

**Oberstar Eyes Raising USDA Role In Wetlands Jurisdiction Decisions (*Inside EPA*)**

House transportation committee Chairman James Oberstar (D-MN) is weighing whether to elevate the U.S. Department of Agriculture's (USDA) role in determining whether farm land is subject to Clean Water Act (CWA) protections, an approach that is aimed at overcoming vehement farm-state opposition to his upcoming bill clarifying the scope of the law but which activists are likely to oppose.

Sources say Oberstar is considering an approach for his upcoming bill clarifying the scope of the CWA that will codify the current practice and regulations of EPA and the Army Corps of Engineers, which generally defer to USDA determinations for whether farmland is "prior converted croplands" (PCC) and eligible for crop subsidies or whether it is a wetland protected by the "Swampbuster" program.

But Oberstar's approach would elevate USDA's role, giving the agency first-time authority under the water act to make the determinations, sources say.

One informed source says the approach is intended to make the farm community more comfortable that his upcoming bill would not expand jurisdiction on agricultural lands. But the source says the bill could also include language ensuring that EPA and the Corps still have authority to make determinations on a case-by-case basis, as their regulations currently allow.

The new approach may win support from the agriculture industry, which last year raised concerns that Corps field offices were inconsistent in determining whether agricultural lands are jurisdictional under the CWA. But the approach is likely to face opposition from environmentalists, who have consistently opposed codifying the exemption for PCC.

A spokeswoman for Oberstar declined to comment.

News of the possible concessions comes as a growing number of House lawmakers, including many Democrats, are strongly criticizing efforts by Oberstar and others to clarify the law's scope.

At a House Small Business Committee hearing July 22 -- called to raise small business and farm concerns with the upcoming bill -- every Democrat on the panel appeared to support limiting jurisdiction to waters that are "navigable" or connected to navigable waters, rather than broader approaches that environmentalists and others have insisted on in the past.

Rep. Brad Elsworth (D-IN) said explicitly that the law's current limitation based on a nexus to navigable waters "should be left in there," while Rep. Ann Kirkpatrick (D-AZ)

said she had “strong concerns” about the potential reach of Oberstar’s bill. “Is there a role for expanded jurisdiction that stops short of removing the word navigable?” she asked.

Even lawmakers staunchly backed by environmentalists are raising questions about a bill that expands jurisdiction. Freshman Rep. Debbie Halvorson (D-IL), who environmentalists have lauded several times since her election last year, questioned how EPA would be able to handle broadened CWA jurisdiction because “we’ve already got a backlog of 15,000-30,000 thousand permits. I mean who would enforce this?”

Halvorson represents a largely rural district and industry sources confirmed her concern about the legislation. But she was also featured in a Jan. 8 event sponsored by the Natural Resources Defense Council and the Blue-Green Alliance Action Fund, whose members include Sierra Club, that claimed she was one of the “next generation of congressional green leaders.”

The small business panel also appeared to be jousting for jurisdiction over the issue, with Chairwoman Nydia Velázquez (D-NY) vowing to present the hearings findings to Oberstar. But the issue could prove complicated because, as Velázquez noted during the hearing, the committee has never previously had any stake in the issue.

Oberstar has long sought legislation to clarify the scope of the law following high court rulings that narrowed the scope of the law to address marginal waters, such as isolated wetlands and perennial streams.

But the chairman’s effort to move a bill in the last Congress -- as well as Senate Democrats’ efforts this Congress -- have continued to face staunch opposition from farm groups concerned that it would expand EPA and the Corps’ current oversight over wetlands.

In an effort to overcome this opposition, sources say the bill is likely to employ new concessions for agriculture, including codifying USDA’s authorities to determine which farmlands are PCC exempt from the CWA, according to industry and other sources.

Under the Farm Bill’s so-called Swampbuster program, farmers are required to protect wetlands on their farms in order to be eligible to receive USDA commodities payments. Land converted to cropland prior to 1985 is known as PCC and is not subject to Swampbuster subsidy provisions, unless it is not farmed for at least five years and wetland conditions return. But generally the law holds that wetlands converted to cropland is not eligible for payments.

While USDA makes these determinations for subsidy purposes, EPA and the Corps generally defer to their determinations unless, on a case-by-case basis, they determine the land is subject to CWA jurisdiction under the terms of a 1993 EPA-Corps regulation.

The agencies' roles are important to agriculture officials because USDA is historically more favorable to farmers. Also, industry groups have argued that exemptions for PCC in past versions of the legislation have failed to protect their existing exemptions.

While not commenting on Oberstar's approach, American Farm Bureau representative Charlie Kruse emphasized to the small business panel the need to preserve the current exemption for PCC. He said that farmers and the real estate market have made financial decisions based on the exemptions for decades and it would be wrong to go back on them now, noting that the current PCC exemption comprises 55 million acres of agricultural land estimated to worth $110 billion.

Land is "the largest and most valuable asset that a farmer has and is our equivalent of a 401(k)," he said, adding that the exemptions "clarified to the entire economy . . . that the market value of the land . . . would not change due to restrictions in land use from federal regulation."

Kruse also backed Halvorson's concerns that a bill expanding jurisdiction would result in an "unconscionable" permit backlog. -- *Jonathan Strong*

**House Panel may strip GOP 'Loopholes' from Chemical Security Bill (*Inside EPA*)**

The House Energy & Commerce Committee may opt to mark up a version of pending chemical security legislation that does not include language to ease facilities' requirements to switch to safer technologies, in an effort to remove or limit the impact of amendments that Homeland Security Committee Republicans added last month, sources say.

Environmentalists are supportive of the plan, because they say it gives the energy committee the opportunity to remove provisions that activists say created "loopholes" that allow even the largest facilities to escape mandates for safer processes, one activist says.

The energy committee plans to hold hearings on and mark up the chemical security legislation as well as a drinking water security bill introduced July 20 by committee Democrats including Henry Waxman (CA), the committee chairman, and Edward J. Markey (MA), the environment subcommittee chairman. *Relevant documents are available on InsideEPA.com.*

The energy committee drinking water bill gives EPA oversight of security issues at drinking water facilities, while the chemical security bill first marked up by the homeland security panel gives the Department of Homeland Security (DHS) oversight of chemical and wastewater facilities. The energy committee originally planned to hold a hearing on the bills July 23, but the hearing has been postponed.

But when the energy committee goes to mark up the chemical security legislation, sources say the panel plans to use bill language as it was introduced by Homeland Security Committee members June 15, which would effectively strip the measure of GOP amendments added when the Homeland Security Committee approved the bill June 23.

“They will either not adopt the loopholes, or they will make sure they are not as damaging,” the activist says.

The Homeland Security Committee’s drafts of the bill gave DHS the ability to require chemical facilities that pose the highest risk to use inherently safer technology (IST) -- which includes switching to chemicals that pose less of a risk if released -- so long as the switch is feasible and not prohibitively expensive.

But GOP committee members successfully won amendments to the bill, H.R. 2868, that would soften the IST requirements, by allowing facilities to appeal IST orders to an administrative law judge and blocking IST requirements if they reduce operations or workforce. Republicans also won inclusion of a measure requiring DHS to analyze the cost of IST to industry and the impact of the law on small businesses. But in spite of the inclusion of the amendments, Republican committee members still voted unanimously against the measure (*Inside EPA*, June 26).

Environmentalists criticized the GOP amendments, arguing the changes would allow even the largest facilities to avoid using IST. The amendments have the potential to delay or avoid safer approaches, especially if they are implemented by a future administration that is opposed to IST, the environmentalist says.

The source also says the term IST is used nowhere in the bill the energy committee plans to mark up. Instead, the bill refers to “methods to reduce the consequences of a terrorist attack,” which could refer to using different chemicals, reducing the temperature or pressure of process, or other approaches.

Meanwhile, the drinking water security bill energy committee members introduced tracks closely to a draft bill released in late May, but adds criminal penalties for the improper release of sensitive information, including facility assessments.

The bill, H.R. 3258, which outlines the security requirements for drinking water facilities, requires EPA to assign water systems to one of four risk-based tiers, requires facilities to identify vulnerabilities and develop site security plans, and requires facilities to meet risk-based security standards based on their risk tier.

The bill also maintains a provision included in the draft bill that requires facilities with chemicals that exceed to-be-determined thresholds to assess whether they can switch to safer chemicals or processes. The bill then gives states with delegated Safe Drinking Water Act authority to determine whether to mandate those changes.

The measure also includes a new provision outlining criminal penalties for the release of protected information about a facility. The bill requires EPA to develop standards for appropriate ways to share information and outlines penalties for individuals who purposely release information in violation of the rules, including fines and up to one year in prison.

The drinking water sector supports the bill's approach to IST because it says states have a better knowledge of the industry and what is feasible, one water sector source says. "Our feeling was that if there has to be some level of government power to force the adoption of IST . . . [states] would be much less likely to mandate something unworkable," the source says.

The sector also supports the new criminal penalties for releasing sensitive information. Documents such as a facility assessment could serve as a roadmap for a criminal or terrorist to access the system and such documents should not be widely circulated, the source says.

The bill, however, does not appear to resolve concerns that there could be dual regulation of facilities that house both drinking water and wastewater systems, with DHS overseeing wastewater and EPA overseeing drinking water.

The source says the energy committee cannot resolve the issue because wastewater is outside of the committee's jurisdiction. The Transportation & Infrastructure (T&I) Committee could resolve the issue, because wastewater issues are in its jurisdiction, and T&I has shown a desire to be involved in the process, the source says. For example, water subcommittee Chairwoman Eddie Bernice Johnson (D-TX) introduced a bill June 17 that would place wastewater facilities under an EPA security program and not DHS' program.

But T&I Chairman James Oberstar (D-MN) appears to have not reached an agreement with Homeland Security Committee Chairman Bennie Thompson (D-MS) on the issue, so T&I has not been able to move forward on wastewater legislation, the source says. If the conflict is not resolved in the House, the issue may be dealt with in the Senate, where both water and wastewater are overseen by the Environment & Public Works Committee, the source says.

7/24/2009
News Analysis

**California Budget Deal Highlights Limits Of State Permit Fee Systems (*Inside EPA*)**

California's budget deal announced earlier this week is highlighting the limits of the permit fee systems that many state environmental agencies have adopted to provide a more reliable funding source for environmental programs than general appropriations and diminishing federal funds, state and other sources say.

While the July 21 legislative deal between Gov. Arnold Schwarzenegger (R) and lawmakers largely protects the state's core environmental programs, which are funded almost entirely by fees on regulated facilities, the deal does eliminate the state waste board, which is funded by permit fees and has been an important driver in efforts to encourage recycling, one environmentalist says.

And, sources say, though fee-based funding is helping to shield environmental programs in California and many other states across the country, it has not protected agencies from some biting impacts of the poor economy, including furloughs for state workers, layoffs, hiring freezes and salary cuts.

Virginia, for example, recently laid off 25 air pollution inspectors while hiring freezes in some states may be preventing officials from hiring new staff to oversee federal stimulus spending -- despite provisions in the stimulus law providing funds for new hires to ensure the money is quickly spent, state sources say.

Many states turned to new and higher permit fees about five years ago, when the Bush administration began cutting federal funding to states for environmental programs, says a source with the Environmental Council of the States (ECOS), which represents state environmental commissioners. For example, at least 42 states have some kind of fee system to fund their clean water permit programs, according to EPA.

In one controversial case, the Bush administration even encouraged many states to shift to a permit fee system, crafting a rule that set aside some EPA water funds for those states that adopted a fee system. But the rule drew strong criticism from states and it was eventually dropped by the Obama administration, although the agency continued to "encourage states to develop sustainable programs that share the cost with those who benefit" from discharge permits.

Despite the growing use of permit fee systems, in recent years states have struggled to convince their legislatures to levy new fees or increase existing fees, "so states are pretty close to reaching the saturation point on fee increases," which is hurting certain state programs that rely in part on general funding that is declining, the source says.

In addition to the layoffs in Virginia, the ECOS source notes that state environmental workers are being furloughed not only in California but in several other states, including Arizona, Hawaii, Iowa, Maryland, Massachusetts, Michigan, Nevada, New Jersey, North Carolina, Washington and Wisconsin.

In Delaware, which imposes fees for some water permits, state officials are poised to implement a 2.5 percent across-the-board cut to state environmental and other officials' salaries.

"We're going to see similar kinds of cuts [as Virginia's] in other states -- if not inspectors, it will be permit writers or other functions we perform," the source says. "So, few states are going to be able to bypass [this] and not take cuts."

Even energy-producing states, which are generally considered to be somewhat immune from budget woes, are being hit. The state of Wyoming, for example, earlier this year adopted a hiring "restriction," requiring prior authorization before new hires are made.

Another state source says state hiring restrictions are even preventing some states from making new hires to spend federal stimulus funds, even though the law provides funds for such hires to ensure the money is quickly spent. "Some states, no matter how much money they can get . . ." still have a "complete hiring freeze," the source says. "They can get additional money for staff, but they still can't hire anybody, and they're trying to get this money out quickly."

While the stimulus may have provided some funds to states, and officials are hopeful the Obama administration will increase funds to states to carry out delegated programs, officials may not always be able to rely on federal funds. House and Senate lawmakers, for example, are moving to adopt EPA spending legislation for fiscal year 2010 that does not provide the roughly $1 billion increase in grants states were seeking. State officials instead appear to be shifting their efforts to lobbying for the extra funding in the agency's upcoming FY11 budget proposal (*Inside EPA*, June 26).

Despite the limitations of the fee-based system, it does appear to have ensured some protections for California's environmental programs.

While everything from education to prisons will be cut by billions under the California budget deal, the only major proposed environmental program cut was the abolishment of the state's waste board, a move that will only save about $1 million, which does not even come from the state's General Fund but from fees. Further, most of the board's staff will simply be shifted to another department, which should preserve most of the environmental protection elements the board carried out.

Overall, the California General Fund only makes up about 5 percent of total funding for the state's environmental programs, representing less than one-tenth of 1 percent of the fund, according to the state's legislative analyst. Fees paid into special funds accounts for about two-thirds of the environmental program budgets, with bond funding and federal funds making up the rest.

One environmental agency that relies more on the General Fund than any other in the California Environmental Protection Agency (Cal/EPA) -- the Office of Environmental Health Hazard Assessment (OEHHA) -- will see its funding shifted more to fees, under a

plan advanced this year by Democrats in the California legislature. This move was seen as helping to kill a proposal by Gov. Arnold Schwarzenegger (R) to abolish OEHHA. This development illustrates another example of the benefits of basing environmental program budgets on fees, sources say.

An environmentalist based in California says that the state's heavy reliance on fees paid by regulated facilities has indeed protected the core regulatory programs from major hits in recent years, even considering the state's whopping deficit, but the system has not been able to prevent significant slowdowns to key functions as a result of the recession.

"It's true that the fee funding has shielded Cal/EPA from the worst of the budget cuts," the source says. "The legislature and governor realize, usually, that cutting these fee-funded programs will not help close the deficit, so the bulk of California's global warming, air, water, pesticides and toxics programs will survive this fiscal crisis. Fee funding also has the benefit of making polluters pay for some of the costs they inflict on society."

But, on the other hand, the source points out, the state's waste board is "slated to be dissolved, furloughs have damaged Cal/EPA's ability to carry out its mission, and many critical environmental needs are not being met."

Currently, all state workers are being furloughed three days a month, which staffers have noted in public and private is considerably slowing key programs, permitting administration and other core functions of Cal/EPA's boards and offices. -- *Curt Barry & Erica Martinson*

7/24/2009

**Wyoming Fight Prompts Call For EPA To Speed Drilling Discharge Rule (*Inside EPA*)**

Environmental groups are pressing EPA to quickly promulgate national technology-based discharge limits for coal-bed methane (CBM) drilling in order to halt weaker state standards such as those at the center of an ongoing fight in Wyoming that activists say are scientifically flawed and violate the Clean Water Act (CWA).

EPA is in the midst of information gathering to determine whether it should set an effluent limitations guideline (ELG) for the CBM sector -- a decision that will likely take years, as EPA says it plans to determine "next steps" in the fall of 2010.

In the meantime, activists want EPA to reject Wyoming's CBM discharge standards. EPA has not agreed to take that step but has said it will visit the state later this summer to assess the activists' concerns that Wyoming's efforts to promote CBM drilling is destroying native grasses and soil in violation of the water law.

Activists say EPA's unwillingness to act quickly to reject Wyoming's CBM discharge standards is in stark contrast to the agency's backing of strict Montana water quality standards. Montana is downstream from Wyoming and set its rules in part to force Wyoming to further limit CBM discharges with high salt content -- measured by levels of electrical conductivity (EC) and sodium adsorbtion ratio (SAR). EC estimates the amount of total dissolved salts in water while SAR is a measure of the suitability of water for use in agricultural irrigation.

EPA is defending Montana's water quality standards for EC and SAR in federal court in Casper, WY, during oral arguments in a long-stalled case that pits a broad swath of industry and Wyoming against EPA, Montana and environmental groups. Judge Clarence Brimmer held two days of arguments July 9 and 10, and asked parties to submit final documents to the court by July 24. *Relevant documents are available on InsideEPA.com.*

The case, *Pennaco Energy Inc., et al. v. U.S. EPA, et al.*, was first filed in 2006. But arguments were delayed as EPA, Montana and Wyoming tried to reach a settlement, though those efforts were ultimately unsuccessful.

One source familiar with the case says it shows "it is really up to EPA to set or approve the standards. . . . EPA can regulate interstate waters; that's their job."

At the same time, EPA Region VIII Acting Administrator Carol Rushin met with the Powder River Basin Resource Council June 29 to hear the group's concerns over the proposed Wyoming discharge limits, which are already being implemented as part of a statewide "agricultural protection policy" as they are being developed into a formal state rule by the Environmental Quality Council (EQC). The standards, once finalized by the state, will have to be submitted to EPA for approval, but activists note that 170 permits have already been issued under the policy and say they want EPA to step in now.

One Powder River Basin Resource Council source says EPA's "approval of the Montana standards [and its defense of those standards in court] is totally contradictory to what they are not doing in Wyoming. . . . If the [Wyoming discharge standards were] tighter, it would help Montana meet its water quality standard."

At the meeting the group had with EPA Region VIII late last month, the agency said it was aware of the Wyoming discharge limits and would look into the group's concerns. The agency did not say it would speed development of a national ELG for CBM, however, which has already been under consideration for years.

The Powder River Basin group formally asked EPA to reject the Wyoming discharge standards in a series of July letters, with a July 9 letter stating, "To allow the status quo in Wyoming to continue while EPA adopts [ELGs] or other standards is like allowing the beating to continue while you negotiate guidelines for a truce."

But a Wyoming Department of Environmental Quality official says the state has been working closely with EPA on development of the EC and SAR discharge limit rules and that so far the agency has not found a problem with them. The source acknowledges the controversy that has surrounded its approach but adds that many in the state support it.

The EQC is slated to hold a hearing on the issue in September, the earliest date the rule could be formally approved for the governor's signature. At that point, the state would submit the rules to EPA for its approval, the source explains.

An attorney who represents Montana ranchers says, however, that if Wyoming does not improve its standards or if EPA fails to step in, "We will put pressure on our elected officials to take legal action" by asking Montana to file suit against Wyoming to enforce water quality at the border. "Unfortunately, Wyoming continues to create loopholes that run afoul of the CWA, and their standards need to fully protect water quality out there with an eye toward restoring whatever damage has been done over the last 10 to 15 years. That is what the law requires." -- *Dawn Reeves*

7/24/2009

**Industry Fights Pennsylvania Plan To Limit Impacts Of Drilling (*Inside EPA*)**

Attorneys from the manufacturing industry are fighting a plan in Pennsylvania to create more stringent limits on total dissolved solids (TDS) in wastewater discharges, saying the plan aimed at dealing with pollution from oil and gas drilling will disproportionately impact publicly owned treatment works (POTWs) and industrial dischargers.

Earlier this year the Pennsylvania Department of Environmental Protection (DEP) announced a new permitting strategy for TDS as part of several actions it is taking to limit the impacts of increased natural gas exploration and drilling in the Marcellus Shale formation in the state.

Drilling in the Marcellus Shale is controversial because it uses hydraulic fracturing to extract the gas, a practice that environmentalists say risks contamination of drinking water sources from the chemicals used to force out the gas. The drilling method is exempt from Safe Drinking Water Act underground injection control regulations.

Earthjustice and a host of environmental groups, including the Natural Resources Defense Council and Waterkeeper Alliance, have urged EPA to set a suite of new wastewater discharge standards for oil and gas development. In April 7 comments on the agency's final 2008 effluent limitations guidelines program plan, the activists cite the contamination in the Monongahela River in Pennsylvania in late 2008 (*Inside EPA*, April 24). The river was impaired by TDS such as chlorides and sulfates, and activists say the

state environment department blamed the contamination on the discharge of oil and gas wastewater to POTWs.

DEP says in the strategy that it is committed to supporting development of the Marcellus Shale but notes that hydraulic fracturing has the potential to create large amount of wastewater, both in the initial flowback water from the fracturing and longer term production brine.

The Monongahela River watershed is being adversely impacted by TDS discharges and many points in the watershed are already impaired from TDS, sulfates and chlorides, DEP says in the strategy. But studies show the extent of existing and potential TDS pollution is widespread and present in other watersheds as well, DEP says.

Under the new permitting strategy, DEP plans to prohibit discharges of new sources of high-TDS wastewater after Jan. 1, 2011. Additionally, the state plans to develop new numeric water quality criteria for TDS and chlorides to protect all designated stream uses, including potable water supplies, the strategy says. In the interim, DEP plans to focus on new sources that have the greatest potential to adversely affect the water quality, which the state says are currently wastewater generated from fracturing and production of oil and gas wells in the Marcellus Shale formation. *Relevant documents are available on InsideEPA.com.*

But the Pennsylvania Chamber of Business & Industry is raising concerns that DEP "has proceeded to promulgate and commenced immediate implementation of this TDS Strategy without proper notice and opportunity for thoughtful public comment," according to a working paper on the issue provided to *Inside EPA*.

The chamber says the permitting strategy is over-generalized, and that recent TDS problems are not statewide, but instead affecting specific streams under certain conditions. The new treatment standard will affect dischargers beyond those impacted by mine drainage, including electric power generation, coal mining and processing, food processing, petroleum refining and chemicals, and pharmaceuticals discharge permits, the chamber says.

7/24/2009

**Notice May Open New Comment Period On Sequestration Proposal (*Inside EPA*)**

EPA has sent a notice on its landmark carbon capture and sequestration (CCS) rulemaking process to the White House for review, a move that may indicate the agency is poised to release an expected notice of data availability (NODA) to take comment on new safety and other information about the practice.

The agency July 20 sent a notice to the White House Office of Management and Budget (OMB) for final review before it is made public. While the OMB Web site does not specify what the notice will contain, Lee Whitehurst of EPA's Office of Groundwater & Drinking Water has said in the past that the agency planned to issue a NODA.

The NODA process would allow the public to comment on new information that has become available since EPA issued its proposed CCS rule last year. That may include data on ongoing CCS pilot projects that one industry official says could show the practice is safer than EPA had initially assumed, which could be good news for energy companies anxious to invest in the technology.

EPA's rule is considered a crucial step in efforts to regulate greenhouse gases because CCS is viewed as a key technology to allow the continued use of fossil fuels under a national program to reduce greenhouse gases. EPA's proposed rule seeks to create a new class of Underground Injection Control wells under the Safe Drinking Water Act.

One possible source of new information that may be considered in the NODA is ongoing CCS pilot projects, including seven regional Department of Energy partnerships aimed at determining the best methods for CCS. In the past, EPA sources have said that information from such projects, such as the effectiveness of well materials, injection practices, monitoring and modeling will inform EPA's decision-making process for permitting commercial-scale CCS projects.

However, some stakeholders have expressed concern that the timing of the NODA could possibly delay the release of the final rule, which the agency agenda has slated for December 2010. For example, Whitehurst had originally projected that EPA would issue the notice in November, which the industry source said could push the release of the final rule into 2011.

7/24/2009

**Sotomayor's Backing For Congress May Bolster Democrats' CWA Bill (*Inside EPA)***

Supreme Court nominee Sonia Sotomayor says she generally seeks to provide Congress discretion when determining the scope of environmental protections, a move that could provide Democratic lawmakers some assurances that she will back pending legislation to clarify the scope of the Clean Water Act (CWA).

During Sotomayor's confirmation hearing July 15, Sen. Ben Cardin (D-MD), who sits on the Judiciary Committee and also chairs the environment committee's clean water panel, pressed Sotomayor on whether she would give deference to Congress in its efforts to protect marginal, intrastate waters.

The Supreme Court in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Corps of Engineers* and *Rapanos v. United States* -- two key cases in which the high court narrowed the law's scope -- "reject[ed] long-standing legal interpretations" of the CWA, Cardin said. *SWANCC* and *Rapanos* "are now precedent and they are binding, and that it may very well require the Congress to pass laws further clarifying what we meant to say so that we can try to get us back on track," Cardin said.

Sotomayor's views on the issue are important because in *SWANCC*, the high court hinted that using the law to protect isolated, intrastate waters and other waters may exceed Congress' power under the Commerce Clause. If confirmed by the Senate, as appears likely, Sotomayor will be replacing retired-Justice David Souter, who generally voted to back strong CWA protections.

To address concerns raised by *SWANCC*, Cardin and other Democratic senators on the environment committee June 18 passed legislation that seeks to restore the law to its pre-*SWANCC* scope and cites Congress' "legislative authority" under the Constitution as the basis for these powers -- although Republicans have vowed to block the bill from floor consideration (see related story).

But if the legislation were enacted, it would almost certainly face a constitutional challenge from industry and others charging that the law exceeds Congress' constitutional power.

In the context of those decisions, Cardin asked Sotomayor if she would "follow the intent of Congress and will not try to supplant individual judgment that would restrict the protections that Congress has passed for our community."

Sotomayor called deference to Congress "the bedrock of our constitutional system" and promised she would continue her record of allowing discretion for Congress and federal agencies in interpreting statutes and the Constitution.

"My cases, my entire record shows that I look at the acts of Congress, as I think the Supreme Court does, with deference, because that is the bedrock of our constitutional system, which is that each branch has a different set of constitutional powers," Sotomayor said.

By vowing deference on the issue, Sotomayor could be indicating she will not be favorable to such a challenge.

Cardin, who chairs the Water & Wildlife Subcommittee of the Senate environment committee, told reporters after the exchange that he welcomed the nominee's response. "She authored an opinion that spoke to giving deference to Congress and allowing Congress to change the laws, rather than the courts. And that's the type of response that I was hoping to receive," he said.

**Wind chime maker aids Hudson River cause (*UPI*)**

**Story also appeared: *Times of the Internet***

SHOKAN, N.Y., July 23 (UPI) --
A gift company started by a musician inspired by a landfill has created a wind chime supporting the ecology of New York's Hudson River, the company says.

Woodstock Percussion Inc.'s Hudson River Chime supports the non-profit Hudson River Sloop Clearwater, founded by U.S. folk singer Pete Seeger to protect the river's natural environment through advocacy, public education and celebration.

The five-pitch chime, tuned to the pentatonic melody of Seeger's My Dirty Stream (The Hudson River Song) -- which speaks of Seeger's hope the river may someday run clear -- came out a month after General Electric Co. started dredging 400,000 tons of toxic sediment from the Hudson, whose surrounding valley is a U.S. National Heritage Area.

We wanted to support an organization that was vital to cleaning up this important river, which supports a biologically rich environment, but we also wanted to focus on a natural wonder that has broad national appeal, Woodstock Percussion Chief Executive Officer Garry Kvistad told United Press International.

I think Americans take pride in our natural resources and having an environmentally safe country, he said. Supporting the Hudson River is like being concerned about the Grand Canyon.

The U.S. Environmental Protection Agency acknowledges Clearwater's advocacy of dredging the Hudson's toxic hot spots over two decades was very helpful in bringing the current dredging to fruition, EPA spokesman David Kluesner told UPI.

He called Clearwater a strong and continual advocate of cleanup of this precious natural resource.

Environmental officials say removing the toxic sediment from the bottom of the river will greatly speed what has been a slow natural decline in levels of toxins in striped bass and other fish species.

GE is supervising and paying for the $750 million-plus cleanup -- one of the costliest and most complicated environmental cleanups in U.S. history -- after discharging an estimated 1.3 million pounds of PCBs, or polychlorinated biphenyls, into the upper Hudson for three decades before the chemicals were banned in 1977 as a health threat.

Washington lists PCBs as a probable human carcinogen in high doses.

Woodstock Percussion, based in the mid-Hudson Valley hamlet of Shokan, N.Y., is donating a portion of Hudson River Chime sales revenue to Clearwater's education and advocacy work for as long as the chime is on the market, Clearwater said. Each chime retails for $25.

The chime's introduction also coincides with the 400th anniversary of Henry Hudson's exploration of the 315-mile river, the 40th anniversary of Clearwater's namesake sailing vessel's maiden voyage and Seeger's 90th birthday.

I find it hugely promising that these positive anniversaries coincide with the cleanup of the Hudson's chief remaining source of pollution, Kvistad told UPI.

And this chime lets us contribute to the river's healing with each chime sold, said Kvistad, a percussionist who founded his company with his wife, Diane, 30 years ago this month after realizing he could tune aluminum tubes from discarded lawn chairs he found and reclaimed while tromping through a landfill in search of treasures.

His innovation -- tuning wind chimes to specific notes and creating explicit harmonies -- is recognized as having revolutionized the wind chime market.

Commercial wind chimes previously were largely decorative hanging configurations of metal, wood and other materials, sometimes including silverware and cookie cutters, that tinkled or thudded when blown by the wind.

**Bacteria close beaches along Bay off Va. Beach (*Norfork Virginia Pilot*)**

VIRGINIA BEACH
Swimming and wading in the Chesapeake Bay were banned Wednesday along a stretch of beaches because of high levels of bacteria.

The Virginia Beach Health Department posted signs Wednesday, warning people against entering the Bay east of the Lesner Bridge, from Starfish Road to Wake Forest Street, an area containing hotels, condominiums and homes.

Water samples showed bacteria levels more than twice the acceptable standard, said Dan Horne, the department's environmental health supervisor.

Another round of samples was taken Wednesday, with results expected today. If clean, beaches could be reopened immediately, Horne said.

It was the second swimming advisory issued in that area of the Bay this summer. The first came a month ago at Chick's Beach, just west of the Lesner Bridge. That closure lasted two days, according to state records.

Horne and others could not say what caused the closures Wednesday or last month, noting that the possibilities abound - pet wastes, a sewage leak, stormwater runoff.

Pinpointing a cause often proves difficult, if not impossible, the officials said, citing recent changes in the state health standard and myriad possible sources of bacteria. In samples, the state now looks for the presence of Enterococcus, an organism that can determine fecal bacteria contamination. Such contamination is linked to human or animal waste and can carry diseases.

People swimming in waters with above-normal bacteria counts have a higher risk of developing gastrointestinal illnesses, as well as skin, eye and respiratory infections.

The state monitors bacteria levels at 44 beaches along the Bay and Atlantic Ocean from May to September. So far this year, six swimming advisories have been issued, including the one Wednesday in an area the state calls Sea Gate.

Last year, the department issued 10 warnings, including two in Virginia Beach and one at Sea Gate, records show. In 2007, 14 advisories were posted, none at Sea Gate but three in Virginia Beach. Most were along the ocean and away from the Bay, records indicate.

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News

**EPA to remove asbestos from creek (*Times Herald*)**

Thursday, July 23, 2009
By THOMAS CELONA
For The Times Herald
The EPA has said it will remove asbestos containing material from the Wissahickon Creek after stabilizing all stream banks, but many residents are concerned about the community's safety in the interim.

The presence of ACM in and along the Wissahickon Creek has been a concern for residents for years. The ACM in the water and along the stream banks comes from the BoRit asbestos site in Ambler, Upper Dublin and Whitpain townships.

Eduardo Rovira, the EPA's on-scene coordinator, said the EPA plans to safely remove all ACM from the creek area. This cleanup will occur after the EPA has stabilized all stream banks, which is part of the removal stage currently in progress.

"Most of the pieces that are washing up are from the sections we haven't done any work at," Rovira said. Because of this, a cleanup at the present moment would only be a temporary effort because ACM would most likely continue to enter the creek from these

locations that have yet to be stabilized.

“It was decided that we will do it only once,” Rovira said. “Once we are done with the stream banks, we will go out and pick up any pieces of ACM in the stream and along the stream banks.”

Rovira said the stabilization of the remaining stream banks will take at least one year, and he estimated the cleanup will occur in late 2010 or early 2011.

Many residents involved with the BoRit site said they are glad the EPA will be removing the ACM.

“Anytime you get trash out of the creek, you’re benefiting the creek, whether it’s ACM or plastic bags or yard waste or anything else,” said Randy Gray, executive director of the Wissahickon Valley Watershed Association.

“I’m happy they are committed to cleaning it up,” said Sharon McCormick, a member of the Citizens’ Advisory Group and Citizens for a Better Ambler who has been active in efforts to have the EPA remove the asbestos at the BoRit site.

However, residents also have concerns about what the safety risks might be of allowing the ACM to remain in and along the creek for at least another year.

“I would urge that it would be done sooner rather than later,” CAG Co-Chair Fred Conner said.

“If they’re not going to get to it until 2010 or 2011, is there going to be any warning to the children in that area?” McCormick said. “It has always been our concern when we see children there. They could pick it up. That causes a real concern for me.”

Rovira said ACM currently in the water poses no health risk.

“Any of the pieces that are actually in the water, they don’t pose a real threat,” he said. “The pieces that are in the water right now, there is no actual potential of any fibers becoming airborne. The airborne fibers are the ones that might cause some health problems.”

However, the dry ACM along the stream banks poses more of a health risk, as fibers can potentially become airborne if disturbed, Rovira said. Because of this, Rovira has advised residents not to touch any ACM they may come across.

“Some of the residents actually wanted to go and do a cleanup of the creek,” he said. “Any other pieces that are not on the water, when they pick it up, they might drop it. By doing that, there’s always the possibility of some fibers becoming airborne.”

Gray said eliminating this health risk will be the biggest improvement accomplished by

the EPA's planned cleanup.

"It's going to have a benefit because it's going to prevent asbestos from getting in the air," he said.

Many have also questioned why the ACM has not been already removed.

"It should have been done 25 years ago," Gray said.

"(The EPA has) noted for miles and decades that there's ACM in that water," McCormick said. "Visible waste usually gets cleaned up immediately (on asbestos sites)."

However, CAG Co-Chair Bob Adams said he understood the EPA taking time to ensure the cleanup is done correctly and thoroughly.

"I think they want to find the extent of it — how much and how far — and how much they're going to clean, which is understandable," he said.

Rovira said he could not give a current estimate of how much ACM there is in and along the Wissahickon Creek, but he did acknowledge the amount is substantial.

"I've walked the stream many, many times, and I know there is quite a bit of material," he said.

**Food scraps energizes wastewater treatment (*San Francisco Chronicle*)**

California
July 24, 2009 Friday
FINAL Edition
Metro; Pg. D1
Food scraps energizes wastewater treatment;
OAKLAND
BY: Kelly Zito, Chronicle Staff Writer
Inside hulking white tanks near the Oakland foot of the Bay Bridge, some of your pizza crusts, kung pao chicken and orange peels are cleaning the wastewater from 650,000 households in Contra Costa and Alameda counties.

Sort of.

Under an innovative program touted as the first of its kind in the nation, the East Bay Municipal Utility District collects about 100 tons of food scraps from restaurants and grocery stores each week, speeds up the decomposition process, and uses the resulting methane gases to fuel the energy-hungry pumps and pipelines at its 49-acre wastewater treatment plant. Leftover scraps are turned into compost.

It's a rough, messy process, and educating waiters and grocery clerks about separating chopsticks and plastic cases from the food scraps is a challenge. But the utility is pleased with the program's progress. It cuts greenhouse gas emissions, keeps refuse out of local landfills and may eventually be profitable.

If the utility district hits its long-term goal of processing 100 to 150 tons of food waste each day, district officials hope to begin selling a steady, sizable amount of renewable energy to Pacific Gas and Electric Co.

"This is a great opportunity, especially since our primary focus is public health and environment," said David Williams, director of wastewater at the utility. "Right now, we take a lot of carbon out of the ground and put it out into the air. In this case you're taking carbon that's already here and getting the energy out of it. That's a great thing."

The U.S. **Environmental Protection Agency,** which awarded EBMUD $50,000 to study the food waste program, said it is the first wastewater system of its kind in the country. Williams expects more utilities to follow, given that treating wastewater consumes a huge amount of energy and that many facilities already have much of the necessary equipment.

For EBMUD, the program grew out of an effort to broaden the kinds of fuels that power the plant. The Oakland operation, like many others in the Bay Area and United States, separates solids from sewage. It then captures the methane gases released while the solids stabilize in giant digester tanks. Even before the utility elected to add food scraps to the mix, the plant was already generating about 2.5 megawatts of power, Williams said.

In 2000, agency managers found themselves sitting on excess capacity after the closure of several East Bay canneries - operations that generate loads of wastewater. So officials began collecting fats, oils, greases and other organic materials from animal processing centers. The federal grant several years later enabled the agency to finally include food leftovers. After spending about $5 million on special pipes and screening gear, the district got on the phone with haulers in San Francisco and Contra Costa County that were willing to deliver only food waste.

These days, the plant can generate upward of 6 megawatts of power.

On a recent weekday, a 20-ton truck showed up at the Oakland plant with several reeking tons of ground-up vegetable peels, bones and breads. After the truck dumped the slush into an underground trough, large hanging hooks snagged several piles of cloths and plastic bags that had ended up with the food slurry.

Shift supervisor Joe Augustine motioned to one pile - "Check out that bright blue rag."

The fight to keep the rag out of the food waste begins several miles away, at places like

Bakesale Betty in Oakland's Temescal District. There, bakery owner Alison Barakat said it takes constant monitoring to make sure the trash, recycling and food go into the appropriate bins.

"It does take a commitment, absolutely, because people forget and put something in the wrong can," said Barakat, whose food waste goes to the EBMUD plant. "But we think it's worth it."

"You're taking carbon that's already here and getting the"

"energy out of it."

David Williams EBMUD director of wastewater

**Great Lakes projects will soon be funded (*Gary Post Tribune*)**

(http://www.post-trib.com/news/1682864,epa0724.article)
July 24, 2009
By Christin Nance Lazerus, Post-Tribune staff writer
The words "Great Lakes funding" brought out dozens of people to pack the Indiana Department of Environmental Management's office in Merrillville on Thursday evening.
Gary Gulezian, the director of Environmental Protection Agency's Great Lakes National Program Office, outlined the projected $475 million Great Lakes Restoration Initiative that will be available as part of the 2010 federal budget.
Congress hasn't finalized the amount: the full House passed it at $475 million, while the Senate Appropriations Committee approved $400 million. Congress will arrive at an amount later this year.

About $250 million of that total would be available for grants, cooperative agreements or project agreements awarded by EPA or other federal agencies

The EPA is holding informational meetings in the eight states that border the Great Lakes, and Gulezian spent much of the meeting discussing the type of projects that the EPA wants to fund.

The program aims to tackle common problems on the Great Lakes, such as toxic substances, invasive species, near-shore health and nonpoint source pollution, and habitat and wildlife protection.

Gulezian said the EPA intends to issue requirements for proposals in August, so that by the time the funding is finalized, the agency will have a list of projects ready to go.

Charlotte Reed, who is with the Save the Dunes Conservation Fund, said she's excited with the possibilities for the funding. "Someone said, 'it's been so long with nothing, if it actually comes then it'll be great,' " Reed said.

Reed said Save the Dunes has several properties that would be good candidates for a restoration plan.

Gary Environmental Coordinator Dorreen Carey said the city has discussed some lakefront revitalization projects, but cleanup of any toxic substances on the site would be necessary to start out.

"I think everyone is pleased to see money going toward restoring ecosystems, community health and the environment," Carey said.

*Contact Christin Nance Lazerus at 648-3086 or cnance@post-trib.com. Comment on this story at www.post-trib.com*

Tacoma, WA -Friday, July 24, 2009

**Work starts on Hanford ground water treatment system (*News Tribune*)**

Last updated: July 24th, 2009 01:42 AM (PDT)

Work is beginning, with the help of $80 million in federal stimulus money, on what will be the largest system at Hanford to clean contaminated ground water.

The treatment system also may be a first. Department of Energy officials have been unable to find another water treatment system in the nation that treats such a wide range of contaminants.

"This new ground water treatment facility brings together all the technology at our disposal," Ines Triay, DOE assistant secretary for environmental management, said in her first visit to Hanford in her new position. "We're extremely pleased with this technology advancement."

Triay, along with leaders from Hanford, organized labor and Hanford regulators, visited the site of the new plant in central Hanford on Thursday and turned over ceremonial shovels of dirt to mark the announcement of the start of construction.

DOE had been planning to construct the new plant, with a building the size of a football field, in phases. But with money from the American Recovery and Reinvestment Act it, now can build a larger facility in one phase.

By allowing the treatment plant to operate at full capacity five years earlier than planned, an estimated $25 million may be saved in long-term treatment costs.

The project couldn't provide a better combination of benefits, said Jay Manning, director of the Washington Department of Ecology. It is protecting the Columbia River from contaminants in the ground water and putting people to work, he said.

"This treatment will not only remove contamination but also shrink the area of contamination so it won't move from the center of the Hanford Site to the river," said Dave Brockman, manager of the DOE Hanford Richland Operations Office.

Now the first wells are being drilled for the project and the design is under way. As construction starts, about 100 people will be hired, and about eight people will be employed when it begins treating ground water in December 2011.

Now a temporary plant is pumping about 300 gallons of water a minute out of the ground in central Hanford and treating it for one contaminant, carbon tetrachloride.

The new plant that will replace it will pump up to 2,000 to 2,500 gallons of water a minute and operate 24 hours a day. When the water is cleaned to drinking water standards, it will be reinjected into the ground in key places to contain the contamination and push it toward the wells that pump out the water.

The new treatment system also will have its own array of wells to pump up the water and reinject it. The new wells -- 20 initially and as many as 34 eventually -- will be deeper than the wells currently used. Some could be as deep as 500 feet, reaching to the bottom of the underground plume of contaminants after it has dropped deeper into the ground over the years.

The goal is to reduce more than 95 percent of the mass of contaminants over the 25-year operation of the pump and treat plant, said John Lehew, president of CH2M Hill Plateau Remediation Co. The cost of designing, building and operating the plant over 25 years is $174 million.

During the Cold War, liquids contaminated with chemicals and radioactive elements were discharged from plutonium production facilities to several soil disposal sites. Much of the contaminants came from T Plant and the Plutonium Finishing Plant. At one point enough water was being discharged to raise the ground water level 60 to 80 feet.

It left five square miles of ground water contaminated above drinking water levels.

The main concern is carbon tetrachloride, a solvent. The new treatment system is planned to remove 77,000 to 110,000 pounds of carbon tetrachloride. But the plume also includes chromium, trichloroethene, nitrates and three radioactive constituents -- iodine 129, technetium 99 and tritium -- which will be treated to drinking water standards.

"With this new pump and treat system, we usher in a new era of ground water treatment at Hanford," Triay said.

About 1,000 new employees have been hired at Hanford with federal stimulus money, and Triay said she planned to move forward as quickly as possible to put all the stimulus funding to work. Hanford is expected to receive about $1.96 billion.

The work being done with stimulus money is "not a make job project. This is a project that really works," said Ron Ault, metal trades department president of the AFL-CIO.

Hanford has challenges ahead, "but you cannot deny the momentum of the work force," said Mike Gearheard, representing Region 10 of the Environmental Protection Agency.

Manning agreed.

"If things are not going well, I say so," he said. "Right now I think things are going pretty well at Hanford."

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Originally published: July 24th, 2009 01:42 AM (PDT)

Web Posted: 07/24/2009 12:00 CDT

**Food waste helps power Calif. wastewater plant (*San Antonio Express*)**

**Story also appeared; *San Francisco Chronicle***

By Kelly Zito- San Francisco Chronicle
SAN FRANCISCO — Inside hulking white tanks near the Oakland foot of the Bay Bridge, pizza crusts, kung pao chicken and orange peels are cleaning the wastewater from 650,000 households in Contra Costa and Alameda counties.
Under an innovative program touted as the first of its kind in the nation, the East Bay Municipal Utility District collects about 100 tons of food scraps from restaurants and grocery stores each week, speeds up the decomposition process, and uses the resulting methane gases to fuel the energy-hungry pumps and pipelines at its 49-acre wastewater treatment plant. Leftover scraps are turned into compost.

It's a rough, messy process, and educating waiters and grocery clerks about separating chopsticks and plastic cases from the food scraps is a challenge. But the utility is pleased with the program's progress. It cuts greenhouse gas emissions, keeps refuse out of local landfills and may eventually be profitable.

If the utility district hits its long-term goal of processing 100 to 150 tons of food waste each day, district officials hope to begin selling a steady, sizable amount of renewable energy to Pacific Gas and Electric Co.

"This is a great opportunity, especially since our primary focus is public health and environment," said David Williams, director of wastewater at the utility. "Right now, we take a lot of carbon out of the ground and put it out into the air. In this case you're taking carbon that's already here and getting the energy out of it. That's a great thing."

The U.S. Environmental Protection Agency, which awarded EBMUD $50,000 to study the food waste program, said it is the first wastewater system of its kind in the country. Williams expects more utilities to follow, given that treating wastewater consumes a huge amount of energy and that many facilities already have much of the necessary equipment.

For EBMUD, the program grew out of an effort to broaden the kinds of fuels that power the plant. The Oakland operation, like many others in the Bay Area and United States, separates solids from sewage. It then captures the methane gases released while the solids stabilize in giant digester tanks. Even before the utility elected to add food scraps to the mix, the plant was already generating about 2.5 megawatts of power, Williams said.

In 2000, agency managers found themselves sitting on excess capacity after the closure of several East Bay canneries - operations that generate loads of wastewater. So officials began collecting fats, oils, greases and other organic materials from animal processing centers. The federal grant several years later enabled the agency to finally include food leftovers. After spending about $5 million on special pipes and screening gear, the district got on the phone with haulers in San Francisco and Contra Costa County that were willing to deliver only food waste.

These days, the plant can generate upward of 6 megawatts of power.

On a recent weekday, a 20-ton truck showed up at the Oakland plant with several reeking tons of ground-up vegetable peels, bones and breads. After the truck dumped the slush into an underground trough, large hanging hooks snagged several piles of cloths and plastic bags that had ended up with the food slurry.

Shift supervisor Joe Augustine motioned to one pile - "Check out that bright blue rag."

The fight to keep the rag out of the food waste begins several miles away, at places like Bakesale Betty in Oakland's Temescal District. There, bakery owner Alison Barakat said it takes constant monitoring to make sure the trash, recycling and food go into the appropriate bins.

"It does take a commitment, absolutely, because people forget and put something in the wrong can," said Barakat, whose food waste goes to the EBMUD plant. "But we think it's worth it."

*This story originally appeared on the **San Francisco Chronicle's Web site**.*

July 24, 2009

**Water results to be released next month (*News Leader*)**

The Environmental Protection Agency says results from tests of Webb City's water supply will be available next month.

Webb City's public works director, Lou Gutheil, says the EPA inspected the city's sewer lines, maintenance logs and procedural guidelines. The EPA investigators also monitored zinc levels in the water system during the visit last week to the southwest Missouri town.

Gutheil said the EPA recommended the department improve its documentation of maintenance and field repair work.

A final report from the EPA on the visit is expected next month.

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