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

Monday, February 18, 2013

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

## Friday, May 22, 2009


ADMINISTRATOR JACKSON ..... 4
EPA to restore scientific review process (*Philadelphia Inquirer*) ..... 4
Scientists Begin To Play Larger Role In Pollutant Standards (*Red Orbit*) ..... 6
EPA administrator tours Wyoming wind farm (*Associated Press*) ..... 7
Story also appeared: *Forbes* ..... 7
Peninsula student wins EPA award (*Seward Phoenix Log*) ..... 8
Activists Cite Environmental Justice Concerns Over Dioxin Study (*Inside EPA*) ..... 9
Industry Scrambles To Protect Remaining EPA Voluntary Programs (*Inside EPA*) 10
AIR ..... 12
Thwarted on one front, governor instead orders emissions cuts (*Los Angeles Times*) ..... 12
Nation Digest: EPA Restores Scientists' Role (*Washington Post*) ..... 14
U.S. Carbon Emissions Fall by Most Since '82 (*Washington Post*) ..... 14
U.S. to rely more on scientists for air rules: EPA (*Reuters*) ..... 16
LIVE from Bell Harbor: EPA listens to testimony on climate crisis findings (*Northwest Progressive Institute Advocate*) ..... 16
EPA panel hears from governor, lawmakers, Starbucks (*Seattle Times*) ..... 18
Greenhouse gases drop, lowest in 19 years (*Washington Times)* ..... 19
Federal jury finds Duke Energy violated Clean Air Act (*Associated Press*) ..... 21
Story also appeared: *Henderson Gleaner, MSN Money, WSOCtv, Myrtle Beach Sun News, CNBC, Forbes, Kentucky Post, MSN Money, Charlotte Observer, WMBF, WTHR, Chicago Tribune, Fox 28, Rocky Mount Telegram* ..... 21
Lawsuit seeks info about Maritime Commission's opposition to clean-truck port program (*Contra Costa Times*) ..... 21
LCSD receives funding for new, cleaner school buses (*Reno Gazette Journal*) ..... 23

EPA Advisors Urge Consideration Of Black Carbon In GHG Risk Finding (*Inside EPA*) ..... 24
EPA Advisors Ask Agency To Evaluate Legality Of Ozone Fee (*Inside EPA*) ..... 26
EPA Study Lays Foundation For Waste Rules To Limit Greenhouse Gases (*Inside EPA*) ..... 27
EPA Steps Away From Considering Source-Specific PM Effects (*Inside EPA*) ..... 29
EPA Assessing Environmental Justice Benefits Of Air Toxics Rules (*Inside EPA*) 30
Industry Says 'Always In' EPA Registry May Hinder Early GHG Cuts (*Inside EPA*) ..... 32
BROWNFIELDS ..... 34
Grant money tapped for Avondale site (*Aiken Standard*) ..... 34
Grant fuels Eustis' plan to spiff up downtown (*Orlando Sentinel*) ..... 36
CLIMATE CHANGE / GLOBAL WARMING ..... 37
House Panel Passes Limit on Greenhouse-Gas Emissions (*Washington Post*) .... 37
Hurdle, but Others Remain (*New York Times*) ..... 39
Industry Pushes House Climate Bill Amendments To Boost Biofuels (*Inside EPA)*41
Activists Accept Major Concessions On Path To House Climate Bill (*Inside EPA*) 44
Boxer Eyes Revised Senate Climate Strategy, Downplays House Bill (*Inside EPA*) ..... 47
EPA Science Advisors Urge Greater Focus On Climate Effects In PM Review (*Inside EPA*) ..... 48
EDITORIAL / OP-ED / COMMENTARY / LETTERS ..... 50
A Rising Anti-Government Tide (*Washington Post*) ..... 50
Light Cars Are Dangerous Cars (*Wall Street Journal)* ..... 52
Obama's new rules (*Gainesville Sun*) ..... 55
Obama pushes accelerator toward 35 mpg (*The Express Times - LehighValleyLive.com*) ..... 56
Time for action on septage treatment plant is now (*Wayland Town Crier*) ..... 57
City officials demand Koppers answers (*Gainesville Sun*) ..... 59
ENFORCEMENT ..... 60
EPA Seeks To Improve Civil, Criminal Coordination, Worrying Industry (*Inside EPA*) ..... 60
FUEL ..... 63
Renewable Fuel Standard Improvement Act Introduced in Senate (*Farm Futures*)63
Automakers See Flex-Fuel Mandates As 'Hostile' To Landmark GHG Pact (*Inside EPA*) ..... 63
Obama Deal Fails To Address California's Looming 2017 Auto GHG Rules (*Inside EPA*) ..... 66
After Autos, EPA On Track To Regulate GHGS From Multiple Sources (*Inside EPA*) ..... 68
Obama's EPA Squeezes CO2 Out of Automakers (*Examiner*) ..... 70
GENERAL ..... 71
EPA Launches Retail Sustainability Portal (*EP Magazine*) ..... 71
List for 2009 Best Places to Work in the Federal Government (*News Blaze*) ..... 72
A Driving Force in the Downturn (*Washington Post*) ..... 72
U.S. Postal Service employee wins EPA award (*Pacifica Tribune*) ..... 75

MINING ..... 76
Ohio State U. president stays on coal mining board (*Investor's Business Daily*) ... 76
PESTICIDES ..... 78
EPA sees no cause for worry in vegetables from community garden in KCK (*Kansas City Star*) ..... 78
POLITICAL ..... 79
Obama Pick Of Clinton EPA Water, Air Chief As Agency Deputy Draws Praise (*Inside EPA*) ..... 79
SUPERFUND ..... 80
Grant helping Libby asbestos victims (*KTVQ TV*) ..... 80
Ashland considers solar panels at Nyanza site (*Metrowest Daily News*) ..... 81
Superfund listing is weighed for two mines (*Tundra Drums*) ..... 82
Agency Eyeing Administrative Changes To Superfund Disclosure (*Inside EPA*) ... 86
EPA Eyes Brac-style Redevelopment Model For Shuttered Auto Plants (*Inside EPA*) ..... 88
TOXICS ..... 89
EPA weighs in on Hangar One's toxic siding in letter to Navy (*San Jose Mercury News*) ..... 89
Why are people complaining? (*St. Petersburg Times*) ..... 90
First Round of Lead Sampling Completed at Pittsburg, Kansas (*Kansas City InfoZine*) ..... 92
WATER ..... 93
As Senate Talks Stall, House Leader Backs Broad Bill On CWA Scope (*Inside EPA*) ..... 93
EPA 'Buy American' Waiver Sought To Prevent Boost For Convicted Firm (*Inside EPA*) ..... 94
60 environmental groups form bay coalition (*Baltimore Sun*) ..... 97
Court Rejects Attempts To Block Manure Spreading Under RCRA (*Inside EPA*) .. 98
Key Lawmaker Vows FY10 Bill Rider To Boost Water Grants Over Loans (*Inside EPA*) ..... 99
Activists, Industry Reach Consensus On EPA CO2 Storage Rule Issues (*Inside EPA*) ..... 100
Feds get to work on plan for bay (*Lancaster Newspapers*) ..... 101
New bay coalition urges federal action (*The Capital*) ..... 103
Federal dollars flow to state water projects (*San Francisco Chronicle*) ..... 105
Elkhart considering sewer rate hike to combat sewage overflow problem (*WNDU-TV*) ..... 107
Volunteer effort to monitor Connecticut River water quality (*ABC News 40*) ..... 107
Arsenic treatment plants are on line (*Desert Valley Times*) ..... 108
How clean is our water? (*Stuttgart Daily Leader*) ..... 111

**ADMINISTRATOR JACKSON**

==========

Posted on Fri, May. 22, 2009

**EPA to restore scientific review process (*Philadelphia Inquirer*)**

By John Sullivan
Inquirer Staff Writer

In a bid to restore the primacy of science in setting air-pollution standards at the Environmental Protection Agency, EPA Administrator Lisa Jackson announced yesterday that she was reestablishing key internal review procedures regarding harmful pollutants.

Jackson said the EPA would resume a process in which agency scientists issue "staff papers" outlining options for policymakers to consider in establishing air-quality levels for ozone, carbon monoxide, and four other key pollutants.

Jackson also "reaffirmed" the critical role of the congressionally mandated Clean Air Scientific Advisory Committee (CASAC), a panel of outside scientists, in helping the agency make sound scientific decisions on air quality.

Both moves come five months after The Inquirer chronicled how the Bush administration intervened, overruled, and ignored the advice of the scientific panel when making decisions about air quality, often setting pollutant levels higher than panel members deemed safe.

In a four-part series, the paper showed how the EPA under then-Administrator Stephen A. Johnson de-emphasized the "staff paper" process followed for years by agency scientists in favor of a regulatory procedure that gave far more weight to political considerations and industry concerns.

Jackson's reversion to earlier regulatory practices was seen by environmentalists as part of a wider campaign by her and the Obama administration to hew more closely to scientific evidence when regulating the environment in all areas.

In a letter yesterday announcing the changes, Jackson said it was "essential that the best science and the greatest transparency inform air quality standards that prevent illness and save lives."

She added that the changes "will help us bring greater rigor and openness to our standard-setting process and improve the scientific basis for our standards."

The moves may seem mundane to the general public, but to many members of scientific panels, it heralds the reversal of a steady decline under the Bush administration of the influence of hard science in setting air-quality standards.

Traditionally, the "staff paper" process was rigorous, bluntly expressing the opinions and conclusions of the EPA's scientific staff on what levels of pollutants they consider safe without undue regard for cost and industry considerations.

"This is very good news," said John Balmes, a California physician who studies ozone and served on the panel when the EPA under George W. Bush set ozone levels in 2008.

Balmes was highly critical of the decision and testified before Congress in 2008 about how the decision ran contrary to widely accepted science and the need to reinstate the staff paper.

"Politicos in the Bush administration wanted to do away with the staff paper because it gave them less opportunity to maneuver," Balmes said.

Jonathan Samet, who now chairs the seven-member science panel, welcomed the changes.

"It's a strong reaffirmation of the importance of the science committee," said Samet, who teaches at University of Southern California. He said the changes would guarantee a more open process, adding that how the EPA made some previous decisions was not clear to the public.

Former CASAC chairwoman Rogene Henderson could not be reached for comment. Henderson has criticized the Bush administration for bowing to industry in setting standards.

"It is just common sense to let these scientists again play a key role in shaping our nation's air-quality standards," said Sen. Thomas Carper (D., Del.), chairman of the Environment and Public Works Committee's subcommittee on clean air and nuclear safety.

The restoration of the staff paper and support for the science panel come at a critical time in the review of the criteria for air pollutants.

As part of the Clean Air Act, the EPA must review and set safe levels every five years for six pollutants: ozone, particulates, lead, carbon monoxide, nitrogen dioxide, and sulfur dioxide.

The pollutants can be dangerous at high levels and are commonly found in the ambient air across the country.

To help make those decisions, Congress established CASAC to advise the administrator on setting safe levels.

Currently, reviews for nitrogen dioxide and sulfur dioxide are underway, said Balmes, who sits on both review panels.

Balmes said that science panel members in April were supposed to review the derided policy paper for setting nitrogen oxide levels, but the meeting was canceled.

"That was the first sign to us that they were going to change things," said Balmes said.

John Walke, the director of the Natural Resources Defense Council's clean-air project, said the changes greatly diminished the role politics and power can play in interfering with science.

"The bottom line is, it will ensure more protective clean-air standards for the public," Walke said.

Read "Smoke and Mirrors,"

a four-part series on the subversion of the EPA, at **http://go.philly.**

com/EPA

**Scientists Begin To Play Larger Role In Pollutant Standards (*Red Orbit*)**

According to Lisa Jackson, administrator of the U.S. Environmental Protection Agency, the government will reverse a Bush administration policy and increase the role of scientists in creating air standards for pollutants.
The EPA will reinstate a policy document called “staff paper” written by agency scientists that analyzes options for the EPA to consider when creating air standards.

The staff paper process was replaced with a notice of proposed rule-making which outlined options for air rules in the Federal Register during the Bush administration.

Environmentalists believed the Bush administration process increased the role of political appointees too early in the decision-making process.

"These changes will help us bring a greater rigor and openness to our standard-setting process and improve the scientific basis for our standards," Jackson said in a press release.

The move aligned with President Barack Obama's promise to amplify the role of science when regulating pollutants.

There are six “criteria” pollutants that often originate from big industry and engines; they are particulate matter, carbon monoxide, lead, ozone, nitrogen dioxide and sulfur dioxide.

Environmental groups cheered the decision.

"Now the EPA once again will fully utilize its scientists in setting air pollution standards," Francesca Grifo, of the Scientific Integrity Program at the Union of Concerned Scientists, told Reuters News.

**EPA administrator tours Wyoming wind farm (*Associated Press*)**

**Story also appeared: *Forbes***

By BOB MOEN , 05.21.09, 10:52 AM EDT
The relatively nascent U.S. wind industry can help propel the country out of its economic doldrums and bring energy independence, Environmental Protection Agency Administrator Lisa Jackson said.
With about a dozen large turbines whirring in a light breeze around her, Jackson said wind energy will benefit Wyoming and the rest of the nation by creating jobs to build and maintain wind farms.
"In a thriving wind power industry, turbines like the ones here will be designed, manufactured, constructed and maintained by Americans," she said Wednesday. "For American workers that creates new jobs, especially manufacturing jobs in communities all across our country."

At the invitation of Wyoming Gov. Dave Freudenthal, Jackson began a two-day tour of the state's energy industry at a wind farm near Cheyenne. On Thursday, Jackson will tour Wyoming coal and natural gas fields.

Jackson, a Princeton University-educated chemical engineer, said the wind farm near Cheyenne was the biggest she has seen.

The operation owned by **Duke Energy Corp.** ( DUK - news - people ) has 14 turbines that produce about 29 megawatts of electricity. The company is adding 20 more turbines that will produce another 42 megawatts nearby. One megawatt is enough electricity to power from 225 to 300 homes, according to the American Wind Energy Association.

The Obama administration is strongly promoting wind energy along with other renewable energy sources to help address climate change and reduce the nation's dependence on foreign oil.

But some have raised concerns that development of large wind farms takes a toll on the environment by claiming large amounts of land and impacting wildlife habitat.

Depending on the size of the turbines, a single wind turbine can require anywhere from 10 to more than 50 acres.

Jackson said that while the environment must be taken into account with wind development, there has to be common sense in dealing with energy.

"Americans are ready to embrace clean energy. Americans are longing for the day when we can be much less dependent on foreign sources of oil and the price spikes that come along with it," she said. "Americans are certainly hungry for the jobs, the construction jobs, the manufacturing jobs, the maintenance jobs, the engineering jobs, the technician jobs. All of them will come with clean energy."

Freudenthal said an important factor in the nation's energy debate is the lack of transmission infrastructure and capacity.

"Whether its wind, coal, any sort of carbon compliant coal facility, or gas, none of it gets to market unless we deal with this question with regard to location of power lines and make sure that we build right sized power lines," he said.

**Peninsula student wins EPA award (*Seward Phoenix Log*)**

Seward,AK
LOG STAFF
May 21, 2009 at 12:52PM AKST
A Kenai Central High School student won first-place in the EPA Region 10 President's Environmental Award.

Lincoln Wensely was honored by EPA administrator Lisa Jackson at a ceremony in Washington, D.C., last week.

Wensely's winning project was "Caring for the Kenai," which included innovative, multi-media educational materials aimed at raising awareness of the damage being done to the Kenai River and the nearby sand dunes.

Through partnerships with local government and community organizations, Wensely produced a three-minute educational movie about protection of the dunes. He also created a video public service announcement that was televised statewide throughout the fishing community, as well as local public service radio announcements.

Michelle Pirzadeh, EPA's acting regional administrator in Seattle, congratulated Wensely and encouraged other young people to take action in their own communities.

“These projects are models of the type of individual action and stewardship that is needed to take care of our treasured natural resources,” she said.

The City of Kenai credited Wensely’s project with fewer trespassing violations during the 2008 fishing season and less human-caused coastal erosion. After reviewing his project, the city passed an ordinance increasing the fine for trespassing on the dunes from $100 to $500 and assigned two officers to patrol the beach during the fishing season. The city is now considering other measures to protect the dunes, including year-round fencing and construction of raised walkways.

**Activists Cite Environmental Justice Concerns Over Dioxin Study (*Inside EPA*)**

A coalition of environmentalists, public health activists and indigenous tribes are citing environmental justice concerns in a new push to get EPA Administrator Lisa Jackson and President Barack Obama to cancel a planned review of a long-awaited dioxin risk assessment and to release the report immediately -- a move that could provide a first-time test of the administration’s commitment to environmental justice.

An environmentalist who signed on to the letter says the case for releasing the risk assessment is firmly rooted in environmental justice, and expects the Obama administration to take the appeal seriously.

Dioxin-laced rivers and lakes, for example, result in high levels of the toxin in fish, making them unsafe to eat -- an exposure pathway that disproportionately affects low-income communities and persons of color. “There’s a huge environmental justice argument to this,” the source says. “The administration recognizes this, and there are huge expectations from the environmental justice community.”

The coalition’s April 28 letter to Jackson and Obama outlines the history of EPA’s development of the risk assessment, which dates back to the 1980s but has never been published, the letter argues, because the agency has repeatedly bowed to industry pressure. “We have a right to air, water, soil and food free of dioxin,” the letter reads. “Under pressure from the chemical industry, [the risk assessment] has still not been released and our communities suffer as a result.” *Relevant documents are available on InsideEPA.com.*

The letter echoes a similar appeal sent to President Obama on Jan. 16, which also called for the release of the risk assessment and the suspension of the Science Advisory Board’s slated review of the Integrated Risk Information System (IRIS) assessment for dioxin, which has been in development for 18 years. Last September, then-EPA research chief George Gray told the House Energy & Science Committee that it could be 2012 before the agency completed a revised assessment.

The American Chemistry Council (ACC) said in a statement that it also supports the release of the risk assessment, so long as it stays true to recommendations made by the National Academy of Sciences (NAS) in 2006. In that study, NAS recommended downgrading cancer risks generally from “carcinogenic to humans” to “likely to be carcinogenic to humans,” and called on EPA to reconsider the use of a more conservative linear risk model for low-dose exposures.

**Industry Scrambles To Protect Remaining EPA Voluntary Programs (*Inside EPA*)**

In the wake of EPA’s elimination of the Performance Track voluntary program, industry officials are scrambling to ensure the survival of Climate Leaders and other voluntary programs ahead of the launch of an EPA advisory panel that industry sources fear could back termination of more voluntary programs.

The push by industry for EPA to retain Climate Leaders and a number of other voluntary efforts also comes as there is lingering uncertainty about the fate of the agency’s Office of Policy, Economics & Innovation (OPEI) under the Obama administration. EPA Administrator Lisa Jackson recently terminated Performance Track, an OPEI-led voluntary program that became a target of criticism from Democrats and environmentalists.

Members of the Business Roundtable recently met with EPA officials to express their concern over the abrupt cancellation of Performance Track and also to express their fears that other voluntary programs including Climate Leaders could be at risk of termination, according to sources familiar with the meeting.

When Jackson terminated Performance Track -- which offered regulatory incentives to companies that established non-binding three-year environmental improvement plans -- she also announced a new advisory panel to “focus on the future of EPA environmental leadership programs,” according to a March 16 memo.

The new National Advisory Council for Environmental Policy and Technology (NACEPT) subcommittee “will give us a platform for open dialogue about the opportunities for accelerating stewardship through environmental leadership programs and the challenges for EPA in designing and managing such programs into the future,” Jackson wrote in her memo. The panel is slated to hold its first meeting in late June or early July, sources say.

One industry source says the panel, which is expected to include representatives of companies that were involved in Performance Track, could lead to the creation of a “better, more robust program” than Performance Track, which was criticized over some participants’ failure to meet their environmental goals.

“I wouldn’t call it ‘Performance Track 2’ or ‘Son of Performance Track’,” the source says, “That program is gone and will not be reincarnated. However, there may be a better solution” that industry and EPA can agree on as a replacement program as a result of the NACEPT discussions, the source says.

But another industry source says, “We are very, very concerned that the closure of Performance Track is a prologue to a different approach at EPA” on voluntary programs under the Obama administration. Termination of the program “came out of the blue and took away an incentive for industry to go beyond what’s required” of companies in reducing their air, water, waste and other pollution under environmental laws.

The source raises concerns that the NACEPT panel could spur an “audit” of every agency voluntary program and be a vehicle for Jackson to identify other programs to cull. Given those fears, industry is eager to ensure the preservation of key programs including Climate Leaders, the source says.

Amid criticism of Performance Track, the Bush EPA strongly touted its Climate Leaders program in which companies complete a corporate-wide inventory of their greenhouse gas emissions, setting long-term reduction goals, and annually reporting their progress to EPA. The program has more than 200 members.

At the recent meeting with EPA, the agency officials present -- which did not include Jackson -- gave “unclear” answers on the future of voluntary programs, the second industry source says. EPA staff said there were no plans at present to scrap other programs, but industry continues to have concerns. The source says that in addition to Climate Leaders there are a host of other authorized and non-authorized programs they want to preserve, including Energy Star, Water-Wise, and others.

Termination of Performance Track “took away an avenue for companies to get their message out to communities” about their attempts to reduce pollution, the first industry source says. Industry will now use the upcoming NACEPT panel to point to “solid” voluntary programs including Climate Leaders, under which the source says many member companies have met and exceeded their commitments.

Industry officials “seem to be putting a lot of weight on NACEPT to come up with something” on preserving and enhancing voluntary programs, one EPA source says.

An EPA spokesman declined to comment.

Amid the industry push to preserve EPA’s remaining voluntary programs, OPEI staff that worked on Performance Track have been given an initial May 29 deadline to come up with proposals for what they will do next, sources say. Options include working on green building efforts, or on other programs operated out of EPA’s National Center for Environmental Innovation, which ran Performance Track.

But the EPA source says the deadline should not be read as indicative of a possible broader OPEI reorganization. “I wouldn’t read too much into” the May 29 deadline, the EPA source says. “It’s more to get things going. Any linkage with that to [OPEI] reorganization is pure speculation.”

Still, the source says that staff within OPEI have not received any information from Jackson or her subordinates, including acting OPEI chief Marcia Mulkey, about a reorganization of the office. “There hasn’t been a clear statement of direction or intent with respect to the direction of the policy office” in the Obama EPA, the source says, adding that some have expressed “concern” about a reorganization.

The concern “reflects more the absence of information that the presence of information,” the source says. Complicating matters, OPEI does not have “its own law” to justify its existence, unlike for example the Clean Air Act for the Office of Air & Radiation or the Clean Water Act for the Office of Water. -- *Anthony Lacey*

**AIR**

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

**Thwarted on one front, governor instead orders emissions cuts (*Los Angeles Times*)**

May 22, 2009 Friday
Home Edition
SECTION: MAIN NEWS; National Desk; Part A; Pg. 22
Thwarted on one front, governor instead orders emissions cuts;
The Washington Legislature wouldn't pass the cap-and-trade program she wanted.
BY: Kim Murphy
DATELINE: SEATTLE
Washington Gov. Chris Gregoire sidestepped her Legislature's refusal to adopt a cap-and-trade program to limit greenhouse gases, signing an executive order Thursday to achieve similar reductions by ratcheting back coal-fired electricity and automobile emissions.

"I wanted cap-and-trade. I didn't get it," said Gregoire, a Democrat, whose order directs government agencies to expand public transit and other programs to meet auto emissions goals, and to reach agreement with the state's only coal-fired power plant to reduce its carbon output at least 50% by 2025.

The order also calls for development of an even wider-ranging set of emission reduction strategies to achieve across-the-board greenhouse gas targets by 2020, and sets the stage for working with California and Oregon to implement a West Coast "electric highway" accessible to electric and alternative-fuel vehicles.

The new order is the latest in a series of efforts by governors to advance climate change goals while awaiting comprehensive national legislation in Washington.

The U.S. House Energy and Commerce Committee voted 33 to 25 on Thursday to approve a bill:energy-and-commerce-committee-passes-comprehensive-clean-energy-legislation&catid=122:media-advisories&Itemid=55 to impose the nation's first limits on carbon dioxide and other greenhouse gases, aiming to cut emissions linked to global warming 83% by 2050. The bill must now go to several other committees and then the House floor. Democrats have said they will use the bill as a starting point for introducing a climate bill in the Senate.

The Washington Legislature in March refused to impose a mandatory limit on carbon emissions, throwing a wrench into the state's participation in the Western Climate Initiative -- established in 2007 among seven states and four Canadian provinces.

Governors in several regions are trying to set up a system of marketable carbon reduction credits that can be traded to industries unable to meet mandatory emissions limits -- the so-called cap-and-trade concept.

Gregoire's order is designed to realize similar carbon reductions by negotiation, incentive and administrative regulation. "This readies Washington state to implement a federal cap-and-trade program immediately," she said.

The order came as the federal Environmental Protection Agency held a second and final hearing in Seattle on its proposal to find that greenhouse gases pose a danger to humans and therefore are subject to regulation under the federal Clean Air Act -- potentially one of the most far-reaching regulatory moves since the agency began overseeing air pollution in the 1960s.

The EPA also is poised to rule that carbon dioxide, in combination with other tailpipe emissions, contributes to the threat of climate change.

"It's an important turnaround. The importance of these issues is finally rising to the top, where the EPA is paying attention to the seriousness of global warming, and is not making decisions based purely on the politics as they have in the past," said Janette Brimmer, staff attorney for the conservation group Earthjustice.

Outside the hearing, several hundred climate-change activists, many bused in from Oregon, batted balloons painted like globes and waved banners with such slogans as "For Our Children's Future."

"After eight years of wandering in the wilderness, we finally have a president who says global warming is real, it is human-caused . . . and we have a responsibility to do something about it," Seattle Mayor Greg Nickels told the crowd.

In this city -- where conservation has long been a mantra -- Thursday's hearing was like handing the megaphone to the choir. During most of the day, not a single respondent testified against the idea. Industry representatives largely were relegated to the post-6 p.m. time slot.

Gregoire and others -- citing University of Washington studies -- told EPA regulators that Washington's Cascade mountain range already has lost 20% of its snowpack and could lose up to 60% by 2050, with potentially devastating consequences for farm irrigation, salmon survival and hydropower generation.

Some business groups are urging the EPA to stand down and allow Congress to adopt comprehensive regulation of greenhouse gases.

"Congress is better positioned than EPA in representing the interests of citizens nationwide, guarding against further harm to our already fragile economy and job loss," Grant Nelson of the Assn. of Washington Business said in a prepared statement.

He added: "We all know that reducing greenhouse gas emissions will be expensive, but how Congress decides to act could make or break our economy of the future, and could mean the difference between job growth and job loss."

kim.murphy@latimes.com

**Nation Digest: EPA Restores Scientists' Role (*Washington Post*)**

May 22, 2009

The Environmental Protection Agency announced a change in the way it considers changes to air-quality standards, reversing a Bush administration decision that was criticized for emphasizing politics over science. The change reinstates a practice of asking for a "staff paper," an opinion prepared by EPA scientists, as a step in the process of setting or resetting standards for pollutants such as smog.

*-- David A. Fahrenthold*

**U.S. Carbon Emissions Fall by Most Since '82 (*Washington Post*)**

Recession, Oil Prices Cited in 2008 Decline
By Steven Mufson
Washington Post Staff Write
Thursday, May 21, 2009
U.S. emissions of carbon dioxide related to energy use fell 2.8 percent last year, according to an estimate by the Energy Information Administration, driven down by high

oil prices and the sagging economy. The drop in carbon dioxide emissions was the steepest since 1982.

The amount of carbon dioxide produced for every dollar of economic output also declined by 3.8 percent, the federal agency said, as industry and motorists became more efficient and frugal and as renewable energy sources gained a slightly larger share of the energy market. That was far greater than the average decline in carbon intensity in previous years.

Carbon dioxide is the most prevalent of the greenhouse gases that contribute to climate change, and the EIA numbers were made public as Congress weighs complex legislation that would put a nationwide ceiling on emissions of those gases.

Environmentalists and climate experts said that the new figures shouldn't deter Congress from adopting measures to drive emissions down further. And the EIA estimated that total energy-related emissions of carbon dioxide in 2008 were still about 15.9 percent higher than in 1990, a benchmark year in international negotiations over climate regulations.

"This isn't a big shock given last year's economic downturn," said Frank O'Donnell, head of Clean Air Watch. "The real issue going forward is how to make sure emissions go down as the economy starts growing again . . . . We don't want a sick economy to be the solution to a sick planet."

Last year the economy grew at a sluggish 1.1 percent rate and total U.S. energy consumption slid by 2.2 percent.

Emissions related to the transportation use of petroleum fell a sharper 5.2 percent, largely because of record high crude oil prices, said the EIA, which is part of the Energy Department. Those prices peaked at $147 a barrel last July before plunging later in the year, but motorists continued to pare their driving because of the economic slowdown.

Now oil prices are climbing again. Yesterday, prices for July delivery of a barrel of crude oil jumped 3.2 percent to a new six-month high of $62.04 on the New York Mercantile Exchange after the EIA reported a one-week drop in crude oil and gasoline inventories that topped analysts' expectations.

Analysts said high prices might continue to dampen CO2 emissions from motor vehicles. Since 1990, carbon dioxide emissions from the transportation sector have climbed 21.1 percent, or 1.1 percent a year, the EIA said. But new mileage and emissions standards announced by President Obama on Tuesday are projected to slash emissions sharply by 2016.

In the electric power sector, which relies on coal for half its fuel and which is the biggest single source of carbon dioxide emissions, CO2 output fell 2.1 percent, outpacing the

1.0 percent drop in power generation. Emissions in electric power dropped most steeply -- 28.1 percent -- among the relatively small number of generators still using petroleum.

**U.S. to rely more on scientists for air rules: EPA (*Reuters*)**

Thu May 21, 2009 2:47pm EDT

NEW YORK (Reuters) - The U.S. government will reverse a Bush administration policy and increase the role of scientists in setting air standards for criteria pollutants harmful to human health, Lisa Jackson, the administrator of the Environmental Protection Agency, said on Thursday.

Jackson said the EPA will reinstate the role of a policy document called a "staff paper" written by agency scientists that contains analyses of options for the administrator to consider when setting air standards.

The Bush administration had replaced the staff paper process with a notice of proposed rule-making outlining options for air rules in the Federal Register, which environmentalists had long complained increased the role of political appointees early in the decision-making process.

"These changes will help us bring a greater rigor and openness to our standard-setting process and improve the scientific basis for our standards," Jackson said in a release.

The move was in line with President Barack Obama's pledge to increase the role of science in regulating pollutants.

The six "criteria" pollutants, which originate from engines and big industry, are particulate matter, carbon monoxide, lead, ozone, nitrogen dioxide and sulfur dioxide.

Environmentalists praised the move. "Now the EPA once again will fully utilize its scientists in setting air pollution standards," said Francesca Grifo, the director of the Scientific Integrity Program at the Union of Concerned Scientists.

(Reporting by Timothy Gardner; Editing by Lisa Shumaker)

Thursday, May 21, 2009

**LIVE from Bell Harbor: EPA listens to testimony on climate crisis findings (*Northwest Progressive Institute Advocate*)**

All today the United States Environmental Protection Agency is holding a hearing to gather public input on its Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act (wow, that's a bureaucratic mouthful). In other words, the EPA is holding a meeting to get public reaction to its conclusion that global warming is real and our planet is threatened by a climate crisis.

As you might expect, the prevalent theme of all the testimony so far today has been *it's about time.* During the Bush error, the EPA was unable to effectively carry out its mission, and many commenters alluded to that in their remarks, expressing relief that the Obama administration is now in charge.

Since convening at 9 AM this morning the EPA has heard from Governor Chris Gregoire, State Representative Dave Upthegrove, State Senator Phil Rockefeller, Lands Commissioner Peter Goldmark, and the head of Washington's Department of Ecology, Jay Manning, along with speakers representing the state's environmental community and many socially responsible businesses.
The governor was first to speak, and less than an hour after her she testified, her office announced she was issuing an executive order to reduce greenhouse gases and battle the climate crisis. Said Gregoire: "This executive order benefits our economy as much as our environment. It will protect our natural resources, while creating thousands of green-collar jobs and strengthening our state's competitiveness in the global race for a clean energy economy."

Gregoire's office says the executive order directs state agencies to:

- Develop emission reduction strategies and industry emissions benchmarks to make sure 2020 reduction targets are met.
- Work with TransAlta to reduce emissions from the company's coal-fired power plant near Centralia by more than half.
- Ensure Washington has trees to capture harmful carbon, while creating financial incentives for the forestry industry.
- Work on low-carbon fuel standards or alternative requirements to reduce carbon emissions from the transportation sector.
- Join with neighboring states and the private sector to implement a West Coast highway accessible to electric and alternative-fuel vehicles.
- Address rising sea levels and the risks to water supplies.
- Increase transit options, such as buses, light rail, and ride-share programs, and give Washington residents more choices for reducing the effect of transportation emissions.
- Continue to work with six other Western states and four Canadian provinces in the Western Climate Initiative to develop a regional emissions reduction program design.
- Work with the Obama Administration to help design a national program that is strong, and reflects state priorities.

The Environmental Protection Agency is represented here today by Rick Albright, Rona Birnbaum, Dina Kruger, and Jason Samenow.

**UPDATE, 11:50 AM:** Mayor Greg Nickels just spoke. People can say what they like about his record as mayor, but his remarks were powerful, polished, and extraordinarily concise. He did a really good job of reviewing the harmful impacts the climate crisis will have on Seattle and Washington State. I'll try to post a transcript of what he said later.

My favorite speakers so far have been Terri Glaberson and Kristen McCaa from CoolMom (who brought their very well behaved kids!), KC Golden of Climate Solutions, and Gifford Pinchot III of the Bainbridge Graduate Institute (yes, he's the grandson of the first leader of the United States Forest Service).

**UPDATE II, 12:21 PM:** It's lunchtime! I'm going to head outside to check out the rally, and then home afterwards. For continuing coverage. follow David Roberts on Twitter... he's microblogging what's going on.

Thursday, May 21, 2009 - Page updated at 05:31 PM

**EPA panel hears from governor, lawmakers, Starbucks (*Seattle Times*)**

By Craig Welch
Seattle Times environment reporter
The governor, a pair of state lawmakers and even a representative from Starbucks this morning told a government panel that evidence is overwhelming that greenhouse gases already are causing painful climate changes around the globe.
Calling global warming the "paramount environmental challenge of our time," state Sen. Phil Rockefeller, D-Bainbridge Island, said years of neglect have put the United States behind the curve in dealing the threats of climate change. Now the country and the world are seeing disruptions to the natural order, such as increasingly acidic marine waters that can corrode mollusk shells.

"The threats are not on the horizon," said fellow state Rep. Dave Upthegrove, D-Normandy Park. "They're here now."

Rockefeller and others gathered at a public hearing at the Bell Harbor Conference Center on the waterfront today to testify before the Environmental Protection Agency about its plans to list greenhouse gases as dangerous pollutants. That would be the first step to EPA regulating the carbon emissions that contribute to global warming.

During the all-day hearing, more than 180 people are expected to offer the EPA their thoughts on climate change. It's one of only two hearings taking place across the country. The Obama administration has said it hopes a bill moving through Congress to tackle greenhouse gas emissions will make new EPA regulations unnecessary.

Outside the conference center, hundreds of people — a few in polar-bear and salmon suits — rallied to hear speakers demand that government and individuals work to reduce greenhouse gases.

At the hearing, officials representing King County and Seattle Congressmen Jay Inslee and Jim McDermott spoke about consequences that were both local and global.

Jim Hanna of Starbucks said his organization has already heard from coffee bean growers that soil changes and increased threats from pesticides are altering the way coffee can be grown. Global warming already poses "a direct business threat to our company."

First up this morning, was Gov. Christine Gregoire, who told a panel of climate experts from the EPA that droughts, catastrophic floods and wildfires have already led her to make more emergency declarations than any of her predecessors. She pointed to those as evidence that climate change was already altering the state's landscape.

She later announced that she'd signed an executive order to reduce Washington's emissions that includes elements of a climate change bill that failed to pass in the recent legislative session. Among other things, it directs the state Department of Ecology to work with large industries to find ways to cut emissions, and calls for plans on how the state's largest counties can reduce the number of vehicles driven.

Outside the hearing, activists who support action to control climate change were donning polar-bear and salmon suits in preparation for a noon rally.
Staff reporter Michelle Ma contributed to this story.
Craig Welch: 206-464-2093 or cwelch@seattletimes.com

Thursday, May 21, 2009

**Greenhouse gases drop, lowest in 19 years (*Washington Times)***

Amanda DeBard
Carbon-dioxide emissions from fossil fuels recorded their largest drop in 19 years last year, the federal government's chief clearinghouse for energy information reported, adding new fodder to the debate in Congress about how - or whether - to reduce greenhouse gases.

The Energy Department's Energy Information Administration (EIA) said Wednesday that carbon-dioxide output fell by 2.8 percent last year, the largest annual decline in energy-related carbon-dioxide emissions since 1990. EIA said last year's record-high oil prices and the start of the economic recession strongly contributed to the decline.

"There's a linear relation between oil consumption and carbon-dioxide emissions," said Perry Lindstrom, who lead the study at EIA. "Lower economic growth also has an effect on energy activity, and we saw that last year."

The new numbers emerge as the House Energy and Commerce Committee is on the verge of passing a climate-change bill that would impose strict new limits on greenhouse-gas emissions in an effort to reduce global warming. Energy-related carbon-dioxide emissions make up more than 80 percent of the nation's greenhouse-gas emissions, which are blamed by most scientists for the gradual warming of the world's surface.

The House is expected to pass the measure later this year, but its outlook in the Senate is uncertain.

Emissions from burning petroleum products, which includes those from refineries and power generation, declined last year by 6 percent. Vehicle emissions, which make up part of that figure, fell 5.2 percent after having risen continuously with the exception of a 1.3 percent decrease in 1991.

Some experts said the drop in emissions is no reason to abandon the congressional effort to reduce greenhouse gases.

"If opponents of the House climate-change bill want to reduce pollution through unemployment and the economic decline, then that's their choice," said Daniel J. Weiss, director of climate strategy at the liberal Center for American Progress.

Mr. Weiss said he would not be surprised if global-warming emissions remain stable this year, but predicted they would rebound next year along with the economy. Other climate scholars said the House's climate-change bill could itself prevent the economy from rebounding.

"The lesson to learn is that a decline in emissions is caused by a recession and the [House] bill aims to force a permanent recession," said Ben Lieberman, a senior energy and environment analyst at the conservative Heritage Foundation. "As long as the economy shrinks, so will carbon emissions."

Republicans and oil drillers have not endorsed the House climate-change bill and are not likely to change their stance given the EIA's findings.

"Today's news that energy-related carbon-dioxide emissions declined by 2.8 percent last year, the single largest decline in 19 years, is yet further evidence that the Democrats' cap-and-trade bill is straight out of 'Alice in Wonderland,' " said Rep. John Shadegg, Arizona Republican and member of the House Energy and Commerce Committee.

The American Petroleum Institute, the main lobby for the oil and gas industry, said the drop is "substantial" and that it expects emissions to continue to fall as refiners blend more ethanol with gasoline. Congress mandated in 2007 that more ethanol be used with gasoline to reduce greenhouse-gas emissions from cars.

Emissions fell in 2008 by 165 million metric tons.

**Federal jury finds Duke Energy violated Clean Air Act (*Associated Press*)**

**Story also appeared: *Henderson Gleaner, MSN Money, WSOCtv, Myrtle Beach Sun News, CNBC, Forbes, Kentucky Post, MSN Money, Charlotte Observer, WMBF, WTHR, Chicago Tribune, Fox 28, Rocky Mount Telegram***

By By The Associated Press
Originally published 10:48 a.m., May 21, 2009
Updated 10:48 a.m., May 21, 2009
A federal jury has found that Duke Energy Corp. violated the Clean Air Act by making changes at a Southern Indiana power plant that significantly increased its air pollution.

The jury in Indianapolis decided that Duke failed to obtain needed permits for changes it made to two units at its Gallagher station plant near New Albany, Ind. Those changes raised the plant's sulfur dioxide emissions.

Jurors ruled in the Charlotte, N.C.-based company's favor on four other plant modification projects, finding in Tuesday's verdict that those did not violate federal or state laws.

Those four included changes to one unit at the Gallagher station, changes to two units at a plant in New Bedford, Ohio, and changes to one unit of a plant near Princeton, Ind.

**Lawsuit seeks info about Maritime Commission's opposition to clean-truck port program (*Contra Costa Times*)**

By Kristopher Hanson, Staff Writer
Posted: 05/21/2009 12:57:21 PM PDT
Updated: 05/21/2009 07:08:36 PM PDT
Environmental watchdogs have filed a lawsuit in an effort to unveil internal memos and records of meetings held by a federal agency that has repeatedly attempted to block the landmark clean-truck program initiated in local ports.
In the lawsuit filed this week, the Natural Resources Defense Council and Public Citizen charge the Federal Maritime Commission with violating the Freedom of Information Act

by refusing to turn over documents primarily related to a November 2008 lawsuit against the ports.

The FMC lawsuit, which was later dismissed by a federal judge, charged the twin ports of Long Beach and Los Angeles with violating federal trade laws in adopting the truck plan and related concession agreements designed to rid the harbor of older, polluting diesel big rigs.

A related FMC decision twice delayed the ports from charging a container fee used to subsidize truck replacement. That ruling was later overturned by the FMC's governing board, and the ports were able to begin collecting the fee in February.

Suspecting that the FMC was being unduly influenced by business lobbyists opposed to the ports' plans, the NRDC filed a Freedom of Information Act request in October to obtain the FMC records, but was repeatedly denied.

In an April 15 letter denying NRDC's request, the FMC stated that records of several closed-door meetings pertaining to the lawsuit and fee injunction were "not likely to contribute significantly to public understanding of the subject." The letter further said "mere assertion" the documents would shed light on their deliberations are "not sufficient."

The NRDC, however, contends FMC actions against the ports were made without proper input from the public and despite evidence showing delays could worsen air quality in harbor communities.

"Good government is open government, and when you have decisions being made behind closed doors on public policy, it's troubling," said NRDC Adrian Martinez. "The public should know what external factors came into play here and what their decision making process was."

The FMC's legal attack on the ports split the agency's three-member governing board and roiled local port authorities, who had been carefully formulating the truck-replacement plan for nearly two years with input from environmentalists, air quality regulators and industry.

The agency's decisions were even a subject of debate in Congress in January, when 31 members of the House fired off a terse letter accusing the board of engaging in a "secretive process that results in more lawsuits and delays."

Air quality regulators estimate that since the truck ban was launched Oct. 1, several thousand of the dirtiest diesel trucks have been replaced by rigs meeting federal 2007 emission standards, which burn 90 percent cleaner than older trucks.

The ban continues through 2012, when all of the roughly 16,000 heavy-duty trucks serving the ports must meet 2007 emission standards.

Health studies show residents and workers in Long Beach, San Pedro and Wilmington are exposed to air up to 100 times more polluted than levels considered acceptable by the U.S. Environmental Protection Agency.

FMC officials did not return calls seeking comment.

**LCSD receives funding for new, cleaner school buses (*Reno Gazette Journal*)**

Staff Report • May 22, 2009
Lyon County School District will receive federal funding as part of the stimulus package for two new "cleaner' running buses, to replace older buses.

Fifteen Nevada public school districts will get what are being called "new, environmentally friendly" buses as part of the state's School Bus Replacement Project, as announced by the Nevada Division of Environmental Protection. This will be funded by American Recovery and Reinvestment Act.
NDEP received $1.73 million from the U.S. Environmental Protection Agency's State Clean Diesel Grant Program to fund the bus replacements.

The funds overall would pay for 17 new school buses, with Lyon County and Nye county school districts receiving two each.

Steve Clifford, LCSD Transportation Supervisor, said the new buses would be direct route replacement buses, requiring the replacement of an older 84-passenger diesel power school bus. He said LCSD would be replacing some of the district's 20-year-old 1989 buses. The program required the new buses would replace 1991 or older buses.

He noted this is especially beneficial since LCSD for the second straight year (in 2009-10 budget) is not including money in its budget for new buses.

Clifford said this was a part of several projects school district transportation departments statewide have been working with NDEP, Nevada Department of Education and school bus vendors.

Delivery of the new buses is estimated by NDEP to be between March and June of 2010, at which point the older buses would be removed from service.

The NDEP School Bus Replacement Program targets the reduction of diesel emissions, which emit large amounts of nitrogen oxides, particulate matter and toxics, pollutants that can negatively ;impact human health and the evenvironment, NDEPT reported.

"Children are particularly susceptible to the negative health effects of these pollutants. These new buses are part of a comprehensive program to reduce diesel emissions exposure for school children," said NDEP Administrator Leo Drozdoff in a NDEP release.

Two school districts, Clark County and Carson City, did not qualify for new buses because their bus fleets are made up of later-model buses that are already equipped with effective emission-control equipment.

Through separate funding from EPA's Clean Diesel Grant Program, the NDEP is also working with school districts to retrofit 1992 to 2004 model year buses with emission-reducing equipment. The NDEP and the Nevada State Office of Energy received a total of $1.5 million in funding for the retrofit program.

This effort will provide enough funding to retrofit all of the state's 1992-2004 public school buses. To date, the NDEP has received applications and determined that 431 buses statewide are eligible for the retrofits.

"By retrofitting these buses and replacing many of the oldest buses with new buses that have the latest emission-reduction technology, the NDEP hopes to significantly reduce the exposure of school children to diesel exhaust emissions," said Sig Jaunarajs (Yawn-a-rice), supervisor of the Nevada State Clean Diesel Program, NDEP.

**EPA Advisors Urge Consideration Of Black Carbon In GHG Risk Finding (*Inside EPA*)**

EPA advisors are voicing concern over the agency's failure to include black carbon in its proposed finding that six greenhouse gases (GHGs) endanger human health and welfare, but officials and advisors say there are still questions about the the pollutant's effects, though EPA says it may still address the pollutant in the finding.

Their discussion comes as the Senate environment committee May 14 approved a bipartisan bill requiring EPA to study black carbon that would define the pollutant, identify major sources of emissions and viable control technologies, and determine what amount and direction of funding from the federal government could best address black carbon at both the domestic and international levels. The House Energy & Commerce Committee is poised to mark up a major energy and climate bill May 18 that would mandate that EPA address black carbon. *Relevant documents are available on InsideEPA.com.*

Black carbon comes mainly from the burning of biomass and diesel fuel and has both health effects and warming effects when it lands on ice and snow. The pollutant is a major public health and regional warming concern in developing countries like India and China, where biomass is used on a massive scale for home cooking and heating.

At EPA's Clean Air Act Advisory Committee (CAAAC) May 14, panel member Tim Johnson of Corning Inc. said that while black carbon is widely believed to be among the most potent GHGs, one outstanding problem is how to account for its effects because it is a short-lived pollutant.

Another CAAAC member, Robert O'Keefe of the Health Effects Institute, said reducing black carbon brings significant co-benefits for both improving health and combating near-term global warming. EPA including the pollutant in its endangerment finding could boost a focus on reducing the pollutant, he said.

Johnson asked acting EPA air chief Elizabeth Craig if the agency could include black carbon in its final endangerment finding, or if EPA would have to re-propose the finding if the agency to include it.

Craig said it depends on how broadly the proposal was written. EPA's Rob Brenner said at the meeting that even though the science "isn't as far along on black carbon as some of the other pollutants," EPA is taking comment on whether to include it in the endangerment finding. The agency has options if it decides to include the pollutant, including a possible supplementary proposal, according to Brenner.

Meanwhile, EPA gave Johnson a warmer response to his suggestion that the agency specifically track reductions of black carbon in its diesel emission reduction grant program, which received an additional $206 million under the stimulus law. EPA's grant applications for the stimulus funds encourage, but do not require, applicants to quantify the GHG emission cuts their projects may achieve, but does not specify which GHGs.

"I think that's great advice," said EPA's Office of Transportation & Air Quality Director Margo Oge in response to Johnson's suggestion at a CAAAC Mobile Sources Technical Review Subcommittee meeting on May 13.

But Oge also downplayed the importance of GHG reduction estimates being a criteria for awarding the grants, because the Diesel Emissions Reduction Act (DERA) that created EPA's diesel grants program did not include any language targeting GHG reductions. "I don't believe that that is an element because that was not an element in the statute when DERA was authorized," said Oge.

**EPA Advisors Ask Agency To Evaluate Legality Of Ozone Fee (*Inside EPA*)**

EPA's Clean Air Act Advisory Committee (CAAAC) is asking the agency to quickly evaluate the legality of several programs states could implement as an alternative to a statutory mandate to impose hefty fees on pollution sources in areas severely out of attainment with EPA's old ozone standard.

CAAAC members at the group's May 14 meeting in Washington, DC could not come to consensus on recommendations to EPA on how states can implement alternative programs that would be as stringent in impact as the ozone fees that are required under section 185 of the Clean Air Act. Instead, CAAAC wants EPA to assess the legality of a number of alternatives that the group discussed without recommending.

EPA sent the committee draft guidance in early February asking for its recommendations for what alternatives to fees the agency could put forward, amid agency uncertainty on how to legally provide flexibility that would allow states to implement alternative emission reduction programs instead of imposing the expensive fees.

Industry and states are voicing strong concerns about the stringency of the air act fee requirements and putting pressure on the agency to provide alternative options. For example, Eddie Terrill, the director of the Oklahoma Environmental Air Quality Division, said at the meeting he "has no idea what Congress intended" when it wrote section 185, adding that the way it is structured and the stringency of the fees "doesn't pass the laugh test."

The fees apply to stationary source emissions of nitrogen oxide (NOx) and volatile organic compounds (VOCs) in areas failing to attain EPA's old 1-hour ozone standard by deadline, but the penalty could also apply in future years to the current 8-hour ozone standard. The penalty applies to severe and extreme nonattainment areas under any of the agency's ozone national ambient air quality standards (NAAQS), and EPA estimates the inflation-adjusted rates for the fees at over $8,000 per ton of emissions over a baseline, according to the EPA's Feb. 10 draft guidance.

The baseline is determined according to March 2008 EPA guidance, which says the baseline amount "must be the lower of the amount of actual or allowable emissions under the permit applicable to the source," according to the draft February guidance memorandum to CAAAC from Office of Air Quality Planning and Standards Director Steve Page. The fees continue to apply to a source until the area comes into attainment.

CAAAC member Bob Wyman of Latham Watkins said at the meeting that enactment of section 185 as it is in the statute would impose about $35 million dollars worth of fees on 585 major sources in extreme and severe 1-hour ozone nonattainment areas. The areas subject to the section 185 provisions include Los Angeles, the San Joaquin

Valley, Houston, New York, Baton Rouge, Chicago, Milwaukee, Baltimore and Sacramento.

The potential policy alternatives to the fees that the CAAAC workgroup drafted include facility aggregation, NOx and VOC aggregation, Clean Unit consideration that would allow already controlled sources to be exempt from the fees, allowing credits against the fees for post-attainment year investments, and exempting new sources built within the airshed after the attainment year.

But heated discussion at a May 13 CAAAC workgroup meeting revolved around whether the alternative programs the group crafted would be legal under the air act. “We can’t recommend something that is illegal under the air act,” one CAAAC source says.

**EPA Study Lays Foundation For Waste Rules To Limit Greenhouse Gases (*Inside EPA*)**

A near-final EPA “foundation paper” lays the groundwork for EPA and states to focus on waste management practices as a way to control greenhouse gas (GHG) emissions, finding that materials and land management activities account for a significant percentage of GHG emissions.

Several states, including California and Oregon, have already moved forward with their own programs to mitigate the GHG effects of landfilling, and most states are focused on the issue, state sources say.

The foundation paper, which has been peer reviewed and is expected to be published next month, finds that materials management accounts for roughly 40 percent of GHG emissions, while land management activities account for roughly 15 percent of GHG emissions, an EPA source says. Materials management includes the development of goods and food, while land management activities include transportation and development.

The paper aimed at the outset to determine whether there was a connection between materials and land management activities and GHG emissions, and if so, whether that contribution was significant enough to warrant further action, the EPA source says. “What we found is that it does have a significant impact,” the source says.

Traditionally, GHG emissions are counted by sector, such as commercial, residential, transportation, agriculture and electric power. But the EPA paper breaks down existing GHG emissions data into systems.

EPA is in the process of a cost-benefit analysis to determine which mitigation efforts -- including recycling, reuse of materials from demolition and enhanced land management

policies -- justify additional expense, as a guidance for states, who bear the majority of solid waste management duties, the source says.

The agency is also working to identify which policies might be effective to encourage states and other local waste management agencies to adopt practices that would mitigate their contribution to climate change. “That’s what we’re trying to figure out,” the source says. “Ultimately, EPA is obviously interested in reducing greenhouse gas emissions,” and materials management will play a part in that.

A source with the Association of State & Territorial Solid Waste Management Officials (ASTSWMO) says several states have already moved forward with their own programs to mitigate the GHG effects of landfilling, including California and Oregon. “When you’re talking about the states, you’re always talking about a hodgepodge,” the source says. “I think, like most programs in the states, everyone is in a different stage, but it’s fair to say most are focused on this.”

While the EPA foundation paper is a means of establishing the connection between materials management and climate change, regulators are still many years away from developing any kind of concerted effort towards applying climate change considerations to solid waste programs, the ASTSWMO source says.

“This is more of a way to help everyone in waste management recognize that waste is an active contributor to the issue of climate change,” the ASTSWMO source says. “People normally associate air pollution with climate change, but the point of the paper is to help make the case that waste” is also a contributing factor.

Oregon has been one of the first states to undertake studies to reduce GHG impacts by materials management, having established an advisory group in 2004 aimed at mitigating emissions in a host of arenas, including solid waste disposal. That advisory group has since been consulting with EPA on their foundation paper, according to a source with the Oregon Department of Environmental Quality.

Oregon found that recycling has a tremendous impact on reducing GHG emissions. The state found that the energy savings from recycling products into new products versus making products from raw materials was the source of the most reductions.

“Most greenhouse gas emissions aren’t associated with landfills; they’re associated with the production of stuff,” the Oregon source says. “Recycling and waste prevention have major greenhouse gas benefits, and they typically get ignored.”

Other ideas are being floated as well, such as developing a GHG emissions framework that is based on a consumption-based model rather than a production-based model.

Currently, emissions are thought of in terms of territory -- countries produce a given number of tons of GHG annually. But under a consumer-based model, GHG reduction schemes would have to take into account more than just the actual emissions

generated by point sources like power plants, but emissions that were made in order to create a given product. For example, the emissions associated with a paper cup would include not only the methane produced when it is landfilled, but the emissions that were released in the course of its production, transport, use and disposal.

“The issue of consumer-based accounting is coming into the discussion,” the Oregon source says. “At a high policy level -- at an international policy level -- people are talking about what policy levers can be identified to control the flow of goods across international boundaries.”

In the future, the source says Oregon intends to identify products whose lifecycle GHG footprint is greatest, though what precisely can be done with that information is unclear. The drive towards a consumption-based approach, the source says, is not intended to curb consumption, but rather to identify ways to minimize emissions in a holistic way. “It could have a role for something like product labeling or consumer education,” the source says. -- *John Heltman*

**EPA Steps Away From Considering Source-Specific PM Effects (*Inside EPA*)**

EPA is not expected to consider source-specific health and welfare effects of particulate matter (PM) in its ongoing review of the air standard for the pollutant, given broad agreement that the science is not advanced enough to support regulations that target the most harmful types of particles from certain sources.

However, several observers are still urging the agency to weigh in as much as possible on the available evidence, especially in instances where it finds evidence of more-harmful effects, according to recent comments on EPA’s December draft Integrated Science Assessment (ISA) for the PM national ambient air quality standard (NAAQS) review.

In the ISA, EPA indicates it will retain the mass-based PM NAAQS standard and not modify its regulations to include speciation of more-harmful particles from specific sources, saying the scientific evidence is not clear enough on the issue. “Overall, a consistent trend or pattern that links particular constituents or sources with specific health outcomes was not observed,” the ISA says.

EPA also says it cannot yet account for regional differences in the severity of health effects from PM emissions, which studies have found but have not yet identified reasons why.

“Clearly, there is variation in both [fine particulate matter (PM2.5)] mass and composition by city, some of which might be due to regional differences; however, there are too many controlling variables (e.g. meteorology, sources, topography) which are

too poorly characterized at this scale to allow conclusions to be drawn regarding PM2.5 composition across all cities within a given geographic region," the draft ISA says.

One recent study reviewing the literature on traffic-related studies found negative health effects from near-road exposure largely inconclusive, underscoring "that the data isn't there," one informed source says. "No one expects EPA to parse out source-specific effects" in the current review.

However, members of EPA's Clean Air Science Advisory Committee (CASAC) and others urged EPA to continue work on characterizing emissions to identify the most harmful constituents of PM, saying that the current mass-based regulations are inaccurate, at an April 1 meeting on the PM review with EPA in North Carolina where CASAC urged the agency to more closely integrate the PM NAAQS review with climate change (*see related story*).

"The fundamental problem with causality is I don't believe a mass indicator is really the indicator that we want. We might be stuck with it, but at least I'd like to see the strength of an association addressed in the causality section," CASAC's Ed Avol said at the North Carolina meeting, according to a meeting transcript.

The Electric Power Research Institute is also urging EPA to indicate what the agency thinks the science currently says about speciation.

"It would be of great value to begin to summarize the current state of knowledge about particular PM components and sources. And indeed the EPA's causality framework, which is introduced in the ISA, could be a site for individual PM components and sources very easily," EPRI's Annette Rohr said in public comment at the meeting. "It's clear that regulating those components that are most harmful from a health perspective is the best way to protect public health and that EPA should start evaluating the feasibility of developing components of the big standard."

**EPA Assessing Environmental Justice Benefits Of Air Toxics Rules (*Inside EPA*)**

EPA is crafting a road map to value the environmental justice and other benefits of its air toxics rules, amid ongoing difficulties calculating the impacts of the technology control strategies as part of the agency's nearly complete analysis of the predicted costs and benefits of the Clean Air Act through 2020.

An improved benefits assessment could help EPA justify stricter air toxics standards, as the standards are set by weighing the cost of the control strategies against the public health benefits.

EPA recently held an internal workshop to get feedback on its road map of possible short- and long-term options to valuing the outcome of air toxics control strategies. The

workshop looked at several EPA-commissioned white papers by outside experts attempting to resolve the long-standing issue, but the outcome of the meeting demonstrated how far the agency is from being able to quantify the benefits of the rules, sources say, in part because the pollutants are locally distributed and not strictly monitored.

“It’s very clear the road map is very rough,” an EPA source says of the April 30-May 1 workshop in Washington, DC. “We’re trying to come up with a research plan to present to [EPA’s Science Advisory Board] for how we move forward. But we really haven’t gotten very far. . . . We are hoping the white papers will inform” the plan.

Calculating the benefits of air toxics policies is difficult because the rules focus on local sources and provide the greatest benefits to those nearest the pollution source. The benefits of national ambient air quality standards for the six criteria pollutants, which provide the lion’s share of federal regulatory benefits, are felt throughout the country and are shown to far outweigh the costs of compliance. But the benefits of the technology-based air toxics rules are highly-localized and relate more directly to environmental justice issues, where populations closest to sources are disproportionately impacted by the emissions, though such benefits are more difficult to calculate.

The Clean Air Act requires EPA to perform periodic, comprehensive analyses of the total costs and benefits of its air rules -- both retrospectively and prospectively. The first prospective analysis, completed in 1999, covered the period between 1990 and 2010, and showed that benefits of air rules outweighed costs by a 4 to 1 margin. The second prospective analysis, now nearly complete, will extend the analysis to 2020.

However, these reports do not include quantitative analyses for air toxics rules. EPA has long struggled to determine how to calculate the benefits of the rules given that they are not evenly distributed across the country.

An improved analysis of the benefits of the rules could help justify stricter air toxics standards. The technology-based standards are designed to reduce toxics to a maximum achievable degree including the consideration of cost and other factors. EPA can set a stricter standard when it is justified by environmental and public health benefits, however.

Participants in the recent internal workshop considered various options for calculating benefits from air toxics regulations, including a new willingness-to-pay study by Resources for the Future, a method for valuing large reductions in individual mortality risks by Vanderbilt University law professor Kip Viscusi, an approach to calculating risks for toxics without chemical-specific data created by Clark University professor Dale Hattis, and an equity valuation model drafted by Harvard University professor Jonathan Levy. *Relevant documents are available on InsideEPA.com.*

The EPA source describes particular interest among the attendees in ways to consider equity in benefits calculations and how to consider risks from toxics without chemical-specific information. The workshop considered two papers by Levy that "provide a framework for examining trade offs between health inequality and total public health benefits in evaluating reductions in power plant and mobile source emissions," according to the draft road map.

"We don't have good methods to understand equity issues about how to distribute benefits, who is more at risk and who is less at risk," Levy said in an interview with *Risk Policy Report*. He said assessing the costs and benefits consideration of any regulation should also include calculations of environmental justice impacts. "Often this is not considered at the same time, and the equity side kind of gets downplayed," Levy said.

EPA's road map describes Levy's method as providing "a more detailed explanation of who is affected by exposure to air toxics, where the potential gains in health benefits are likely to be greatest, and the relationship between these metrics." But the road map also notes that the framework only considers "health effects, not the net benefits (i.e., benefits less costs) of toxics reduction."

Hattis' paper describes a method around what he sees as the limitations of chemical specific data: not strictly necessary and a limit on creativity. His approach requires risk assessors to "quantitatively characterize each uncertainty (including those currently represented by uncertainty factors) by reducing the uncertainty to an observable variability among putatively analogous cases," according to his presentation.

The recent workshop suggests EPA is making progress on assessing the benefits of air toxics rules, despite the difficulty of the issue, according to sources who attended the event. The situation is "now a little closer to being considered doable," Hattis said.

A major effort by EPA's air office to calculate the benefits of a regulation for benzene, *Health Benefits of Benzene Reductions in Houston, 1990-2020,* completed in 2008, is contributing to EPA's current effort. The study concluded that the rules will result in nine avoided fatal and non-fatal leukemia cases by 2020, with a total health benefit of between $9 million and $13 million. However, the study also found that the ability to estimate the benefits of reducing air toxics "has proven difficult, due to gaps in the toxicological database," including limited air toxics monitoring. The study was also very time and resource intensive and would be difficult to replicate for all of the 147 air toxics rules in effect, according to presentations from various experts attending the recent workshop.

**Industry Says 'Always In' EPA Registry May Hinder Early GHG Cuts (*Inside EPA*)**

Industry officials say the "once in, always in" nature of EPA's pending greenhouse gas (GHG) reporting registry, which offers facilities no way to opt out of the program if they

reduce emissions below the reporting threshold, may discourage companies from making GHG cuts in advance of a nationwide climate regime.

The proposed registry rule has “early action disincentives,” Glen Capra from the environmental consulting firm Weston Solutions told a May 15 American Bar Association (ABA) teleconference. For example, the always in nature of the registry means that industries who emit enough to trigger the registry’s reporting requirements have zero incentive to reduce their emissions below those levels because it would not release them from reporting in the future, Capra said.

In addition, while a future cap-and-trade regime to reduce GHG emissions may offer incentives for early cuts, including the allocation of extra emission credits, the registry does not detail any such incentives for reducing GHGs now. These provisions “could be a hindrance to take early action,” Capra told the teleconference.

The proposed emissions registry would require suppliers of fossil fuels and industrial chemicals, manufacturers of vehicles and engines, and other facilities that emit 25,000 metric tons or more of GHG emissions to submit annual emission reports to the agency. The sources account for up to 90 percent of U.S. GHG emissions, according to the proposal.

The registry was mandated by Congress in the 2007 energy law and is viewed as the first step in the eventual implementation of an economy-wide cap-and-trade system to reduce GHGs. Public comments are due on the proposal by June 9 and EPA says it intends to finalize the registry before the end of the year.

On the ABA teleconference John Jacus of the law firm Davis Graham & Stubbs LLP also highlighted the rule’s possible penalties for false submission of data, saying that it could create a “difficult” situation for companies that inadvertently make errors with their data reporting. “With so many facilities” having to report under the registry’s proposed thresholds, “I see great potential for problems,” Jacus said.

He also echoed Capra’s concerns about the always in nature of the proposed registry, describing this aspect of the rule as “problematic” and suggesting that EPA provide some mechanism to phase out covered facilities or provide certain exemptions from reporting requirements.

Another concern Capra raised is that there is no provision in the proposed registry rule that specifies when facilities must do their GHG monitoring. The registry does not require reporting of continuous emissions monitoring and this “once-a-year measurement is going to produce wide variability,” Capra said. For example, some companies may do repairs that affect their levels of GHG emissions before or after they collect monitoring data for the registry. “EPA will have to consider that and realize that some sources will be under-reporting,” he said.

Mary Ellen Ternes of the law firm McAfee & Taft said on the ABA teleconference that the proposed registry rule “is a fairly simple rule” but would require large resource investments.

The industry concerns add to earlier criticisms of the registry proposal, which has drawn some fire for not requiring third-party emissions verification. Auditing firms and officials from the voluntary Climate Registry argued in favor of independent verification if it is found to be cost-effective at an April 6-7 public hearing on EPA’s proposal in Arlington, VA. EPA’s proposal would give agency staff authority to review and verify all reported GHG emissions, spurring fears from some that EPA may not have the resources for the undertaking.

However, industries that would be subject to first-time GHG reporting requirements under the agency’s proposal generally said at the hearing that they agree with EPA that third-party verification is unnecessary. And speakers on the teleconference suggested the agency has the ability to do in-house verification.

Bill Irving of EPA’s Office of Atmospheric Programs told the teleconference that while the agency is proposing to do in-house verification “we are not taking off the table use of third-party verification in a future context.” Still, Irving said the agency has had “quite a positive experience” with centralized, agency verification with its NOx budget and acid rain emissions trading programs. Due to the “good experience” with verification under those programs, “[W]e think we can scale this up to the [GHG] reporting rule,” Irving said. -- *Anthony Lacey*

**BROWNFIELDS**

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

**Grant money tapped for Avondale site (*Aiken Standard*)**

By April Bailey, Aiken Standard, S.C.
May 21--WARRENVILLE -- The old Avondale Mills site in Warrenville has seen better days. The mill is one of several in the surrounding area that has closed and been left vacant for years.

Officials with Aiken Housing Authority, however, are hoping to help spark change to the area. The AHA, along with its non-profit arm, the Community Development and Improvement Corporation, and Community Environmental Corporation, has been awarded $600,000 from the **Environmental Protection Agency** as a part of the **Brownfields** Program.

A portion of the money -- $400,000 -- will be used to conduct **hazardous wastes** assessments in mills in Graniteville, Vaucluse and Warrenville. The remaining $200,000 of the money will be used to conduct petroleum assessments at the sites.

Reginal Barner, CDIC president, said the goal of the project is to put the vacant buildings back to use. Barner said that once the assessments are complete, the housing authority plans to seek more **EPA** grants to help clean up the sites.

"What we want to do is to take the existing buildings in the area, rehab those buildings and put them back to use in the community," he said.

Beverly Banister, acting deputy regional administrator for the **EPA,** commended AHA's efforts in obtaining the grant, saying that the **EPA** received more than 600 grant applications. The grant program is a part of the **EPA's** initiative to reuse and revitalize contaminated property.

**Brownfields** grants provide funds and technical assistance to states, communities and other stakeholders in economic redevelopment to prevent, assess, safely clean up and reuse **brownfields** -- industrial or commercial sites that are idle or underused because of real or perceived environmental pollution.

The program received stimulus funds from the American Recovery and Reinvestment Act, signed into law by President Barack Obama in February. The $600,000 represents the first **EPA** Recovery Act funds to be used in Aiken County.

Many gathered at Avondale Mills in Warrenville on Wednesday afternoon to celebrate what they hope will boost revitalization efforts for the communities. Among them was Louisiana Wright, founder of the Graniteville Community Coalition, a group organized to assist Graniteville residents after the 2005 train collision.

"This is just the beginning," she said. "I think it is absolutely wonderful, and I see great things coming out of this," Wright said.

According to Wright, while many in the area are thriving and moving on with their lives since the train collision, several are still suffering, as many remain without jobs and health coverage. Wright said she is excited about the steps local organizations are taking to assist the community.

"When you bring positive revitalization to an area, it can't do anything but good," she said.

Contact April Bailey at abailey@aikenstandard.com

To see more of the Aiken Standard or to subscribe to the newspaper, go to http://www.aikenstandard.com/. Copyright (c) 2009, Aiken Standard, S.C. Distributed by McClatchy-Tribune Information Services. For reprints, email tmsreprints@permissionsgroup.com, call 800-374-7985 or 847-635-6550, send a fax to 847-635-6968, or write to The Permissions Group Inc., 1247 Milwaukee Ave., Suite 303, Glenview, IL 60025, USA.

**Grant fuels Eustis' plan to spiff up downtown (*Orlando Sentinel*)**

By Martin E. Comas, Sentinel Staff Writer
EUSTIS
Long eager to develop its sluggish downtown into a bustling district, this city recently got a boost in the form of a $400,000 grant.

The funds from the U.S. Environmental Protection Agency -- known as brownfields grants -- will be used to determine whether more than four dozen properties, many in the downtown district and identified as potentially contaminated, actually contain hazardous waste.

If so, the city would then be eligible for additional federal funds to clean the contamination and help redevelop those properties.

That will go a long way toward attracting new businesses and developers to Eustis' struggling core, according to city officials.

"This grant is one of the first steps in really opening the door to more development opportunities," City Manager Paul Berg said. "It's a big advantage [for a land owner or developer] because it takes out the big uncertainty of a property."

When Florida Hospital Waterman moved its facility out of downtown Eustis in 2003, most of the old buildings were demolished. Since then, the roughly 11 downtown acres have remained vacant, and downtown merchants -- who depended on the hospital staff, visitors and patients as customers -- have suffered.

Eustis has long wanted condominiums, retail shops, restaurants and offices on the former hospital site.

The **EPA brownfield** grants could help to lure new developers because a designated **brownfield** area could help them qualify for state loan guarantees, sales-tax credits and other incentives, city officials said.

"Acquiring the grant adds another redevelopment tool to our developer's tool kit," said John Schneiger, deputy city manager for economic development.

A **brownfield** is an area that may be tainted by **hazardous waste** or low-level contamination, including petroleum. That's likely in Eustis.

As early as the late 19th century, Eustis served as a stop for steamboats and trains ferrying goods between Lake County farms and Florida towns. When citrus later became the dominant economic engine in Lake County, Eustis served as a hub.

But with the fading of the county's citrus industry in the past decade, many of the commercial and industrial businesses in Eustis closed, leaving behind abandoned and vacant properties.

A recent citywide study identified 51 potentially contaminated properties.

Berg pointed out that an old gas-station site, for example, could have a leaking tank.

The assessment of those suspected **hazardous-waste** sites under the **EPA** grant should begin within a year, according to city officials. Property owners, however, will not be required to have their land studied for contamination.

"It's 100 percent voluntary," Berg said. "It's only if they choose to participate."

Seven other Florida cities, including New Smyrna Beach and Cocoa, received the $400,000 **EPA** grants. Tallahassee received a $600,000 grant.

"We feel pretty good in being in that company," Berg said.

## CLIMATE CHANGE / GLOBAL WARMING

==========

### House Panel Passes Limit on Greenhouse-Gas Emissions (*Washington Post*)

By David A. Fahrenthold
Washington Post Staff Writer
Friday, May 22, 2009

A bill to create the first national limit on greenhouse-gas emissions was approved by a House committee yesterday after a week of late-night debates that cemented the shift of climate change from rhetorical jousting to a subject of serious, if messy, Washington policymaking.

The legislation would create a cap-and-trade system: Over the next decades, power plants, oil refineries and manufacturers would be required to obtain allowances for the pollution they emit. Those who need more or less could turn to a Wall-Street-like market in the allowances.

The 33 to 25 vote was a major victory for House Democrats, who had softened and jury-rigged the bill to reassure manufacturers and utilities -- and members of their own party from the South and Midwest -- that they would not suffer greatly.

"I don't think it's too much of an exaggeration to say that this is a turning point, in the history of the United States and [its] energy sources," said Rep. Edward J. Markey (D-Mass.), one of the bill's chief sponsors. "This is a day we've waited a long time on."

The vote gives this bill more momentum than any previous legislation to reduce greenhouse gases, but it faces hurdles. In the House, Rep. Collin C. Peterson (D-Minn.) has said he wants to take up the bill in his Agriculture Committee, seeking to change rules for those who raise corn for ethanol. The Senate has shot down previous cap-and-trade plans.

President Obama supports the bill, an aide said yesterday, though some provisions are weaker than what he advocated during the presidential campaign. In particular, Obama called for all pollution credits to be auctioned off by the government, but the House bill would give away about 85 percent of them.

After that shift and a weakening of the bill's demands for new renewable electricity, the environmental group Greenpeace withdrew its support. But many environmental activists have accepted the changes.

"None of the strength of the bill is affected by that," said Fred Krupp, president of the Environmental Defense Fund.

The bill, aiming to remake the way the United States uses energy, employs vast incentives and slow-growing punishments to shift from high-polluting fossil fuels to new sources such as wind, solar power and plant-based fuels. The bill calls for a 17 percent reduction in greenhouse-gas emissions by 2020 and an 83 percent reduction by 2050.

Only a small segment of businesses, including utilities, factories and refineries that produce gasoline and other fuels, would have to buy pollution allowances. But because the United States depends heavily on fossil fuels, the new costs would probably be spread through the economy.

The Environmental Protection Agency estimated that the overall impact would be too small to significantly dampen economic growth. But the conservative Heritage Foundation has said it might cost a family $4,300 per year in a few decades.

"The actual paperwork isn't done at the retail level," said David Kreutzer, a climate policy specialist at the Heritage Foundation. "But it's going to jack the cost up, and they will have to pass the costs on to consumers."

This week's debate in the House Energy and Commerce Committee was, in essence, over before the first gavel. Chairman Henry A. Waxman (D-Calif.) had won over a majority by offering Democrats from heavy-polluting states promises to distribute the credits free and lower the bill's target for cutting emissions by 2020.

But the week still turned out to be lively and long, with debates lasting until nearly midnight on Tuesday and Wednesday. Republicans submitted amendments allowing the bill to be nullified if too many jobs are lost, if electricity prices go too high, or if China and India do not rein in their emissions. All failed.

*Staff writer Steven Mufson and staff researcher Magda Jean-Louis contributed to this report.*

**Hurdle, but Others Remain (*New York Times*)**

May 22, 2009 Friday
Late Edition - Final
Section A; Column 0; National Desk; Pg. 13: Ambitious Energy and Climate Bill Clears a House
By JOHN M. BRODER: WASHINGTON
The House Energy and Commerce Committee, splitting largely along party lines, approved on Thursday the most ambitious energy and global warming legislation ever debated in Congress.

The bill's passage, on a 33-to-25 vote, served as a bookend to a week that began with President Obama's announcing a deal with auto manufacturers to impose tough new mileage and emissions standards for all cars and trucks sold in the United States starting in 2012.

With progress on this legislation and his own executive actions, Mr. Obama is assembling the pieces of a credible American package to take to Copenhagen later this year as United Nations negotiators gather for talks on a new **global warming** treaty.

But the energy legislation passed on Thursday still faces a tortuous path through several more House committees before it can be brought up for a vote later this year. In the Senate, leaders say they lack the votes to pass the bill as it is now written.

Representatives Henry A. Waxman of California and Edward J. Markey of Massachusetts, both Democrats, sponsored the bill. Mr. Waxman called it "decisive and historic."

"When this bill is enacted," Mr. Waxman said, "we'll break our dependence on foreign oil, make our nation a leader in clean-energy jobs and technology and cut **global warming** pollution."

The objections of the Republican opponents were summed up in the words of Representative Mike Rogers of Michigan, who said the bill would mean sharp increases in energy costs and the loss of millions of jobs.

"This is the biggest energy tax in the history of the United States," Mr. Rogers said.

Mr. Obama did not play a major public role in the committee's work, but intervened quietly on several occasions, calling nervous conservative Democrats to assure them that a vote for the bill would not hurt them politically. Two weeks ago, he gathered all of the panel's Democrats at the White House to urge them to set aside their differences to produce a bill that met his goals of energy conservation and **global warming** abatement.

The measure approved by the House committee runs more than 930 pages. It establishes a cap-and-trade program to control climate-altering emissions; dictates an increase in the use of renewable energy sources; and sets new efficiency standards for buildings, lighting and industrial facilities. It calls for a 17 percent reduction in emissions of heat-trapping gases from 2005 levels by 2020 and 83 percent by 2050.

It was the object of one of the biggest lobbying campaigns of any piece of environmental legislation, with millions of dollars spent on both sides in the months leading up to Thursday's vote. Lawmakers heard from former Vice President Al Gore, local utility companies, hunters and fishermen, national environmental groups, agricultural interests and the coal, oil and natural gas industries.

Much more is to come as the bill, known as the American Clean Energy and Security Act, is taken up by the Ways and Means Committee and, possibly, House panels on agriculture, transportation and natural resources.

The measure has critics and supporters on the left and right. Many large manufacturers and the majority of the big utilities support it, for now, as the least-bad option for what is considered the inevitable imposition of controls on heat-trapping gases like carbon dioxide.

The National Association of Manufacturers and the United States Chamber of Commerce opposed it, although some members of both groups broke with leadership to endorse the measure. These two big lobbies argued that it was a burdensome tax on business that would drive companies and jobs overseas while doing little to address **climate change.**

The major environmental advocacy groups are, for the most part, enthusiastic backers. "Clearly, it's an unprecedented step forward in the critical effort to create millions of clean-energy jobs, reduce our dependence on oil and protect our planet from **global warming** pollution," said Gene Karpinski, president of the League of Conservation Voters.

But some groups, like Greenpeace, Friends of the Earth and Public Citizen, expressed concern that the bill as drafted gave away too much to polluting industries and depended excessively on hypothetical reductions in emissions of heat-trapping gases

from developing countries.

"Despite the best efforts of Chairman Waxman, the decision-making process was co-opted by oil and coal lobbyists determined to sustain our addiction to dirty fossil fuels," said a joint statement from the groups. "The resulting bill reflects the triumph of politics over science, and the triumph of industry influence over public interest."

When Mr. Waxman first unveiled his plan in late March, at least a dozen of the panel's 36 Democrats had qualms of it. These so-called Brown Dogs were mainly from states dependent on coal for power and manufacturing for jobs, and needed assurance that their constituents would be protected.

In weeks of closed-door negotiations with these Democrats, Mr. Waxman doled out billions of dollars worth of free pollution permits, known as allowances, to cushion any price shock caused by imposing a cap on emissions of heat-trapping gases.

In the end, 85 percent of all pollution allowances were given at no cost for various purposes, including compensating energy-intensive industries, state governments, oil refiners and low-income households, at least in the early years of the program. Mr. Obama's position during the presidential campaign was that all of the permits should be auctioned, not given away, but the White House did not object to Mr. Waxman's generous allocations.

**Industry Pushes House Climate Bill Amendments To Boost Biofuels (*Inside EPA)***

Industry is pushing amendments to the House climate bill to boost the use of biofuels, including a rider that would bar EPA from considering the climate impact of international land use changes in the agency's renewable fuel standard (RFS), a provision to give carbon credits to biofuels producers, and other measures.

The House Energy & Commerce committee May 18 began marking up the climate and energy bill authored by Chairman Henry Waxman (D-CA) and environment subcommittee Chairman Edward Markey (D-MA). Coming soon after EPA's May 5 proposal to implement the RFS, the markup offers biofuels proponents the chance to push measures to amend aspects of the RFS proposal they oppose and expand provisions they support.

The markup also provides an opportunity for stakeholders to push for other energy-related amendments, as environmentalists are urging lawmakers to use the bill to remove regulatory exemptions for the oil and gas industry.

Biofuels proponents are eyeing the Waxman-Markey bill as a vehicle for measures to promote the biofuels industry, which they say have been harmed by the RFS proposal. Industry says the proposal unfairly considers the international climate impacts of biofuels, which occurs when farmers in other countries clear land to grow crops to

compensate for U.S. biofuels crops, without considering the indirect climate impact of fossil fuels or other industries. Industry says this makes biofuels' climate impacts look worse than is the case.

To address their concerns, the biofuels industry is planning to push lawmakers to adopt as an amendment to the climate bill a separate bill, H.R. 2409, that was introduced May 14 by the House Agriculture Committee Chairman Collin Peterson (D-MN) that would bar EPA from considering indirect climate effects like international land use change when determining which fuels qualify for credit under the RFS.

The bill would also give the Department of Energy and the Department of Agriculture shared authority with EPA to implement the standard, and replace the RFS definition of feedstock that can be used for biofuels with a more expansive definition that was included in the 2008 farm bill. If successful, the rider could require EPA to revise its existing RFS proposal to implement the changes.

One biofuels source says industry plans to push lawmakers to include the Peterson measure in the climate bill, but the source declined to comment on a strategy for doing so. One House source says that Peterson has not yet decided how to move the bill, but according to press reports, Peterson says he will not vote in favor of the climate bill until his RFS bill is passed.

Peterson's conditional support of the climate bill echoes concerns he raised at a May 6 agriculture committee conservation panel hearing on the RFS, where he said EPA's handling of the proposal led him to lose faith in agencies' ability to implement climate legislation. "The only way I would consider any kind of climate bill is if it is ironclad that these agencies had no ability to do any rulemaking of any kind whatsoever, if we had everything dotted and crossed . . . and we could be absolutely guaranteed that these folks would not be involved," Peterson said.

In addition to the Peterson bill, industry is also urging lawmakers to include language in the pending climate bill that would expand what they see as a positive precedent in the RFS, which gave ethanol producers credit for using biotechnology to reduce heat and energy use, according to a second industry source.

For example, the RFS gave credit to facilities for using enzymes to convert corn into sugar, which can then be fermented into ethanol, and for using organisms to distill the ethanol from water so that it can be used as fuel.

The technologies, called raw starch hydrolysis and membrane separation, allowed these facilities to exceed the required 20 percent GHG reductions, achieving reductions of 21 to 39 percent, even when the facility is powered by coal, according to the proposal. EPA says "advanced technologies such as membrane separation and raw starch hydrolysis could improve the emissions associated with corn ethanol production even more substantially," than technologies such as combined heat and power, which

uses the heat from power generation in the ethanol production process, according to the proposal.

Now industry is pushing legislative language, which is being updated to reflect recent changes to the climate bill, that would similarly recognize the GHG benefits of biotechnology under a climate cap and trade program, the source says. The language would allow a range of industries, including biofuels, to qualify for allowances or offsets if they use biotechnology that reduces their carbon emissions, the source says.

For example, a plastics manufacturer that switches from using petroleum in their products to using corn or cellulosic materials may be able to qualify for credit if the language is included, the source says. However, industry has not yet found a sponsor for the language, the source says.

Meanwhile, activists are also pushing Congress to include energy-related environment provisions in the climate bill. One environmentalist says activists sent memos to lawmakers in late April urging them to remove regulatory exemptions for the oil and gas industry that were included in the 2005 energy bill. Activists sent the memos to lawmakers they thought would be supportive of removing the exemptions, including Waxman, Markey, House Speaker Nancy Pelosi (D-CA) and House Majority Leader Steny Hoyer (D-MD).

For example, activists are trying to remove a provision that excludes runoff from drill sites from regulation under the Clean Water Act and a provision that allows agencies to give oil and gas developers so-called categorical exclusions to bypass the normal environmental review process under the National Environmental Protection Act, the environmentalist says.

In particular, activists are urging congress to remove an exemption under the Safe Drinking Water Act (SDWA) for a practice called hydraulic fracturing, where water and chemicals are forced into the ground to crack shale formations and release natural gas so it can be extracted, the environmentalist says.

Congress removed EPA's authority to regulate the practice under SDWA after an EPA study showed the practice did not pose a risk to drinking water. However, EPA Administrator Lisa Jackson told lawmakers at a May 19 hearing of the House appropriations committee interior panel that the agency would likely revisit the study in light of recent reports of water contamination from the practice.

The issue is likely to arise soon in Congress, as Rep. Diana DeGette (D-CO), is planning to reintroduce legislation she offered in the last congress that would remove the SDWA exemption. Activists would like to see the measure included in the Waxman climate bill, the environmentalist says.

A spokesman for DeGette, who is a member of the Energy and Commerce committee that is marking up the climate bill, said the lawmaker has decided not to offer the bill as

an amendment to the climate bill in committee because she decided it was not the best way to move the legislation. However, the spokesman said DeGette had not decided whether to try to move the bill as stand-alone legislation or as part of another bill and said he did not know whether she would offer the bill as an amendment to the climate bill on the floor. -- *Kate Winston*

**Activists Accept Major Concessions On Path To House Climate Bill (*Inside EPA*)**

Major environmental groups are accepting substantial concessions, including promotion of nuclear power, in exchange for passage of climate legislation, saying that while they will work to strengthen the measure as it proceeds, it is necessary to take the key step of moving the bill out of the House energy committee.

“Do I want to see the nuclear industry get subsidized? No,” one environmentalist says. “But you have to move a bill through Congress.”

Nevertheless, a trio of other environmental groups are publicly opposing the bill and sources say it is unclear whether “progressive” lawmakers will go along with some of the concessions on the House floor.

The House Energy & Commerce Committee is marking up landmark energy and climate legislation to create a federal cap-and-trade climate program, which committee Chairman Henry Waxman (D-CA) says he hopes to complete before lawmakers break for the Memorial Day recess May 22. House leaders have also indicated that they hope to bring up the bill on the House floor by late June, a timeframe that would help clear the way to move on health care reform legislation.

One of the latest concessions by environmental groups is a nuclear energy amendment, offered successfully by Rep. John Dingell (D-MI) May 19. The amendment, which passed in an overwhelming bipartisan vote of 51-6, creates a new program that benefits nuclear energy and other technologies, while capping the share of clean energy loan guarantees that can be obtained by any one clean energy producer -- be it nuclear, coal with carbon sequestration, or renewables -- at 30 percent, keeping any one from taking over the fund.

The amendment also requires industries to return to Congress for funding every year, which environmentalists say will improve oversight and ensure that the nuclear industry isn’t getting a blank check. The amendment also includes “prevailing wage” language that ensures those hired to undertake projects funded by the clean energy subsidies will be paid fair wages for the work, a measure that is a win for organized labor, which a major constituent of Dingell’s.

Even with those provisions, some activists say they aren't thrilled with the amendment, but realize that it is a necessary compromise in order to broaden the appeal of the larger bill and advance money available for clean energy.

Even Waxman and Markey -- themselves long opposed to nuclear subsidies -- voted in favor of the amendment, which another environmentalist says is a signal that the amendment is something that environmentalists, industry and organized labor can accept. "Waxman never said he supported nuclear," the source says. "The bill puts [subsidies] in a different place. The nuclear industry can get subsidies but they can't walk away with the whole bank."

The lawmakers' support for the nuclear amendment is just the latest concession environmentalists and their allies have accepted. In an effort to win agreement from fellow Democrats and move the bill out of committee, Waxman and clean air subcommittee Chairman Ed Markey (D-MA) revised their earlier draft bill even before committee markup to reflect several deals they struck with coal- and manufacturing-state lawmakers.

Among the new provisions, the lawmakers softened the bill's greenhouse gas (GHG) reduction goals, scaling back the near-term target of a 20 percent reduction by 2020 to a 17 percent target; exempted coal-fired plants "initially permitted" before Jan. 1, 2009 from having to meet carbon performance standards; and adopted a renewable electricity standard (RES) that activists say would not require additional actions beyond those called for in existing programs.

The revised bill also reiterates and clarifies earlier provisions exempting new or expanded facilities from new source review (NSR) permit requirements, which can lead to strict emission controls.

In addition to these provisions, activists are even facing the prospect of further concessions. One of the first amendments offered and then withdrawn during committee markup, from Rep. Bart Stupak (D-MI), proposed moving the January 2009 coal plant deadline to July 2010, in the wake of concerns from Stupak that several pending plants in his state had experienced permitting delays.

The measures have been met with grudging acceptance by major environmental groups, who say it is the only way to move the legislation.

In a report released May 20, the World Resources Institute found that some of the concessions in the bill mean the legislation will only achieve a 15 percent GHG reduction by 2020, not the 17 percent target set by the bill. But the group backed the bill, noting it will still ensure achievement of long-term targets. "Though the 2020 target is slightly less stringent, the long-term targets are still intact setting the U.S. on a pathway to cut emissions substantially from business as usual," John Larsen, WRI senior associate, said in a press release.

At a May 18 press conference, environmentalists called for federal climate legislation to supplement EPA's proposed endangerment finding for GHGs while offering only the most muted critique of the NSR and other concessions in the bill.

In response to a question on the bill's scaling back of EPA's authority, Natural Resource Defense Council's David Doniger touted the bill, saying "the new law largely builds upon the Clean Air Act." Doniger said there are a few bill provisions "that make a lot of sense and a few that we have questions about . . . I am sure we will continue to work on this question of how the new law affects the old law. We need them both." Doniger noted that the pending legislation would also leave intact current authority to regulate motor vehicles.

Environmentalists at the press conference also touted the bill's new GHG performance standard, but did not explicitly reference language in the bill exempting "initially permitted" facilities from compliance. Sierra Club's David Bookbinder called the requirements for future plants "very strong" but also said, "is there work to be done on that? Yes."

But another environmentalist blasts the language, saying it is a "clear weakening and a very substantial one" that could let many coal plants to be built without emissions controls. The source says the language appears to have been tweaked to address industry concern over pending coal plant proposals that include efforts by Duke Energy, which is part of an industry-environment coalition that has called for cap-and-trade legislation.

On the RES, Union of Concerned Scientists (UCS) noted in a May 14 press release that even though the RES proposal would not require utilities to take any additional steps to produce renewable electricity, the compromise is necessary to move the bill. "This compromise will help move this critical legislation forward." UCS calls on lawmakers to strengthen the measure so that it yields the "green jobs and consumer savings that the public deserves."

Environmental groups have also expressed some disappointment with a cash-for-clunkers program attached to the bill to encourage the purchase of automobiles -- a plan that efficiency advocates complain would subsidize the purchase of vehicles without assurances that these new vehicles meet stricter fuel-economy requirements.

While the major groups are grudgingly accepting the concessions, a May 13 joint statement from Greenpeace, Public Citizen and Friends of the Earth, says the concessions "undermine" the goals of addressing climate change, transforming the economy and showing international leadership. A follow up May 15 press release from Greenpeace said, "this bill has been seriously undermined" by the lobbying of industries. "We cannot support this bill in its current state," the group says.

However, one environmentalist critical of the concessions in the new bill nevertheless calls the legislation "the most complex effort the commerce committee has tackled in

three decades," while another environmentalists says, "We want to applaud the fact that it has gotten this far."

**Boxer Eyes Revised Senate Climate Strategy, Downplays House Bill (*Inside EPA*)**

Senate environment committee Chairwoman Barbara Boxer (D-CA) is suggesting a climate legislative strategy that differs from her earlier comments and those of Democratic leadership, saying the Senate will consider the pending House climate bill but only in conjunction with past proposals, in order to craft a "best consensus" bill.

Republicans, meanwhile, are gearing up for a battle over climate policy in the Senate, with a purported strategy memo circulated by GOP staff on the Environment & Public Works Committee taking a page from environmentalist critics of cap-and-trade in blasting the proposed policy as a risky and regressive giveaway to Wall Street traders and corporate America. *The memo is available on InsideEPA.com.*

The effort appears aimed in part at capitalizing on lingering fears expressed even by some Democrats, such as Sen. Maria Cantwell (D-WA), about entrusting a greenhouse gas emissions trading policy favored by the very investment banks that helped cause the global recession.

Boxer's comments on the Senate's climate agenda, made to reporters May 19 outside the Senate chamber, appear to contrast somewhat with earlier remarks from Senate Majority Leader Harry Reid (D-NV) suggesting the legislation being marked up this week by the House Energy & Commerce Committee would be taken up by several Senate committees as something of a template for climate policy. Previously, Boxer had also suggested the House climate bill could merely be agreed upon in conference with the Senate; her more recent comments may be an indication of some level of dissatisfaction in the Senate with a strategy that relies heavily on the bill offered by Reps. Henry Waxman (D-CA) and Edward Markey (D-MA).

"As soon as the bill goes through the [House energy] committee, which I think is going to be this week . . . we're going to hold a series of workshops to analyze that bill," Boxer said. "Of course, we'll look at our bill from last time and we'll put together what's the best consensus bill," she added.

In the meantime, Boxer and Senate Foreign Relations Committee Chairman John Kerry (D-MA) have been hosting weekly, informal gatherings of senators to discuss climate change policy and the politics of enacting cap-and-trade, according to Sen. Tom Udall (D-NM). Around 18 senators, including much of the environment committee, attend the Tuesday meetings, Udall said, where lawmakers meet to "try to think about how we're going to move [cap-and-trade] along and get it passed."

One obstacle facing Senate passage of a climate bill is that even those who favor restricting greenhouse gases are not sold on emissions trading as the policy vehicle. Cantwell, for instance, chairwoman of a key energy subcommittee, said she has no interest in pursuing a climate policy that leads to the same type of complex financial mechanisms that proliferated during the housing bubble.

“We’ve had so many problems with derivatives being chopped up [and] securitized, so I’m looking for something much simpler,” she says. To that end, Cantwell says she will be introducing a bill based on the “cap-and-dividend” model -- where greenhouse gas emissions are capped and revenues raised by the program are rebated to citizens -- though she did not comment on whether emissions trading would be eliminated or simply curtailed.

Aware of discontent among some Democrats and environmentalists over cap-and-trade, Senate Republicans appear to be aiming to drive a wedge between proponents of greenhouse gas controls by echoing the criticisms of emissions trading made by environmental groups like Friends of the Earth. The May 14 memo circulated by GOP staff outlining the party’s strategy for the upcoming climate debate, for example, blasts the House cap-and-trade bill as a boon to Wall Street and a burden on small businesses and low-income households, and one likely to leave consumers with “nothing but a tax hike.”

In particular, the memo casts the Waxman-Markey legislation as corporate welfare, and charges that the companies making up the U.S. Climate Action Partnership -- the industry-environmental group whose recommendations have provided the basis for the bill -- are engaged in an “unabashed quid pro quo” with lawmakers, supporting an emissions trading policy in return for billions of dollars in free emission allowances.

**EPA Science Advisors Urge Greater Focus On Climate Effects In PM Review (*Inside EPA*)**

EPA’s scientific advisory group is urging a greater focus on the effects of climate change in its recent comments on the agency’s ongoing review of the particulate matter (PM) national ambient air quality standard (NAAQS), a move that could heighten attention to synergies between traditional air pollutants and greenhouse gases in science and policy.

EPA is facing a number of high-profile questions in the review in addition to how it incorporates climate effects, including how it attributes PM exposure to health effects in a new causality framework being created for the review, and whether it should consider health effects from potentially more harmful particles originating from certain sources.

The agency is still in the early stages of the PM NAAQS review, having issued its first draft of the Integrated Science Assessment (ISA) in December, with a final document

set to come out by the end of the year, followed by a final risk assessment by mid-2010, a proposed rule by January 2011, and a final rule by October 2011.

EPA is conducting the PM NAAQS review amid uncertainty about the existing 2006 standard, after the U.S. Court of Appeals for the District of Columbia Circuit Feb. 24 remanded portions of the NAAQS related to fine particles back to the agency for further justification. In addition, EPA is reviewing the Bush-era modification of the traditional NAAQS review process, which was a controversial attempt to streamline it.

EPA Office of Air Quality Planning & Standards official Lydia Wegman said both of these issues may affect the current schedule for the PM NAAQS review. “The schedule is subject to change depending on what we do with the NAAQS review process, and also how we respond to the remand and the timing of our response to the remand,” Wegman said at an April 1 Clean Air Scientific Advisory Committee (CASAC) meeting on the PM NAAQS review in North Carolina, according to the meeting transcript. *Relevant documents are available on InsideEPA.com.*

However, amid the uncertainty over the schedule, EPA set a May 15 cutoff for new science to be considered in the review, according to EPA’s John Vandenberg. “That will allow us to incorporate comments from CASAC, from the public, from the new studies, but we have to have some point in time that we work from,” Vandenberg said at the meeting.

CASAC is widely praising the draft ISA, but in a draft letter the panel is asking EPA to clarify its stance on climate change and to include the effects as a more central issue in its consideration of both the primary standard, which addresses human health, and the secondary standard to protect the environment.

“The implications of PM size and composition for climate effects need to be more thoroughly explored, both with regard to climate change and the associated health effects of climate change,” the April 30 draft CASAC letter says.

PM-climate synergies are complicated and not entirely understood. For example, black carbon, one type of PM, has a warming effect when it lands on ice and snow and has been linked to causing a significant increment of Arctic melting. However, sulfates, another part of the complex chemical mixture of PM, has a net cooling effect. These contrasting properties of a uniformly regulated pollutant make the evaluation of PM climate effects difficult to quantify, EPA says.

“The effects on climate are generally discussed as direct and indirect effects, and aerosols can have direct effects on radiation and temperature, contributing to warming, which is mainly associated with black carbon or cooling, and overall the net effect is a global cooling. And indirect effects, which are naturally more difficult to calculate, may involve cloud feedbacks and influence precipitation formation and cloud lifetimes . . . [U]ltimately these direct and indirect effects may affect atmospheric and oceanic

circulation bio-chemical cycles," EPA's Chris Novak said at the CASAC meeting, in reference to the ISA's chapter 9 that summarizes climate effects.

EPA's potentially increased effort to assess the synergies between climate change and PM could help heighten attention to the issue, which is also simmering at the international level. Some policymakers are urging reductions in traditional air pollutants as a way to at once cut warming in the short term as well as to entice developing countries to support a climate treaty, since countries like India and China are bearing serious public health burdens from the health effects of traditional air pollutants.

Others also urge the combination of air pollution and climate change policies in order to prevent potentially rapid warming, resulting from policies to cut sulfur dioxide, which creates cooling effects that are believed to be masking much of the warming that has already resulted from anthropogenic greenhouse gas emissions.

"I almost hesitate to raise the question, but when we talk about this causality framework and when we talk about effects on something like climate . . . is it appropriate to ask a question about beneficial effects?" CASAC's Rich Poirot asked EPA at the meeting.

EPA's Vandenberg responded that the agency is not using the word "beneficial . . . I think we're trying to lay out the evidence as it relates to the causal framework and not put value judgments on it."

And panel member Ted Russel in individual written comments on chapter 9 says climate change could be central in whether EPA decides to revise the PM standard. "Looking at the question as to what might drive revision of the NAAQS, climate change should be part of that, if not play a central role. I am concerned that this chapter in its current form leads to a lack of consideration of climate impacts (both ways). This section needs to make the link between climate change and health impacts (which, I agree, are uncertain)," Russel's comments in the April 30 letter say. -- *Jenny Johnson*

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

**A Rising Anti-Government Tide (*Washington Post*)**

May 22, 2009 Friday
Regional Edition
EDITORIAL COPY; Pg. A21
Maryland
BY: Newt Gingrich
Americans should look carefully at the anti-politician, anti-government mood exhibited in

California this week. Just as Proposition 13 and the anti-tax movement of 1978 were the forerunners of the Reagan presidential victory, so the results of Tuesday's vote are a harbinger of things to come.

The repudiation of the California establishment in the series of initiative defeats could hardly have been more decisive. Five taxing and spending measures were rejected by 62.6 to 66.4 percent of the voters. That is a consistent majority of enormous potential. An even larger majority, 73.9 percent, approved the proposition limiting elected officials' salaries when there is a deficit.

This vote is the second great signal that the American people are getting fed up with corrupt politicians, arrogant bureaucrats, greedy interests and incompetent, destructive government.

The elites ridiculed or ignored the first harbinger of rebellion, the recent tea parties. While it will be harder to ignore this massive anti-tax, anti-spending vote, they will attempt to do just that.

Voters in our largest state spoke unambiguously, but politicians and lobbyists in Sacramento are ignoring or rejecting the voters' will, just as they are in Albany and Trenton. The states with huge government machines have basically moved beyond the control of the people. They have become castles of corruption, favoritism and wastefulness. These state governments are run by lobbyists for the various unions through bureaucracies seeking to impose the values of a militant left. Elections have become so rigged by big money and clever incumbents that the process of self-government is threatened.

Sacramento politicians will now reject the voters' call for lower taxes and less spending and embrace the union-lobbyist-bureaucrat machine that is running California into the ground, crippling its economy and cheating residents. This model of high-tax, big-spending inefficiency has already driven thousands of successful Californians out of the state (taking with them an estimated $11 billion in annual tax revenue). The exodus will continue.

Gov. Arnold Schwarzenegger is a smart, tough, charismatic leader who has been forced to submit to policies he knows are ruining California on behalf of interests he knows are cheating the state. His failure to tame the union-lobbyist-bureaucrat machine that owns the legislature is a symptom of just how powerful it is.

Albany is even more corrupt and dysfunctional. The special interests that own the legislators in both parties have been exploiting New York for two generations. They have impoverished the Upstate region to the point where it is a vast zone of no jobs and no opportunities. Their predatory tax and bureaucratic union behavior is beginning to cripple New York City. More and more successful New Yorkers are leaving the state. In the face of multiple crises, Gov. David Paterson has shown himself incapable of carrying out reform.

In other words, the political machines in California and New York are wrecking the states' economies and driving out successful residents. But the machines don't care because all they want to do is own the wreckage.

This system of ruining communities on behalf of interest groups first appeared in Detroit. Bad government, bad politicians and bad policies drove a city that had, in 1950, the highest per capita income of any large American city to No. 62 in per capita income as of 2007. The population has declined from 1.8 million to fewer than 950,000. Recently, 1,800 homes were sold for under $10,000 each. The human cost of bad politics and bad government in Detroit is staggering.

Now President Obama, House Speaker Nancy Pelosi and Senate Majority Leader Harry Reid want to impose on the nation this style of politics in which interest groups, politicians and bureaucracies dominate. Look at their record: a $787 billion stimulus no elected official had read, 8,000 earmarks, an **Environmental Protection Agency** plan to control the economy through carbon regulations, the government threatening retaliation against those who would protect their property rights against theft in the Chrysler bailout -- again and again, this team is moving toward a government that owns the country rather than a government that is owned by the people.

Watch Sacramento politicians and interest groups work to overrule the people of California. Watch Albany politicians and interest groups continue to undermine the economy of New York. Watch the arrogance of the elites in Washington as they impose their costs and special deals on the American people.

Then look again at the 62 percent-plus majority in California in favor of smaller government and lower taxes.

In the great tradition of political movements rising against arrogant, corrupt elites, there will soon be a party of people rooting out the party of government. This party may be Republican; it may be Democratic; in some states it may be a third party. The politicians have been warned.

The writer, a Republican, was speaker of the House of Representatives from 1995 to 1999. He is chairman of the Gingrich Group, a communications and consulting firm, and general chairman of American Solutions for Winning the Future.

MAY 22, 2009

**Light Cars Are Dangerous Cars (*Wall Street Journal)***

And other unintended consequences of strict fuel-economy standards.
By ROBERT E. GRADY

If something seems too good to be true, it usually is. Such is the case with President Barack Obama's proposed national fuel efficiency standards for cars and trucks and a new tailpipe standard for C02 emissions. The national press has uncritically reported that the new standards will make cars "cleaner." In fact, the rules could impose substantial costs in terms of urban air pollution and human life.

The standards are designed to reduce C02 emissions from cars, with the twin goals of addressing climate change and reducing dependence on imported energy. Carbon dioxide is, of course, ubiquitous and relatively harmless on an everyday basis. It is only its long-term buildup that scientists posit will cause temperature warming. What are not so harmless in the near term are the "criteria air pollutants" currently regulated under the Clean Air Act -- ground-level ozone (or smog), particulate matter, carbon monoxide, sulfur dioxide, nitrogen oxides and lead -- all of which have been shown by the Environmental Protection Agency's (EPA) own scientists to have an adverse effect on human health.

The great irony of Mr. Obama's fuel efficiency proposals is that they may worsen emissions of these harmful gases. By the White House's own calculation (which many observers believe to be quite conservative), the new rules, when combined with earlier proposed increases in Corporate Average Fuel Economy (CAFE) standards, will increase the average price of a new car by $1,300. Herein lies the problem.

In today's automobile fleet, the majority of the pollution comes from the oldest, dirtiest cars. In fact, the dirtiest 10% of the cars account for more than 50% of smog and carbon monoxide. The dirtiest one-third of the fleet accounts for more than 80% of the pollution. That is because the U.S. government has, for 39 years now under successive versions of the Clean Air Act, required automakers to meet ever-tightening standards for tailpipe emissions from new cars. When it comes to smog, carbon monoxide, nitrogen oxides and particulates that new SUV is a lot cleaner than an old, poorly-tuned compact.

The Clean Air Act's requirements have sent emissions in the right direction. According to the EPA, since 1980 annual emissions of carbon monoxide are down 52%, emissions of ozone are down 41%, and emissions of nitrogen dioxide are down 37%. (Emissions of lead are down 97% thanks to taking the lead out of gasoline in the early 1980s).

The Obama plan could slow this progress. An economic phenomenon called "price elasticity of demand" is well established when it comes to automobile purchases. In other words, if you raise the price of new cars, people will buy fewer of them or, at a minimum, put off the purchase for a year or so while they drive the old clunker for a few thousand more miles. And fewer new cars means more pollution, which can cause significant health problems. Yet environmentalists and the press have ignored this issue, so as not to inject a note of complexity or doubt into the chorus of glee that greeted the president's attack on greenhouse-gas emissions.

Last fall, however, both the press and the green community paid significant attention to a study conducted by researchers from California State University at Fullerton and

Sonoma Technology Inc. The study showed that, from 2005-07, California's South Coast and San Joaquin Valley air basins experienced more than 100 days in which ozone levels exceeded the National Ambient Quality Standard. In each of those areas, more than 60% of the population was exposed to unhealthy levels of fine particulate matter.

The study concluded that if these areas had simply met the federal standard, these regions could have experienced 1,950 fewer new cases of adult-onset chronic bronchitis; 3,680 fewer premature deaths among those 30 and older; 141,370 fewer asthma attacks; almost 500,000 fewer lost days of work; and, importantly, avoided approximately $28 billion in total costs to the Southern California economy.

Clearly the health risks from fine particulates especially and also from smog are substantial. It is also true that many scientists and economists predict significant long-term costs associated with climate change. But the costs associated with excessive emissions of criteria air pollutants are immediate and observable.

The Obama fuel efficiency plan may also contribute to a significant increase in highway deaths as vehicles are required to quickly meet the new CAFE standard and will likely become lighter in weight as a result. According to a study completed in 2001 by the National Research Council (NRC), the last major increase in CAFE standards, mandated by the Energy Policy and Conservation Act of 1975, required about a 50% increase in fuel economy (to 27.5 mpg by model year 1985 from an average of 18 mpg in 1978). The NRC study concluded that the subsequent downsizing and down-weighting of vehicles, "while resulting in significant fuel savings, also resulted in a safety penalty." Specifically, the NRC estimated that in 1993 there were between 1,300 and 2,600 motor vehicle crash deaths that would not have occurred if cars were as heavy as they were in 1976.

The president now proposes a fuel economy increase of similar magnitude in an even quicker time frame -- to 39 mpg by model year 2016 from 27.5 mpg now. Given the time it takes for new technologies to be developed, tested and incorporated into new car models, it is likely that down-weighting of cars will be an important means of meeting the new standard. And one result again could be highway deaths that might otherwise not have occurred.

Well, one might argue, this would not be the case if everyone drove smaller cars. The NRC study considered this countervailing fact and included it in its estimates. But nearly half of all car crashes (more than 48% in the years studied) are one-vehicle crashes. Put another way: If your car hits a tree or a post or a bridge abutment, you are most certainly better off in a larger car.

None of this is intended to argue that Mr. Obama should not be attacking the problem of climate change. Indeed, some in Congress are proposing to cap carbon emissions and allow tons of carbon credits to be traded, which at least provides the flexibility for those who must comply to reduce emissions in whatever way they choose. Others are

proposing an increase in gasoline or carbon taxes. Both of these approaches have their merits, although economic conservatives like me would point out that, in order not to damage the ailing economy, any increases in gasoline or carbon taxes should be matched by a cut of at least equal size in payroll taxes.

My point is simply this: Mr. Obama's proposed fuel efficiency and CO2 tailpipe regulations should be subjected to rigorous cost-benefit analysis, as all federal regulations should be. Those at EPA charged by statute with regulating air emissions, and those at the Office of Management and Budget charged with reviewing the implementing regulations, should carefully assess whether the benefits of the president's fuel efficiency and carbon proposals outweigh their very real costs.

**Mr. Grady is managing director of the Carlyle Group in San Francisco and a former trustee of the Environmental Defense Fund. He was involved as a senior White House aide in drafting the Clean Air Act Amendments of 1990, and helped craft Gov. Arnold Schwarzenegger's Environmental Action Plan during his 2003 campaign.**

**Obama's new rules (*Gainesville Sun*)**

Published: Friday, May 22, 2009 at 6:01 a.m.
Last Modified: Friday, May 22, 2009 at 12:22 a.m.
The national fuel-efficiency and emission-control standard announced this week will significantly raise the requirements for vehicle manufacturers, foreign and domestic. But the standard also will enable automakers and regulators to pursue the goals more efficiently.
The new rules:

- Raise the required, overall average for fuel efficiency to 35.5 miles per gallon by 2016, four years earlier than current federal law requires.

- New passenger cars would have to average 39 m.p.g.; light trucks, 30 m.p.g.. (The current average for cars is 27.5 m.p.g.; for trucks, 23 m.p.g..)

- Impose, for the first time nationwide, limits on vehicle-exhaust emissions.

Carbon dioxide and other vehicle emissions that contribute to climate change would be reduced by almost one-third by 2016. The restrictions would reduce greenhouse emissions by 900 million metric tons, the equivalent of taking 177 million cars off the road over the 6 1/2-year duration of the new policies.

The announced standard also combines the fuel-efficiency and emissions regulations into one package and streamlines rule-making procedures. And it eliminates state-by-state attempts to set stricter standards than those allowed by federal law.

"The Obama Administration's plan for the first national standard for tailpipe greenhouse gas emissions is a significant step forward in American energy and global warming policy, to the benefit of us all," Phyllis Cuttino, director of the Pew Environment Group's U.S. Global Warming Campaign, said. "This will ensure that automakers produce the fuel-efficient cars Americans demand, saving consumers money at the pump, reducing our dependence on oil and cutting the pollution that threatens the public's health and our environment."

Opponents cite estimates that the new standard will add about $1,300 to the cost of an average vehicle, once the standard takes full effect. But improving fuel efficiency on the scale envisioned will save average drivers between $300 and $500 a year, according to the U.S. Environmental Protection Agency. Obama estimated savings of $2,800 over the life of a car.

And those savings don't include the political, economic and national security benefits of reducing America's dependence on fossil fuels, or the environmental advantages of limiting emissions.

Transportation is the nation's second-largest source of carbon dioxide emissions (behind electric-power generation).

This week's announcement puts the U.S. on track for more efficient use of fossil fuels, a cleaner environment and relief for an economy that is too exposed to the many risks associated with oil.

**Obama pushes accelerator toward 35 mpg (*The Express Times - LehighValleyLive.com*)**

Posted by jflagg May 21, 2009 00:30AM
President Obama's push for a uniform fuel-efficiency standard for all states -- which calls for a fleet average of 35 miles per gallon in new vehicles by 2016 -- is an attainable goal, and it places the entire nation on the same track.

Previously, California and 13 other states had to petition the Environmental Protection Agency to set more stringent guidelines to increase vehicle efficiency and reduce pollution.

The primary question is not whether we can reach that goal, it's whether the Big Three domestic manufacturers can produce affordable, high-mileage cars that Americans will want to buy -- and whether the capricious gas market will make smaller cars more attractive to consumers used to SUVs, pickups and minivans.

**Time for action on septage treatment plant is now (*Wayland Town Crier*)**

By Werner Gossels
Thu May 21, 2009, 10:47 AM EDT
WAYLAND - Fellow homeowners of Sudbury and Wayland:

Do you have a septic system? If you do, and most homes in our two towns do, you may be interested in the following concerns.

On Tuesday evening, May 5, the boards of selectmen of the towns of Sudbury and Wayland, meeting jointly, voted unanimously to deny funding for mandated upgrades (instrumentation and an additional sand filter at a cost of approximately $300,000 over the next 18 months) required by Massachusetts Department of Environmental Protection in order to meet enhanced standards for removal of nitrogen from the discharge to groundwater of the septage treatment plant.

At present the plant has on its books sufficient funds to pay for these upgrades without borrowing. During fiscal 2008 this plant earned a surplus. This year the operation is currently some $45,000 ahead of last year and shows every promise of ending the fiscal year on June 30 with a surplus.

The plant is an enterprise fund that pays for its own operations and has been doing so for more than 25 years. It has no debt on its books.

In recent years, when the boards of selectmen have reviewed the fiscal year results, they have begun the conversation by asking, "How much will it cost to decommission (close) the plant?" and "How much money is needed to pay for legacy costs for past employees of the plant who have retired?"

In deference to these two potential obligations, their policy, imposed on the Septage Committee, prohibits use of earned surplus (now well above $300,000). The result of this policy is that a functioning, multi-million dollar septage treatment plant, currently servicing thousands of homes in Sudbury and Wayland each year, that is producing arguably its most environmentally benign effluent so far, will not be allowed to install the upgrades to attempt to meet the DEP's stricter standard. Instead, the selectmen's vote means the plant will close by December of this year.

During the 24-month period ending June 2009, 10 million gallons of septage pumped from 6,000 to 7,000 Sudbury and Wayland homes will have been cleaned at our local facility and returned to our local groundwater. Data from the six test wells surrounding the septage treatment facility shows total nitrogen in the groundwater has been improving steadily during the most recent nine quarters. All six wells were in compliance with the total nitrogen limit in each of the last two quarters. This result has been

achieved even though the septage treatment plant is sited adjacent to the two town's three former landfills at the top of Sand Hill on Route 20.

After December 2009, when the plant is closed, septage from our homes will have to be transported to distant sewage treatment plants to be processed. Each homeowner will have to pay more to haulers because transporting 12,500 pounds per pumping of sloshing, heavy, corrosive liquid to distant points is more expensive than disposing of it locally. The unappreciated bargain of having our own plant will be gone. Moreover, future costs of remote septage disposal are likely to increase dramatically because the sewerage plants willing to accept septage are themselves investing millions of dollars in mandated upgrades required by DEP (state) and EPA (federal) to protect rivers and streams.

It is curious that the Wayland Board of Selectmen has sponsored Town Meeting articles totaling $5.6 million, a large portion to be paid by the town, to rehab or rebuild a sewage treatment plant on the Raytheon site that will serve a few businesses and fewer homeowners in its immediate vicinity. It is equally curious that immediately after the vote, the Sudbury Board of Selectmen raised the possibility of constructing a joint sewage treatment plant on the site of the "decommissioned" septage treatment plant that would serve the businesses of both towns along Route 20. There seems to be no proportionality between the millions of dollars these boards advocate spending for creating or rebuilding small sewage treatment plants to serve small constituencies in contrast to their denial of $300,000 to $400,000 for small upgrades to a functioning septage treatment plant that has served the vast majority of homes in Sudbury and Wayland for so many years. This regrettable situation never should be allowed to happen.

There is nothing easy about cleaning septic tank pumping sufficiently well to meet groundwater discharge standards consistently. The DEP has strangled the septage treatment facility financially by limiting its output permit to an absolute limit of 25,000 gallons per day. This severely restricts the revenue that can be generated to fund operations, modernization and/or technological improvements.

When DEP mandated upgrades at their enforcement conference in February, they agreed to an increase in the discharge permit to 33,000 gallons per day to help pay for the required investment. The March 10 letter spelling out DEP's mandatory upgrades, however, eliminated that lifesaving provision, holding it out as an indefinite future "carrot" if all went well.

As Sudbury and Wayland homeowners who are being left to deal with the long-term consequences of this loss of a valuable municipal service, you need to know the facts:

Both boards of selectmen have consistently refused to take any responsibility for helping the Septage Committee to deal with its dilemma.

They have done nothing to organize and exert political influence at DEP to allow an

output permit modification that would allow the Wayland-Sudbury Septage Facility to survive financially.

They have absolutely refused to spend 10 cents of either town's money on behalf of the septage treatment facility.

They have forbidden the use of earned surplus of septage facility funds to accomplish the upgrades.

If you approve of the posture of your boards of selectmen, please call to tell them so.

If you do not approve of their recent vote to decommission (close) the Wayland-Sudbury Joint Septage Treatment Facility, please call to tell them so, and request their help to save the facility.
There is no other alternative left. The June 1, 2009 deadline to inform DEP of the decision of the two towns may seem decisive. However, there is every chance to reverse it if an informed citizenry demands it.

The choice rests with you, the homeowners of our two towns. The time for action is today.

Werner Gossels is the Wayland Board of Health's representative to the Wayland-Sudbury Joint Septage Treatment Facility Committee.

**City officials demand Koppers answers (*Gainesville Sun*)**

Sen. Bill Nelson and city commissioners say there is too much foot dragging over the contaminated site's cleanup.
By Megan Rolland
Staff writer
Published: Friday, May 22, 2009 at 6:01 a.m.
Last Modified: Thursday, May 21, 2009 at 11:26 p.m.
The city of Gainesville reacted Thursday to data released late last week showing high levels of contamination on a city-owned buffer between the Koppers wood treatment facility and a single-family residential area.

"I was shocked and appalled to learn that the area of contamination from the Cabot/Koppers Superfund site is now adversely affecting the daily lives of area residents," wrote Commissioner Lauren Poe in a letter to the Environmental Protection Agency. "For decades I have watched Beazer East engage in round after round of testing to determine the extent of this growing menace to our community ... Yet after years of testing, there is still no final resolution."

U.S. Sen. Bill Nelson sent a letter of his own to the EPA, something he has done a number of times while in office regarding the 25-year-old federally designated priority site.

"I understand the EPA has spoken with Beazer East, the primary responsible party, about immediate actions that will limit exposure," Nelson wrote. "Yet days have gone by and there is no visible effort to cover, fence off, or otherwise isolate the areas where contaminants were found."

Mitchell Brourman of Beazer East said that he wanted to assure residents that the data will be further analyzed.

"People should feel some comfort that this isn't just data that is being thrown out there," he said. "It is being addressed. The information is being put in the context of what risks are really deemed from that data ... likely health risks and potential health risks. We're not talking about acute toxicity."

The Alachua County Environmental Protection Department and Health Department told city commissioners Thursday that they will be holding a community information meeting as well as examining ways to secure or limit access to the 25-foot buffer where contamination is the highest for the chemicals dioxin, arsenic and benzo(a)pyrene.

All three of those chemicals, which pose various long-term exposure threats to human health, were found at levels exceeding state standards for residential areas.

The contamination was also noted in receding amounts 100 feet from the buffer heading into the neighborhood.

It's unclear whether Beazer East will be responsible for clean-up of the land outside the Koppers facility as part of the Superfund remedial plan.

Brourman said those conversations will be ongoing, but he asserted that the state's standards are extremely conservative.

**ENFORCEMENT**
**==========**

**EPA Seeks To Improve Civil, Criminal Coordination, Worrying Industry (*Inside EPA*)**

EPA is seeking budget increases in fiscal year 2010 in part to improve coordination between civil and criminal enforcement efforts, a move that is worrying industry officials

who fear undisclosed criminal investigations could be secretly gleaning information from civil inquiries with which companies are cooperating.

At a May 14 conference on criminal environmental enforcement policies, EPA and DOJ officials said that the administration also plans to use their increased FY10 enforcement budgets to complete Bush administration criminal enforcement tasks and to support what are expected to be highly litigated Obama administration policies on key priorities such as climate change and the Great Lakes cleanup.

“With some additional resources we’ll be able to focus . . . on the enforcement side as well as the criminal side,” Associate Attorney General Tom Perrelli told the American Law Institute-American Bar Association (ALI-ABA) conference.

Obama’s proposed fiscal year 2010 budget proposal would boost EPA’s Compliance and Environmental Stewardship budget for Environmental Programs and Management to $586 million from $562 million in 2009. The proposal would boost DOJ’s funding for Land, Natural Resources and Indian Matters to $110 million from $103 million in 2009.

Perrelli noted that budget constraints and enforcement priorities under the past administration continue to impact all litigating divisions of DOJ, while a number of upcoming environmental regulations are likely to increase the workload on both the defense and enforcement sides.

Fred Burnside, director of EPA’s Office of Criminal Enforcement Forensics and Training, said a budget boost would help to improve “information flow” between civil and criminal investigators at a time when industry is already concerned about the agency’s increasing use of so-called “parallel” criminal and civil investigations on a single subject, whether a corporation or an individual.

“I can’t emphasize enough the improved information flow within EPA. We work very closely with the civil enforcement program, and decisions are made about which way we need to go,” said Burnside, explaining that frequent meetings with his civil counterpart -- as well as officials in waste, water and other agency offices -- help to efficiently direct information toward the appropriate investigators, whether civil, criminal or both.

“We’re perfectly willing to work parallel proceedings,” said Burnside.

And although Burnside said the office is focused on managing the existing level of investigations more effectively, rather than increasing the number of cases referred to DOJ for prosecution, the office is currently seeking to restore the number of agents to the congressionally recommended level by next year and may seek further boosts under the Obama administration, a clue that both investigations and prosecutions could increase significantly. *Relevant documents are available on InsideEPA.com.*

“I think in the future we’ll get more agents,” said Burnside, adding, “I guess I can say it in one word -- budget.”

The promise of increased cooperation between criminal and civil enforcement is worrying industry officials, who fear that an initial civil investigation with which they are cooperating could be a “stalking horse” for a secret criminal inquiry.

Speaking at the ALI-ABA conference, Kris Dighe, assistant chief in DOJ’s environmental crimes unit, noted that there are restrictions on information flow between civil and criminal investigators. “We have a very robust parallel proceedings policy,” said Dighe, explaining that DOJ policy prohibits criminal investigators from sharing any information with civil investigators once a grand jury is convened.

But Warren Hamel, chair of the white collar defense group at Venable LLP, says the policy does not obligate enforcement officials to inform subjects of a civil investigation when they are also the subject of a criminal inquiry. “This issue comes up a lot in environmental matters because very often the first person we’re going to see is a civil investigator, not a criminal investigator,” he said.

Speaking to *Inside EPA* after his presentation, Hamel said the issues come into play during inspections. He noted for example that a Resource Conservation & Recovery Act civil inspector could bring allegations to the attention of a counterpart in criminal enforcement, without the knowledge of the company under scrutiny.

Hamel has also expressed concern with an April 2008 ruling in *United States v. Stringer* that established a very “pro-government” standard for when investigators have to disclose that such investigations are occurring. In the ruling, the U.S. Court of Appeals for the 9th Circuit held that the government had not violated the due process rights of defendants in a criminal securities case by deciding not to conduct the criminal investigation in the open.

“If other circuits follow the Ninth Circuit’s lead, the government will have far more leeway to conduct clandestine criminal investigations in close coordination with a civil investigation, or to use a civil enforcement investigation as a stalking horse to gather evidence for a criminal investigation,” Hamel wrote in a 2008 article for the Bureau of National Affairs’ (BNA) *White Collar Crime Report*.

Steven Solow, a former DOJ Environmental Crimes Section Chief and current Hunton & Williams partner, also noted at the conference that, “There is no wall preventing the civil side from turning over any information they gained to the criminal side.”

In a recent article in BNA’s *Environment Reporter*, Solow warned that a funding increase for EPA criminal investigators -- such as that currently sought by Burnside -- is “the surest sign of a coming uptick in criminal investigations and prosecutions.”

## FUEL

==========

### Renewable Fuel Standard Improvement Act Introduced in Senate (*Farm Futures*)

Ag groups voice support of legislation.
(5/22/2009)
**Farm Futures Staff**
Senator Chuck Grassley, R-Iowa has introduced the companion legislation to a measure introduced by House Agriculture Chair Collin Peterson, D-Minn., last week. The bill would ensure the biofuels industry isn't penalized for the Environmental Protection Agency's use of non-scientific data when determining greenhouse gas emissions. Grassley says he'll bring the issue up every chance he gets calling it obvious the EPA's rationale doesn't meet the common sense test. He says it's ridiculous to think Brazilian farmers are looking to see what Iowa farmers are doing to determine how they run their business.
The legislation improves several provisions with the expanded Renewable Fuels Standard that were enacted in the 2007 Energy Independence and Security Act. Among other things Grassley's bill ensures greenhouse gas calculations are based on proven science by removing the requirement to include indirect land use changes and exempts biodiesel plants in operation or under construction prior to the date of enactment of the 2007 measure from lifecycle greenhouse gas reduction requirements.
Agriculture and energy groups have voiced their support of the Renewable Fuel Standard Improvement Act. The American Farm Bureau Federation, National Farmers Union and Growth Energy sent a letter to Peterson and House Ag Committee Ranking Member Frank Lucas, R-Okla. commending them for pushing this bill forward.
The groups wrote, "It is our strong belief that the theory of using indirect land use calculations for determining the life cycle emissions of a liquid fuel is unrealistic and problematic. There are too many unanswered questions about how it is defined and implemented." According to the groups, using indirect land use calculations would also put U.S. agriculture in jeopardy by making farmers responsible for actions in other countries, which are beyond their control.

### Automakers See Flex-Fuel Mandates As ‘Hostile’ To Landmark GHG Pact (*Inside EPA*)

Automakers are opposing Democrats’ push to boost flexible fuel vehicle (FFV) mandates in the pending House climate bill by saying the mandates would be a “hostile” move after the industry made a pact with the Obama administration to drop their long-running opposition to first-time greenhouse gas (GHG) limits for vehicles.

However, industry faces opposition from House Energy & Commerce Committee Democrats, including panel Chairman Henry Waxman (D-CA) and environment subcommittee Chairman Edward Markey (D-MA), the authors of the bill that would

establish a cap-and-trade system to reduce GHG emissions being marked up this week. The lawmakers in a manager's amendment posted to the committee Web site May 18 allow the Department of Transportation (DOT) to mandate FFVs contingent on availability of alternative fuels and infrastructure.

Additionally, Rep. Eliot Engel (D-NY) has indicated he may oppose the bill unless it includes his legislation, H.R. 1476, the Open Fuel Standard Act, which mandates high percentages of FFVs regardless of fuel availability.

But the Alliance of Automobile Manufacturers is pushing back strongly against any Democratic bid to include FFV mandates in the climate legislation. Their opposition comes after automakers reached a landmark May 19 agreement with the administration and states to comply with new fuel-efficiency standards covering 2012-2016 model-year vehicles, which will impose a first-time national GHG auto standard and ends automaker lawsuits challenging GHG auto standards put forth by California and 13 other states.

In a May 19 letter to House Energy & Commerce Committee members, the alliance urges lawmakers "to oppose the FFV mandate provisions in the manager's amendment and any amendment to the bill that mandates FFV production." *Relevant documents are available on InsideEPA.com.*

Waxman and Markey were aware of the pending auto deal and included in their substitute bill language to reflect the GHG standards pact, according to a May 19 Markey statement. The original bill included language to create a federal fuel economy program by harmonizing federal standards with California's "stronger rules," Markey said. Following the pact on national GHG standards, the lawmakers removed the language, the statement says.

FFVs have long been controversial because automakers could receive fuel economy credit for building them, despite the fact that few were using alternative fuels, such as gasoline containing 85 percent ethanol (E85). In response, Congress in the 2007 energy law sought to phase out the FFV loophole, phasing out the mileage credit automakers can claim for building FFVs annually through model year 2019 and allowing zero credit in model year 2020 and beyond.

The auto industry is now furiously seeking to revoke any additional FFV mandates that could be imposed on top of the GHG emissions limits and fuel economy gains they agreed to under the Obama pact. That agreement, outlined in a joint EPA-DOT notice-of-intent to promulgate harmonized fuel economy and GHG rules, says that EPA will grant automakers FFV credit in line with the energy law only through model year 2015 and will consider allowing credit beyond that "if manufacturers are able to demonstrate that the alternative fuel is actually being used in the vehicles."

A source with Engel's office says it is unclear whether the lawmaker will seek to have his FFV bill included as an amendment to the overall climate bill, but Engel addressed the issue in his May 18 opening statement at the markup by stressing the importance of

expanding the use of FFVs. Engel's bill would mandate that 50 percent of vehicles sold by each manufacturer be FFVs by 2012, and raise that number to 80 percent by 2015.

The auto alliance's letter to committee members warns that the Engel bill would mandate production of FFVs "regardless of fuel availability. . . . An FFV mandate is a massive tax with no benefit . . . [because] most drivers still will not be able to find or use alternative fuel in most of the country."

Engel in his opening statement offered strong support for FFVs, saying he believed "with all my heart" that every car manufactured domestically should be able to run on ethanol, methanol or gasoline. "But no matter how hard I tried, Mr. Chairman, I couldn't seem to get this important language in the bill. . . . I hope we can make some changes as the bill moves forward."

Environmentalists who broadly support the auto industry deal with the administration say they understand the industry's opposition to including more mandates in the climate bill, with one source noting the "delicate balance" that has been struck. "Auto companies will abide by the agreement and not use FFV credits [to meet EPA and DOT standards], but in return out of Waxman-Markey they don't want mandates to produce FFVs because they would have to do that separately and on top of what they are already doing," one source says.

A second activist also agrees with the auto industry's position on FFV mandates in the climate bill. "I don't think we need an FFV mandate at this point. . . . Part of what we need to do is make sure [FFVs] are actually using E85 before we push mandates for FFVs. . . . That is the first step."

An auto industry source says automakers "absolutely support" the sunset provisions for FFV credits in the forthcoming joint EPA-DOT rule, as well as the Waxman-Markey changes to the bill that reflect the Obama pact.

Industry does not have strong objections to the managers' amendment that ties FFV mandates to fuel availability, the source says. However, if Engel continues his push for FFVs regardless of E85 infrastructure, "it will become an issue because our industry is 100 percent opposed to any mandates on FFVs and we would view any attempt to invoke them as hostile."

The industry opposition to FFV mandates comes as the Renewable Fuels Association (RFA) is seeking to tie the auto deal to its push to increase ethanol, including the industry's effort to allow mid-level ethanol in conventional gasoline in a waiver request now pending before EPA.

In a May 19 statement, RFA said that in the auto deal "President Obama has rightly recognized that improving vehicle fuel economy is an important tool in reducing America's reliance on foreign oil. . . . Raising fuel economy standards, allowing for ethanol blends in excess of 10 percent, and continuing to invest in next generation

renewable fuel technologies are the kind of forward-looking policies that will begin to change America's foreign oil habit."

In response, the auto industry source says, "For the ethanol industry to suggest this agreement says anything close to endorsing mid-level blends of ethanol is disingenuous at best. . . . This is a bad move for them strategically. I do not encourage anyone to put words in the mouth of Obama, the EPA administrator or the energy czar."

The first environmentalist also agrees that RFA's attempt to connect the auto deal with support for higher ethanol blends is tenuous. "The announcement was about the auto industry and resolving California and state issues. It has nothing to do with ethanol," the source says.

The second environmentalist says that instead of seeking to push its agenda through the auto industry agreement, RFA "should be working to get oil companies to have more E85 stations."

RFA did not return several calls for comment. -- *Dawn Reeves*

News Analysis

**Obama Deal Fails To Address California's Looming 2017 Auto GHG Rules (*Inside EPA*)**

While the Obama administration announced this week a landmark agreement with automakers and California officials to set new national fuel economy and greenhouse gas (GHG) vehicle standards for model years 2012 to 2016, a major battle may erupt within months when the state proposes new GHG standards for model year 2017 vehicles and beyond.

If California pursues stricter standards than those automakers or federal agencies would prefer, another contentious debate is likely to ensue about whether EPA should grant the state a Clean Air Act waiver to allow the rules to advance. California's original waiver request to implement its 2012 to 2016 standards sparked fierce auto industry opposition and lawsuits aiming to block the state from following through with its proposal. Industry is expected to drop the suits as part of the pact with the Obama administration on the new vehicle emission standards.

While the Obama administration has moved more toward California's desires for GHG reductions for the 2012-2016 vehicles, it may be reluctant to push the envelope further in the next round of fuel-efficiency and GHG standards-setting. Carol Browner, White House climate and energy advisor, acknowledged this week that another controversy

over a California waiver for model year 2017 standards could be on the horizon, but that "our strong preference is that the precedent we established here would be used again."

The California Air Resources Board (CARB), which sets emission standards for vehicles sold in the state, is scheduled next summer to adopt GHG standards for 2017-and-beyond model-year vehicles, according to a board spokesman. The rules are considered a critical piece of the state's plan to reduce GHG emissions to 1990 levels by 2020, which is required by the landmark 2006 state global warming law, AB 32.

The new proposal "would apply beginning in 2017," but the end date is undetermined, the spokesman says. "The end date means when the standards become the most stringent. The standards actually go on forever."

CARB has already publicly stated that it wants to reduce GHG emissions from vehicles 45 percent by 2020 compared with the 2002 fleet vehicles, which is 15 percent higher than what is to be achieved by the 2016 model year under the new national agreement reached this week.

CARB has also released several analyses since early 2008 claiming that its plans are more stringent than what the federal government is projected to propose for 2017-2020 vehicles, based on requirements in the 2007 federal energy act, which laid out fuel-economy targets to be pursued under corporate average fuel economy (CAFE) standards. For example, in a May 2008 technical assessment comparing GHG reductions in the U.S. and Canada under CARB's GHG rules and those required by the 2007 federal energy act, CARB officials claimed that by 2020, the state regulations would reduce 41 percent more GHG emissions than the federal rules. Whether this assessment must be updated to consider the Obama administration's GHG-reduction plans and policies is unclear.

Nevertheless, California officials "expect to pursue a traditional waiver request" for the next round of vehicle GHG standards, the CARB spokesman says. "When EPA is ready to adopt similar standards, we will discuss if merging provisions of the two programs is beneficial."

The waiver expected to be issued soon to California affecting the 2012-2016 model-year vehicle standards "should help establish the precedent for future waivers," the CARB spokesman adds.

EPA and the National Highway Traffic Safety Administration (NHTSA) are expected to propose the next round of fuel-economy and GHG emission standards for the 2017-2020 vehicles sometime in 2012, which may come about a year after CARB is scheduled to adopt its rules.

An auto industry source says it is very unlikely that EPA and NHTSA will simply copy CARB's next round of GHG limits as the next national standard for 2017-2020 vehicles.

“I don’t expect EPA/NHTSA will adopt CARB’s standards,” the source says. “I think they’ll adopt their own standards.”

This scenario would appear to all but ensure new and contentious debate over CARB’s forthcoming proposal -- and potentially more litigation from automakers against the state agency.

“California doesn’t have a waiver yet and even if they did they would need another waiver for 2017 and beyond,” the source says. “Assuming the state can get a waiver from EPA to implement its own tougher GHG standards is a big assumption,” the source adds, referring to the next GHG standards that CARB will propose.

The CARB spokesman says it would be up to the federal administration to decide whether to “match” the next round of California GHG standards with the federal approach. “We would hope they would continue to track” our standards. “We’ve indicated we want to move from 30 percent to 45 percent by 2020.” Federal officials have not indicated whether they also share this vision, the spokesman notes.

An environmentalist says CARB’s regulatory timeline for the next round of GHG standards appears very aggressive and indicates the board may not end up staying with plan, possibly setting up a scenario where CARB would not adopt the rules until 2012. This could provide a significant window for certain policies and views to change among the state and federal officials to avoid future conflicts, the source says.

“The world is a little different and a lot of things now are different than they were five years ago, when CARB wrapped up adoption of the [first] program and started working on the waiver process,” the environmentalist says. “I hope there is not a waiver-type battle and [sides being] locked into cold-war battles with the auto standards. Quite frankly, the auto industry does not really have too much of a leg to stand on to claim that more stringent standards are going to wreck them, because they continue to wreck themselves.”

If CARB does adopt its next round of vehicle GHG regulations next summer, the environmentalist says automakers should participate closely to influence the standards when they are first proposed in draft form, rather than suing over the rules and ignoring the public-input process, which the source argues was the industry’s tack the first time around. -- *Curt Barry*

News Analysis

**After Autos, EPA On Track To Regulate GHGS From Multiple Sources (*Inside EPA*)**

Now that EPA has announced its intent to regulate greenhouse gases (GHGs) from motor vehicles, the agency is on a track to regulate the emissions from multiple other sources, including power plants and other stationary sources and other mobile sources such as aircraft, that for now are backed by key Democrats in Congress.

The agency is already considering several regulatory measures to address these sources, including a new source performance standard for electric generating units that has been remanded from a pending court challenge. And last week, agency officials announced a plan for addressing aircraft emissions under the air act in concert with international regulators.

EPA's May 19 notice of intent (NOI) to regulate vehicle GHG emissions under section 202 of the Clean Air Act, in concert with Department of Transportation plans to strengthen corporate average fuel economy (CAFE) standards, marks the first time GHGs will be regulated under the law (*see related stories*).

The requirement stems from air act provisions that once EPA finds under one section of the act that a pollutant "causes or contributes" to endangerment of public health and welfare, it must promulgate regulations for sources of that pollutant under other sections of the act.

EPA's April 17 proposed finding that GHGs endanger human health and welfare was the primary step to first-time regulation of GHGs. EPA issued the finding in response to the high court's ruling in *Massachusetts et al. v. EPA et al.*, which instructed EPA to redraft its determination not to find endangerment from GHGs after the court found that carbon dioxide (CO2) is a "pollutant" subject to air act regulation.

The new notice of intent to propose section 202 mobile source regulations for GHGs sets in motion a process that will eventually bring all major sources of the pollutants under air act regulation once the rules are finalized, in the absence of action to limit EPA's authority by Congress, which is considering legislation to address the issue.

EPA's announcement may also have the added significance of putting pressure on Congress to act, at a minimum because many lawmakers fear that without legislation, EPA would be powerless to stop regulation of emissions from small sources, such as fast-food restaurants, hospitals, office buildings, schools and others.

But the rules for other sources that EPA is moving ahead to begin addressing over the next several months are also required in the current version of the House bill from Reps. Henry Waxman (D-CA) and Edward Markey (D-MA). For example, the bill sets performance standards for power plants starting in 2020, and requires EPA to promulgate rules to enact the provision two years after the bill is signed into law. The bill also includes mandates for EPA to promulgate GHG standards for a number of sources the agency has already been petitioned to address, including heavy-duty vehicles, marine engines, locomotives, nonroad engines and aircraft.

EPA's move to work on the rules following the recently-announced light-duty vehicle standards therefore could fit within mandates that may come down from Congress as well as its current mandate to regulate under the act.

Since the high court's ruling, EPA, environmentalists and industry officials have repeatedly acknowledged that rules to limit GHGs under one section of the act would trigger such requirements under other parts of the act.

"As EPA has considered how best to respond to the Supreme Court's decision in *Massachusetts v. EPA*, as well as how to respond to petitions and comments received in rulemakings asking EPA to regulate greenhouse gas emissions from mobile and stationary sources, it has become clear that implementing the Supreme Court's decision could affect sources beyond cars and trucks," EPA says in its April 2009 regulatory agenda.

In fact, in the wake of the high court's ruling, EPA received several petitions to regulate GHG from multiple sources.

"We have 7 petitions dealing with climate change," Office of Air Quality and Transportation Director Margo Oge said at a May 13 clean diesel conference in Washington, D.C. "We are exploring areas for being responsive to the . . . petitions now that the endangerment finding has been proposed." The petitions include calls for EPA to set GHG standards for aircraft, locomotives, ships and non-road engines such as construction equipment.

Oge said EPA is working with the International Civil Aviation Organization to promulgate rules for aircraft. "ICAO would be the place that we would like to . . . look for the next round of reductions from aircraft," Oge said.

On the stationary source front, environmentalists have cited power plants as a key source category they would like to see EPA act on soon after issuing the mobile source GHG standards. In the wake of *Massachusetts*, a federal appellate court has remanded portions of EPA's new source performance standard (NSPS) for power plants, which does not address CO2. EPA is also considering whether to include CO2 limits in a number of other NSPS rules, including boilers, refineries and landfills.

David Bookbinder, an attorney with Sierra Club, said recently that once EPA finalizes the endangerment finding, the agency has a mandatory duty under the air act to regulate GHG emissions from stationary sources and aircraft, while the agency has discretionary authority to regulate the emissions from other mobile source categories. -- *Jenny Johnson*

**Obama's EPA Squeezes CO2 Out of Automakers (*Examiner*)**

May 21, 8:48 AM ·

This week President Obama and his environmental regulators proposed new Environmental Protection Agency (EPA) rules that require automakers build more fuel efficient vehicles. The new rules require that the current vehicle company fleet average mileages of 27.5 mpg for cars and 23.1 mpg for trucks be raised to 39 mpg for cars and 30 mpg for trucks by 2016. The EPA claims that these new mandates are an effective way to reduce greenhouse gases associated with climate change. These new mileage standards are estimated to add $1,000 to $2,000 to the average new vehicle cost, which theoretically would be recovered by the vehicle owner in fuel savings over several years.

The new mileage standards are equivalent to those proposed under California's tailpipe greenhouse-gas program, which passed the State Legislature in 2002; but were never enacted because Bush's EPA disapproved. Obama officials have said that California will comply with the new EPA standards.

Under the influence of the recent multi-billion-dollar federal bailout fundings, autoworker unions and two of the three US car manufacturers have joined the EPA in the new fleet standards development. As government "rulemaking," these new mileage regulations are not the product of elected official deliberations; rather, they are direct administrative agency fiats (decrees).

These new mileage regulations, along with proposed carbon-taxing systems, will add broad and uncertain costs to all products and services in a time of global economic recession. The resultant US regulatory cost differentials will move more US manufacturers (and workers) to lower-cost foreign production, make US-built cars too costly for foreign markets, and distort global market liquidities.

As stated in a recent Yale scholars' article: *Current efforts to tax or cap carbon emissions are doomed to failure. The answer lies not in making dirty energy expensive, but in making clean energy cheap.*

**GENERAL**

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

**EPA Launches Retail Sustainability Portal (*EP Magazine*)**

May 22, 2009

The U.S. Environmental Protection Agency has launched a **Web portal** that will provide retailers with a central clearinghouse for information regarding environmental sustainability and compliance, according to the Retail Industry Leaders Association. The retail-specific tool is the product of an ongoing dialogue between EPA and its retail partners.

The portal includes all EPA content related to retail environmental compliance as well as links to many of the leading non-EPA resources for environmentally responsible retailers.

"Compliance assistance is an important tool to help achieve compliance with environmental regulations. This collaboration with the retail industry provides a cost-effective way to provide educational and technical materials to help the retail sector maintain and go beyond compliance. We appreciate the support of the retail leaders that helped EPA develop the Retail Industry Web Portal," said Lisa Lund, director, EPA Office of Compliance.

Published: May 21,2009

**List for 2009 Best Places to Work in the Federal Government (*News Blaze*)**

The U.S. Environmental Protection Agency ranks number 6 among the best places to work in the federal government, according to the Partnership for Public Service. The survey, 2009 Best Places to Work in the Federal Government, shows EPA moving up in the rankings from number 9 in 2008.

In the survey, EPA employees gave the agency high marks for being a family-oriented place to work and offering career advancement and performance-based awards. Employees also feel that EPA supports diversity, the leadership empowers employees in their work, and they have effective supervisors.

The Best Places to Work rankings, compiled by the Partnership for Public Service and American University's Institute for the Study of Public Policy Implementation, are based on a survey conducted by the U.S. Office of Personnel Management and represents the views of 212,000 federal employees. Agencies are ranked in three categories: large (2,000 or more employees), small or subcomponent. They are also ranked in 10 workplace categories, including leadership, work/life balance, and pay and benefits.

More information on the Best Places to Work: http://www.bestplacestowork.org

**A Driving Force in the Downturn (*Washington Post*)**

For Montgomery, Auto Industry's Crisis Hits Home

By: Dana Hedgpeth; Washington Post Staff Writer
Ed Montgomery is so new to his job that the only things on the wall of his sparse office at the Department of Labor are a couple of unemployment charts and a pair of color-coded maps highlighting the communities hardest hit by the collapse of the American auto industry.

The Midwest is a blotch of dark purple.

The maps show the challenge Montgomery, 53, is up against as Obama's point man to help auto workers and communities that depend on the sector. A month into the job and in between a recent trip to Michigan and a two-day tour of Ohio yesterday and today, Montgomery said a plea in Warren, Mich., reminded him of just how serious the crisis is for some cities. A United Way director told Montgomery the No. 1 request on a help line is food.

"That reminds you this is real. People are hurting . . . You look at numbers. You can look at statistics. You look at unemployment rates," he said, but hearing that example stuck with him.

"Until you actually confront the fact of what it means to try to live on and try to feed a family of four on the benefits that are out there . . . in some cases people don't have that or in some cases multiple family members have lost their jobs," he said. "It's palpable."

Creating a senior position in the administration to help a battered industry's workers is new and unique, according to labor historians and economists. There was no identical position for Pittsburgh's steel industry, for instance.

For now, Montgomery operates from mostly a bully pulpit. He has a skeleton staff and a small budget. Much of his work will involve pushing department secretaries in Washington to cut red tape and steering some money from the $700-billion plus stimulus package to hard-hit auto towns.

"Ed is their best hope," said Robert Schwab, associate dean at the College of Behavioral and Social Sciences at the University of Maryland. "But we've all got to recognize there are limitations to what Ed or anybody can do. You're fighting an economic fact: The auto industry is going to be a shadow of what it was."

In Flint, Sen. Carl M. Levin (D-Mich.) teased Montgomery about his "fancy title" -- director of recovery for auto communities and workers. The reality of Montgomery's job, Levin said: "He's our lobbyist."

Montgomery calls himself a facilitator or a coordinator. "I don't have the magic bullet, but I sure would like to help and see if I can move it forward and craft a solution and help people," he said.

Montgomery is not creating government-funded programs or initiatives. Instead, he is

trying to link struggling communities to ongoing federal efforts. For example, Montgomery told community and business leaders in Michigan about funds available through the **Environmental Protection Agency** to clean up old industrial sites. He also promoted stimulus funds to help extend small-business loans to companies including auto dealers and suppliers.

At a stop yesterday in Dayton, Ohio, Montgomery said $50 million in stimulus money would go to help train workers in auto communities for jobs in the green energy sector. Next week, he is expected to travel to Detroit to listen to Michigan energy officials and help kick off workshops to show cities and towns how to access nearly $80 million of stimulus funds to help them develop new, green jobs.

"The government has made a large amount of money available," Montgomery said. "My job is to make sure people who are affected in these communities have full access to those resources, are able to tap into them, know how to get to use them . . . quickly and effectively."

Montgomery left his job as dean at the College of Behavioral and Social Sciences to work for the administration. Having served as the No. 2 official in the Labor Department during the Clinton administration, he helped lead President Obama's Labor Department transition team. When Lawrence H. Summers, one of Obama's top economic advisers and Montgomery's graduate school classmate, called to persuade him to help with the struggling auto industry, Montgomery admits it wasn't a hard sell. "He had me at hello," he said.

Born in New York, Montgomery is the younger of two sons. When he was an infant, his parents moved to Minnesota, where his father worked as a machinist.

He recalled that he would get excited when he came home from school some afternoons to find his father's toolbox there -- not realizing at the time that it meant bad news. His father had been let go, again. After repeated layoffs, his father went into academia, eventually teaching at the University of Pittsburgh and Yale, where he became a labor historian.

Montgomery, whose wife is the granddaughter of a General Motors worker from Portland, Mich., lives in Howard County and drives a 2000 Lincoln. He used to drive his 1990 Harley-Davidson motorcycle to College Park. He's broad-shouldered and wears black-framed glasses that make him look like the college professor he was.

Montgomery has written extensively on labor unions, unemployment and other economic trends. He is careful to point out that textbooks often give examples of how things should work on average, but that the solutions may not work for every city. Health care jobs may thrive in one town, for example, while manufacturing parts for wind turbines may be a better fit in another.

"This is a bottom-up effort," Montgomery recently told a group of politicians, community

leaders and auto workers at a community college in Flint. "This is not Washington talking to Flint. This is Flint talking to Washington."

When Montgomery was young, his family eventually settled in Pittsburgh, where he said he watched the rise and fall of the steel industry. He recalled that in the early 1980s, when he was a young professor at Carnegie Mellon University, his friends would tease him that he needed to find a job that paid more.

They were making $30,000 to $40,000 a year with overtime in the then-vibrant steel mills. He was earning $19,000. But when the mills started closing, some of those friends were laid off. "It was real to see what they were going through," he said.

He said he sees parallels in the fall of Pittsburgh's steel industry and the auto industry's struggles. In their heydays, both sectors "generated a way for people to get good, middle-class jobs," Montgomery said.

"That paid well, provided health-care benefits that provided a pension. What too many folks are going through is the threat to that and in some cases losing those jobs and losing that middle-class existence."

**U.S. Postal Service employee wins EPA award (*Pacifica Tribune*)**

Pacifica,CA
Posted: 05/21/2009 07:00:00 AM PDT
U.S. Postal Service Environmental Specialist and Pacifica resident Patrick Langsjoen was among 19 Northern California recipients of the 2009 Environmental Protection Agency Region 9 Environmental Achievement Award. The ceremony, honoring Langsjoen and his fellow awardees, took place recently in downtown San Francisco. "I am both professionally and personally honored to be receiving a 2009 EPA Region 9 Environmental Achievement Award," Langsjoen said.

Langsjoen was recognized for his exceptional work and commitment to protecting the environment. Among his many achievements, perhaps his most notable was his proactive leadership role in transitioning the 31,000 Postal delivery vehicles in the Pacific Area to the

use of lead-free wheel weights. This effort alone reduced workplace occupational lead exposure by over five tons, and eliminated a quarter ton of lead from entering the environment each year. Langsjoen's lead-free wheel weight initiative served as the catalyst to transition the entire USPS delivery fleet of 215,000 vehicles to lead-free wheel weights, which when fully implemented, will eliminate as much as 37 tons of lead from entering the environment.

"It is a great pleasure and honor that we can recognize the innovative and important environmental work achieved by this year's impressive group of organizations and individuals, and the example they set for all of us to follow," said Laura Yoshii, the U.S. EPA's acting administrator for the Pacific Southwest region. "This year's winners and nominees have made superb efforts to protect and preserve our air, water and land, and increased awareness of the environmental challenges we all face."

Each year, the EPA celebrates and recognizes outstanding environmental advocates who have made a significant contribution toward enhancing and protecting the quality of the environment. Langsjoen was selected from among 200 nominees from businesses, government officials, tribes, media, environmental organizations and community activists.

In addition to the lead-free wheel weight initiative, Langsjoen was recognized for his proactive and innovative efforts in reducing the environmental footprint of the U.S. Postal Service. Based out of San Francisco, he provides environmental support to field units on a breadth of multi-media compliance issues, including recycling, environmental compliance and storm water runoff quality. Langsjoen was also instrumental in implementing a number of sustainability initiatives including establishing the San Francisco Vehicle Maintenance Facility as a "Clean and Green" site.

**MINING**

==========

**Ohio State U. president stays on coal mining board (*Investor's Business Daily*)**

Posted 05/21/2009 07:21 PM ET
Ohio State U., Columbus, OH, May 21, 2009 (The Lantern/UWire via COMTEX) -- Shareholders of Massey Energy voted Tuesday to re-elect Ohio State University President E. Gordon Gee to the coal mining company's Board of Directors, much to the dismay of environmentalists.

At the same meeting, shareholders voted down two environmental-protection proposals brought by other shareholders. Environmental and social action groups criticize Massey for its practice of mountaintop removal mining and its record of U.S. Environmental Protection Agency violations.

Some shareholders proposed an Environmental Progress Report to be compiled by Massey's Board of Directors six months before next year's meeting. The report would update shareholders on the progress of company reforms.

The reforms are required by a $20 million settlement with the EPA for more than 4,500 violations of the Clean Water Act.

In a proxy statement sent to shareholders before Tuesday's meeting, the Board of Directors recommended shareholders vote against the measure. It said it would include "in some fashion all of the topics in [the] proposal," in future Corporate Social Responsibility Reports.

The company has produced just one of these reports, but intends to use them to keep shareholders updated, according to the proxy statement.

The second proposal called for a separate carbon dioxide emissions report from the company. The report would outline how the company is dealing with growing legal and social pressures associated with global climate change.

Again, the board advised stockholders to vote no. It defended the company and industry and cited corporate support of clean-coal technologies. The board stated that "providing this report will not add value or provide additional information to the stockholders and will only serve to increase administrative burdens and costs."

Gee discussed his service on Massey's board in an April interview with The Lantern, the only time he has done so publicly. He defended his continued service saying "It would be very easy for me to get off the [board] because I really don't need to do that. But the other side of it, the reason I continue to serve, is the fact that I believe very strongly in environmental issues and it's better to be inside of the tent making a difference than it is [to be] outside complaining."

Gee has often publicly stated his support for seeking clean and renewable energy solutions. He is co-chairing a "partnership of public universities pushing to develop renewable energy resources," according to Columbus Business First.

OSU Media Relations said Wednesday that Gee "is not available for comment on this particular story."

Contacted Wednesday, a Massey receptionist said the company has only one public relations person and he is on vacation.

According to a report by Columbus Business First, Gee received $219,261 for his work on Massey's board last year. The Associate Press reported that he holds more than 28,000 shares in Massey, worth $531,000 as of last Wednesday. He made $1.3 million as president of OSU last year.

Environmental groups, local and national, are asking for Gee to choose his clean energy stance over his desire to influence Massey from the inside. His re-election, along with the defeat of the environmental proposals, brings new pressure from these groups.

Gee said in his Lantern interview that coal "represents 60 percent of the energy in this country. It's the only self-sustaining energy source that we have right now. So we need to get it right, or else we need to shut off the lights."

The group that started the campaign against Gee's involvement with Massey is Cleveland-based Ohio Citizen Action. Organizing Director Paul Ryder wrote on the group's Web site Tuesday that Gee "needs to do his homework on coal statistics." He went on to say that mountaintop removal mining comprises only 4.8 percent of the nation's electrical energy and it is anything but self-sustaining.

"I think it's very disappointing, ... a major conflict of interests," said Matthew Reitman, coordinator of the Ohio Student Environment Coalition. "I agree that it's easier to effect change from the inside. Gordon Gee has not done that. If he can demonstrate tangible results, that's one thing. He has been unwilling to produce any evidence that he's effected any major environmental or human rights reforms [at Massey]."

There are several activist groups fighting for Gee's resignation from Massey across the nation, state and OSU campus. Notable newcomers on this list are Greenpeace USA and the Sierra Club.

http://www.thelantern.com

**PESTICIDES**

==========

Posted on Thu, May. 21, 2009

**EPA sees no cause for worry in vegetables from community garden in KCK (*Kansas City Star*)**

The Environmental Protection Agency said Thursday that soil samples from a community garden in Kansas City, Kan., contain “low levels of metals and pesticides in the soil.”

“These levels are lower than amounts that cause health problems. Therefore, people who garden or eat vegetables grown in the garden should not have any adverse health effects from metal and pesticide exposure,” according to the agency.

The community garden became a source of concern after the EPA learned there were hazardous substances at a nearby site. The agency collected samples near North First Street and Franklin Avenue.

At a recent meeting, community activist Marvin Robinson asked EPA officials: “Will you be willing to come eat the first salad out of this garden?”

Sue Casteel of the EPA answered: “If we decide it’s safe, I would love to have some vegetables out of the garden.”

The EPA will schedule a public meeting to discuss the matter further. Community members with questions may call the EPA at 913-551-7463.

**POLITICAL**
**==========**

**Obama Pick Of Clinton EPA Water, Air Chief As Agency Deputy Draws Praise (*Inside EPA*)**

President Barack Obama's plan to nominate former Clinton EPA air and water official Robert Perciasepe as EPA deputy administrator is drawing broad praise from other former agency officials and environmentalists who tout the pending nominee's experience as a state and federal regulator and with the National Audubon Society.

Obama also intends to nominate longtime EPA official Colin Scott Fulton -- currently serving as the agency's acting deputy administrator -- to the position of EPA general counsel, according to a May 19 White House press release. The announcements mean that the president has named all but a handful of nominees for major slots at EPA, with a notable exception being a candidate to head the agency's Office of Research & Development.

Perciasepe served under former Clinton EPA Administrator Carol Browner as assistant administrator for water at EPA, then as assistant administrator for air and radiation. Browner is now serving at Obama's White House in a new climate and energy advisor position.

"He is a magnificent appointment," former EPA official Jim Reisa -- who now works at the National Academy of Sciences -- said in an interview. "He's very smart" and has "a lot of experience," Reisa said.

Frank O'Donnell, president of the activist group Clean Air Watch, also welcomed the announced nomination. In a May 20 blog post on the group's Web site O'Donnell said the nomination "should be a cause for celebration" for clean air advocates. "He is as qualified as anyone in the nation for this job. . . . He is a real problem solver. You may remember some of his great accomplishments included tougher standards for cars, SUVs, gasoline sulfur, diesel sulfur and diesel trucks and buses. We have cleaner air today thanks to things Perciasepe did a decade ago."

Before joining EPA, Perciasepe served as Maryland's environment secretary from 1990 to 1993, making him the latest in a string of EPA nominees with extensive experience working as a state official on the East Coast.

Perciasepe is currently the chief operating officer of Audubon, an environmental group whose mission is "to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity,"

according to the group's Web site. Perciasepe joined Audubon as senior vice president for public policy and head of the group's Washington, DC office in 2001.

Perciasepe's pending nomination fills a void left in the wake of Cannon's decision in April to withdraw his candidacy. Cannon's abrupt withdrawal was due primarily to an ongoing congressional inquiry into America's Clean Water Foundation, which was established to monitor farms' environmental performance but was disbanded after a critical EPA inspector general inquiry.

Meanwhile Fulton, Obama's pick to be EPA general counsel, has been serving as acting deputy EPA administrator since Feb. 4. In the 1980s Fulton served as an environmental prosecutor at the Department of Justice, and from 1990 to 1995 he held leadership positions in EPA's enforcement program. From 1995 to 1999 he served as EPA principal deputy general counsel and from 1999 to 2007 as a judge on EPA's Environmental Appeals Board.

## SUPERFUND

### Grant helping Libby asbestos victims (*KTVQ TV*)

Posted: May 21, 2009 06:54 PM EDT
Updated: May 21, 2009 07:00 PM EDT
A federal grant is on its way Libby to provide health care for people with asbestos-related illnesses.
Montana Senator Max Baucus says the $6 million grant from Health and Human Services could be the first step toward declaring a public health emergency in the asbestos-contaminated town.
The U.S. Environmental Protection Agency declared the area a Superfund site, but has not declared a public health emergency.

HHS is slated to announce the grant opportunity for the Lincoln County Health Department on Friday, and a consortium of at least three health care entities to provide screenings and health care services to people battling asbestos-related illnesses.

Baucus says he's been fighting hard for Libby residents and is pleased with this announcement.

"I've been so upset with WR Grace, so upset with prior administrations," Baucus said. "They've done some of the on the job cleanup but they didn't do the job in terms of medical care. This administration is finally going to do it."

Baucus added that if a public health emergency is declared, the Federal Government would be required to provide health care to Libby residents with asbestos-related disease.

**Ashland considers solar panels at Nyanza site (*Metrowest Daily News*)**

By Aaron Wasserman/Daily News staff
The MetroWest Daily News
Posted May 21, 2009 @ 11:24 PM
ASHLAND —
The owner of the Nyanza Superfund site and town planner are discussing whether it would be possible to install solar panels there.

No formal plans have been submitted and the idea is only preliminary, but the concept is one of the few options for what could be done at the site, where no redevelopment can pierce the cap enclosing the contamination.

"We're not close to certainty, but it is an interesting idea and deserves in-depth investigation, and that's what we're going to do," said Robert Gayner, who owns the property, named after the last company to produce textile dyes and other products there.

The federal Environmental Protection Agency has cleaned and monitored the site for about 25 years because large volumes of wastewater with chemicals and acid were discharged from the business. Soil, groundwater, surface water and nearby wetlands and the Sudbury River are contaminated as a result.

Redevelopment at the site is very limited because no foundations could be built that require boring more than a few feet into the capped landfill that covers contaminated soil. The cap is about five feet deep, said Jim DiLorenzo, an EPA project manager, during a tour of the site last Saturday.

Solar panels would likely not need a deep foundation to be installed, said officials, and the landfill is also a large, empty clearing.

"It is a very wide open area so it could lend itself to a good-sized solar field, and could power activities close by, so distribution would not be as difficult," said Planning Director Steve Kerlin. He added of the site, "There are not many options, but this seems reasonable."

Kerlin and Gayner said they have met twice in the past month to discuss the idea, and Gayner said he is researching its economic and engineering viability.

DiLorenzo said the Environmental Protection Agency and state Department of Environmental Protection would have to evaluate and approve any project. He said, "Conceptually, theoretically, a solar farm could work here," but Gayner "can't do anything that would compromise the integrity of the cap" and there is a "pretty thick deed restriction" on what the government will allow.

Kerlin said yesterday solar panels are allowed in Ashland's zoning bylaws, and would likely need a building permit and not Planning Board approval.

Aaron Wasserman can be reached at 508-626-4424 or awasserm@cnc.com.

**Superfund listing is weighed for two mines (*Tundra Drums*)**

ALEX DeMARBAN
May 21, 2009 at 11:05AM AKST
Two abandoned Alaska mines, operated when there were few, if any, environmental laws, might become national cleanup priorities.

The Environmental Protection Agency is considering listing the former mines — Red Devil mercury mine in Southwest and Salt Chuck gold, silver and copper mine in Southeast — as Superfund sites, a state official said.

They would be the first Alaska mines to receive that designation.

A listing would speed up long-needed cleanups and provide millions of dollars to do a thorough job, said Anne Marie Palmieri, a project manager with the state's contaminated sites program.

Contamination from both mines is extremely high and could put subsistence fishermen and hunters at risk, Palmieri said.

People  who live in villages nearby often hunt and fish for food, but said they avoid the sites. The entrance to the Red Devil mine is gated, though beer cans and shotgun shells, as if for target practice, have been found there, Palmieri said.

The state's contaminated sites program supports the listing, as do area residents, she said.

Officials with Calista, the Native regional corporation for the Red Devil area, don't want a listing until a study determines how much mercury is naturally occurring and how much is caused by mining.

And the Alaska Miners Association, which hasn't taken a position, worries that mining opponents will use the label to attack today's industry, including efforts such as the Donlin gold prospect near Red Devil and the Pebble gold and copper prospect in the Bristol Bay area.

"They'll say, 'Oh, look, mining, you can't trust the industry, irrespective of the fact this was done many, many decades ago," said Steve Borell, executive director of the Alaska Miners Association.

Over the years, numerous studies have been done at both mines. At Salt Chuck, toxins from the mine have shown up in subsistence foods.

As for Red Devil mine, no studies have been done showing the effects of the contamination on fish or area residents, Palmieri said. A Superfund designation would pay for such studies.

The mines operated when there were none of today's requirements for state and federal environmental permits. There were also no laws requiring mines be cleaned up before they're abandoned.

Massive piles of toxic tailings — the crushed and processed rock left over from the extraction process — were dumped out in the open.

Today, tailings must be contained in a protected and managed facility, such as a tailings impoundment, so contaminants  don't leach into water or soil.

**Mines' history**

The Salt Chuck Mine, about 10 miles from the Tlingit village of Kasaan, population 65, operated from 1905 to 1941. About 10,000 dump trucks worth of contaminated soil was piled on an intertidal zone south of the mill, according to Palmieri and a state fact sheet.

High levels of toxins — copper arsenic and polychlorinated biphenyls, or PCBs — have been found there.

Arsenic and PCBs have been linked to cancer. Copper adversely affects salmon, Palmieri said.

Also, vanadium — known to cause birth defects in animals —  and arsenic hve been found in clams and mussels at levels that pose a risk to human health risk, according to the fact sheet.

Ten-acre Red Devil Mine, once one of the largest mercury mines in the U.S., produced 2.7 million pounds of mercury between 1933 and 1971, according to a state fact sheet. The site is two miles upriver from the village of Red Devil, population 34.

It contains mercury at levels that are tens of thousands of times higher than state and federal limits, the fact sheet said. Very high levels of arsenic and antimony have also been found there.

Studies have shown that mercury can cause brain damage in humans, especially to infants and developing fetuses. Antinomy can cause heart and lung problems.

At least 5,000 dump trucks worth of contaminated tailings were dumped in the open there, the state said.

The tailings were used as fill for a barge landing in the Kuskokwim River and for pads beneath buildings.

Mounds of it ended up in Red Devil Creek, a tiny tributary flowing into the Kuskokwim River, because there was no other place to put it, Palmieri said.

Before the listing occurs, the EPA wants to know the state's position by June 30.

Gov. Sarah Palin or Larry Hartig, commissioner of the state Department of Environmental Conservation, will provide the state's formal response, Palmieri said.

To assess public opinion about the idea, state officials in recent weeks have informally solicited comments from area residents, mining officials, Native corporations, tribes and others, Palmieri said.

The comment period ended May 15.

Residents near both mines, fearful that toxic heavy metals might pollute fish and food they eat, want the benefits a Superfund designation would bring, Palmieri said.

**Red Devil's pike, salmon**

The village of Red Devil has no grocery store. Residents said they often eat locally caught pike, salmon and other fish.

Mary Willis, who heads the tribal government, said she wants the site listed.
"… It is a concern, the contamination to the people and if it (the mine) leaks out over time," she said.

Bob Vanderpool, owner of Vanderpool Flying Service in Red Devil, agrees. He said residents have been trying to get the site cleaned up for decades.

“There’s raw mercury all over the ground and people live all along the river,” he said. Borell, with the Miners Association, said he doesn’t know anyone who supports the idea. Given the weakened state of the nation’s economy, there may be other solutions than spending several million dollars on a cleanup.

For example, local residents at Salt Chuck already know they shouldn’t eat clams gathered near the site.

“It’s been known for some time, so is it feasible to put up signs that say, ‘Don’t eat the clams’ ?” he said.

Officials with Calista Corp., which would benefit if the Donlin Creek mine is developed on Native land, acknowledge there’s contamination at the Red Devil site. But they don’t think a Superfund listing is the best approach until further study is done.

“The public is justified in their concern but we think there’s a right way to proceed,” said Jeff Foley, Calista’s senior geologist.

Calista owns Alaska Newspapers Inc., which publishes this newspaper.

A study by the U.S. Geological Survey in 1999 found that arsenic in Red Devil creek exceeded federal drinking water standards.

The same study found that the creek water contained levels of mercury that were dangerous to aquatic life, but a 1995 study by U.S. Geological Survey reported just the opposite.

Also, in 1995, the U.S. Geological Survey found that mercury levels in the Kuskowkim River near the creek didn’t exceed the state’s drinking water standards.

This is because the creek trickles into the broad Kuskokwim, and contamination is immediately diluted, Foley said.

The mercury levels reported in the federal study may show the river water is safe for drinking, but it’s high enough to threaten fish that live in the water, and perhaps the people that eat them, Palmieri said.

Foley said much of the mercury and other heavy metals in the area, and along the Kuskokwim, is naturally occurring. Before the mine is designated a Superfund, it’s important to know what’s natural and what’s not. Not knowing could lead to a larger cleanup than needed, possibly releasing more mercury and other contaminants, he said.

The Bureau of Land Management, which manages the federally owned land, recently received some money that could be used to begin answering that question, he said.

But waiting until such a study is done could delay the cleanup for years, and possibly forever, in part because BLM must receive the money one step at a time, Palmieri said.

Determining which mercury is natural and which isn't would happen much faster if the site receives a Superfund listing, allowing the cleanup to proceed much more quickly, she said. A Superfund cleanup would also allow the state to partner with the BLM and EPA.

It wouldn't cause more pollution, she said.

"When they look at remedial options for cleanup, one thing they look at is how to conduct the work and not do more environmental harm," she said.

State laws also ensure that a cleanup can't occur if it causes more environmental harm than the contamination itself, she said.

David Griso, head of the Kuskokwim Watershed Council based in Aniak, about 76 air miles from Red Devil, has voiced support for a listing.

It needs to be cleaned up as soon as possible, he said.

"These levels are really high and they're happening right now," he said.

**Agency Eyeing Administrative Changes To Superfund Disclosure (*Inside EPA*)**

EPA is poised to convene a stakeholder discussion of administrative changes to Superfund in order to address a growing debate in the brownfield redevelopment community about mandatory contamination disclosure and the proper roles of state brownfields programs and the Superfund National Priorities List (NPL), sources say.

The changes come after a candid debate on a brownfields list service (listserv) last month caught the attention of some senior EPA staff, who have suggested holding a stakeholders meeting at this year's Brownfields Conference in New Orleans, LA, in November to discuss changes to the All Appropriate Inquiry (AAI) rule, which governs what prospective purchasers of contaminated properties must do to identify potential contamination.

David Lloyd, director of EPA's Office of Brownfields & Land Revitalization, said in a May 1 message to the Center for Public Environmental Oversight's (CPEO) brownfields listserv that EPA "should very soon have [its] political management in place" and that he "will put your suggestion at the top of my list to discuss and we'll see if we can organize a gathering to talk through some of the issues face to face."

An EPA spokeswoman said in a statement May 14 that the agency intends to create a stakeholder forum so AAI disclosure requirements can be discussed and fleshed out. “We are interested in planning a forum for dialogue with Brownfields professionals and other interested persons to talk about the All Appropriate Inquiries rule, and other aspects of the program,” the spokeswoman says. One possible venue for the discussion would be the Brownfields Conference in November, the spokeswoman says, adding that senior EPA staff plan to discuss the issue with the new agency waste chief.

Another source says the scope of the forum, in addition to disclosure of releases, would include determining which sites should be remediated through enforcement actions by EPA and voluntary actions by states, and a possible EPA review of state brownfield programs, though the agenda is not final and the scope could change over time.

“I think it is possible for such a forum to recommend policies to provide the additional environmental protection that [some advocates] are calling for without undermining reasonable brownfields deals,” the source said in an e-mail. “If a diverse committee comes up with consensus policies, that could lead to administrative changes, legislative proposals, or changes in practices at other levels, such as states.”

During the recent online debate on the CPEO listserv over the the appropriate uses of brownfields versus NPL cleanups and the Superfund law’s disclosure rules, some brownfields experts said the Superfund law essentially allows potentially responsible parties to hide contamination from authorities through “no look” clauses and other legal techniques in their sales agreements.

“I -- and most of the community activists with which I work -- have been discouraged by the trend, over the last decade, to address Superfund-caliber sites as Brownfields,” said CPEO Executive Director Lenny Siegel said in an April 24 message. “When sites that pose the greatest threat to public health and the environment are treated as Brownfields, there is a tendency to leave contamination in place. While usually this provides short-term protection, it may lead to unacceptable risks in the long run.”

Environmental attorney Lawrence Schnapf added that the determination for whether to list a site on the NPL would be made simpler if all contamination was made publicly available once it was known. “If they are required to disclose contamination, there’d be a level playing field between known contaminated sites, suspected contaminated sites and unknown contaminated sites,” Schnapf said April 24.

Mandatory disclosure is an issue Schnapf raised in March, when he said he was planning to draft a letter to Sen. Frank Lautenberg (D-NJ), the new chair of the Senate Environment & Public Works Committee’s panel on hazardous substances, asking him to amend Superfund law to make the disclosure of contamination on a property mandatory if discovered, as opposed to the current rules that only require disclosure if the contamination is part of an ongoing release.

Industry has vocally opposed the idea of mandatory disclosure, saying it would grind redevelopment to a halt and leave potential buyers no real incentive to undertake voluntary cleanups. One industry source said in March that mandatory disclosure would be “a spectacularly useful way to further depress the recovery” of brownfield sites. Environmental attorney Barry Trilling responded to the idea in an April 27 message on the CPEO listserv by saying mandatory disclosure is a solution to a problem that doesn’t exist -- the premise that developers are covering up contamination for profit.

**EPA Eyes Brac-style Redevelopment Model For Shuttered Auto Plants (*Inside EPA*)**

EPA is considering using a remediation model for soon-to-be-shuttered automotive plants based on the one used by the Defense Department (DOD) to bring former defense facilities back to productive civilian use, according to sources familiar with EPA’s preliminary discussions.

Chrysler’s bankruptcy discussions with Italian automaker Fiat are likely to result in the closure of an undetermined number of auto plants. With General Motors (GM) also re-evaluating its future capacity, there are scores of plants that could be potentially added to the Superfund rolls, many of which are likely to have extensive historical contamination, and EPA has just begun to consider what to do with the shuttered plants.

“I understand that Fiat is only opening three of the [Chrysler] plants, and the rest are going to close,” the source says. “Chrysler’s in bankruptcy, so . . . they’ll end up in Superfund probably. Who knows what’s going to happen with GM.”

EPA said in a statement that its brownfields program is working with the White House and other federal agencies to assist “the clean up, redevelopment and reuse planning for idled or closed factories” as part of the White House-led Auto Sector Task Force for Recovery of Communities and Workers. The agency said it “will work with the specific community and state to try to bring all available resources to help with this effort, including facilitating use of existing assessment or cleanup grants, revolving loan fund grants and targeted brownfield assessment monies.

“The approaches being discussed are the same that the program would apply in any affected community,” according to the statement. “To the extent the brownfields program can, it will also work to facilitate agreements for the transfer of these sites to communities, for the benefit of that community.”

The DOD model for closure came into use when the department initiated the Base Realignment and Closure (BRAC) program, which has occurred in stages over the past 20 years. Under that model, DOD would undergo a cleanup effort at the site in tandem with appropriate state authorities, and ultimately the property would be transferred to a

quasi-governmental local development corporation, which then would develop a plan to attract investors or other businesses to the site.

“Since the government is closing the plants the government is going to be expected to have a hand in the cleanup,” another source says. “I think they’re learning from BRAC to have a local land use process” instead of a more centralized model.

There has been no indication, however, of what EPA and states intend to do with automobile dealership sites that are closing by the hundreds across the country. On May 15, GM announced that it was not renewing contracts for 1,100 of its 6,000 dealerships, and Chrysler said it is looking to terminate 789 dealership agreements, about 25 percent of its dealerships. While contamination on those sites is likely far less extensive than at manufacturing facilities, there is a potential for petroleum, solvent and heavy metal contamination, making beneficial reuse of those sites problematic and stressing already overburdened state brownfields programs.

**TOXICS**

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

**EPA weighs in on Hangar One's toxic siding in letter to Navy (*San Jose Mercury News*)**

California
By Diana Samuels
Daily News Staff Writer
Posted: 05/22/2009 12:01:10 AM PDT
Updated: 05/22/2009 12:01:11 AM PDT
The U.S. Environmental Protection Agency has signed off on the Navy's proposal to remove the toxic panels covering Moffett Field's Hangar One and leave the underlying steel frame uncovered.
The Navy, which occupied the Mountain View Superfund site until NASA Ames took over in 1994, is responsible for cleaning up the contaminants, which include PCBs. But it hasn't made a commitment to repanel the Depression-era structure once its siding is removed. NASA has said recently it would be willing to take over long-term cleanup if the Navy pays for a new cover.

Removing the hangar's siding will help prevent future recontamination, a May 11 letter from the EPA says. The letter asks the Navy to develop a "comprehensive work plan" that would make sure no harmful toxins are spread during the removal process.

The question of repaneling the hangar isn't really the EPA's territory, said John Chesnutt, a regional EPA supervisor. But the EPA's letter does ask the Navy to make

sure the frame, which would be coated with a weather-resistant epoxy, is properly maintained and won't release any more toxins into the environment if it's left exposed.

"We'll have to adapt the proper maintenance strategy, whether there's siding or not," Chesnutt said.

Lenny Siegel, director of the Center for Public Environmental Oversight and member of the Moffett Field Restoration Advisory Board, said it was "not unexpected" that the EPA didn't ask the Navy to repanel
the hangar.

"It's not that they approve," he said. "It's just that it's outside their expertise and it wasn't going to be their issue."

He said he expects the hangar's skeleton to go uncovered for at least some time.

"There's no one who disagrees with putting a new cover on it, but no one wants to pay for it," Siegel said. "That's where we're stuck."

The next Restoration Advisory Board meeting is scheduled for June 9.

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

**Why are people complaining? (*St. Petersburg Times*)**

Florida
May 22, 2009 Friday
SECTION: B; Pg. 4B
Some low-quality Chinese drywall lets off sulfur-smelling fumes that seem to corrode copper wiring in sockets, air conditioners and other appliances. Some homes, including one in Tarpon Springs, have had the air conditioners replaced three times in a year. Other homeowners have complained about coughs and sore throats from breathing the fumes, which seem to get worse when the drywall is wet.

Why did we need to import drywall, and how much of it came to Florida?

With drywall in short supply during the building boom and Hurricane Katrina reconstruction, suppliers turned increasingly to China to fill the gap. An Associated Press investigation of shipping records put the amount imported from China at about 500 million pounds, much of it entering the United States in 2006. It's possible that Chinese drywall was installed in anywhere from 10,000 to 100,000 homes.

Is every bit of the imported drywall tainted?

That's unknown. While tens of thousands of homes across the country potentially contain Chinese drywall, Florida's Department of Health has received complaints from fewer than 400 homeowners. And some of the complaints have been unfounded. Sulfur is a naturally occurring element in gypsum, the main ingredient of drywall.

How widespread is it in the Tampa Bay area?

The state health department has received 19 complaints from our four-county region. Most complaints came from South Florida.

Which builders used it?

According to plaintiffs' attorneys, builders that used the stuff include Lennar, Taylor Morrison, WCI, Transeastern, Ryland and Standard Pacific.

What's the legal status of Chinese drywall complaints?

Dozens of homeowners have sued builders for installing what they claim was tainted drywall in their homes. Builders, including Florida-based Lennar, have sued manufacturers and suppliers of drywall for supplying them with subpar building material.

What have laboratory tests found in the Chinese drywall?

A 66-page Florida Department of Health analysis last winter concluded that samples of Chinese drywall contained higher levels of sulfur and organic compounds. State toxicologist and chief investigator David Krause said that while drywall can be corrosive, it poses no immediate health threat to people. Lab work performed by the **Environmental Protection Agency** showed Chinese samples contained sulfur, two compounds found in acrylic paints and levels of strontium 10 times higher than in an American sample.

Strontium? That sounds dangerous.

Not necessarily. Strontium is used in radioactive form to treat cancer and other ailments, but it's commonly found in China as a naturally occurring mineral called strontium carbonate, used in fireworks and as a clarifying agent in sugar refining. In announcing the strontium findings, the **EPA** reached no conclusions about health hazards.

Politicians predict calamities from Chinese drywall. In March, U.S. Rep Robert Wexler of Broward County called it a "significant statewide problem similar to natural disasters such as a hurricane, fire, or flood." Should we panic?

Hurricane Katrina killed thousands and caused tens of billions of dollars in damage. Chinese drywall is nowhere near that problem. No one has died. And, so far, builders themselves have covered most of the replacement costs for the drywall.

- James Thorner, Times staff writer Information from Times wires was included in this report.

**First Round of Lead Sampling Completed at Pittsburg, Kansas (*Kansas City InfoZine*)**

Posted Thursday, May 21, 2009 :: Staff infoZine

EPA continues to work with city officials to provide pertinent information to the public.

Kansas City, KS - infoZine - EPA Region 7 and its contractors have completed the first round of sampling for lead at 166 properties in Pittsburg, Kan. Some of the samples have been submitted for additional analysis to measure risks to sensitive populations, particularly for children under seven years of age and pregnant women. Results from the secondary round of testing should be available in approximately six weeks.

EPA continues to work with city officials to provide pertinent information to the public. All currently available sampling results have been sent to the owners of the respective sampled properties, along with data transmittal letters explaining the results. The Privacy Act prohibits EPA from making individual owners' sampling results available to the general public.

EPA has encouraged affected property owners to let EPA or the Crawford County Health Department know about any sensitive populations, such as young children or pregnant women, who may reside or be present for extended periods of time at their residences, so that appropriate measures can be taken to reduce exposures.

Lead levels that are found to exceed health-based standards generally require the removal of lead-contaminated soils from residential yards.

In addition to the sampling, blood-lead testing for children less than seven years of age is recommended. Children are more likely to be exposed to lead and are more sensitive to the effects of lead than adults. This exposure may result in learning disabilities or behavioral problems. Lead can damage the nervous system, kidneys and reproductive system.

Citizens can reduce children's lead exposure and its effects by washing children's hands after playing outside and before meals; vacuuming and dusting with a damp cloth to help remove dust that may have lead in it; and eating a diet high in calcium and iron and low in fat.

**WATER**

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

**As Senate Talks Stall, House Leader Backs Broad Bill On CWA Scope (*Inside EPA*)**

House Transportation & Infrastructure Committee (T&I) Chairman James Oberstar (D-MN) is vehemently defending his bill to clarify the scope of the Clean Water Act (CWA) from the concerns of some Senate Democrats and others that it would expand the law's jurisdiction rather than restore its scope to where it stood before two high court rulings.

"We're not remaking the face of the earth!" Oberstar said in an interview with *Inside EPA*, "we're just restoring the law prior to [the Supreme Court's] misguided interpretation of the act."

Oberstar said the savings clauses in the bill he introduced in the 110th Congress will prevent the legislation from expanding the scope of the water act.

The issue is key because Democratic senators seeking to negotiate a compromise bill clarifying the law's scope are grappling with how -- and whether -- to address warnings from the Supreme Court in its 2001 *SWANCC* ruling that the broadest reaches of the law, such as protections for isolated, intrastate waters, may be unconstitutional (*Inside EPA*, May 13).

Sen. Max Baucus (D-MT), as well as EPA and industry sources, say language in a bill introduced by Sen. Russ Feingold (D-WI), and supported in the past by Oberstar to clearly address the high court's warnings of the limits of Congress' authority under the Commerce Clause could end up expanding the scope of the law.

To address the concern, Sen. Barbara Boxer (D-CA), chairwoman of the Environment & Public Works Committee, has taken the lead on negotiations to resolve the issue.

But the dispute has delayed consideration of legislation in the Senate environment committee and it is not clear when, or whether, the committee will return to the issue after the Memorial Day recess.

The legislation the lawmakers are seeking is intended to clarify the law in the wake of two Supreme Court rulings that critics say have generally narrowed the law's jurisdiction over isolated wetlands, intermittent streams and other marginal waters. In *Solid Waste Agency of Northern Cook County (SWANCC) v. Army Corps of Engineers*, the court limited the basis for asserting jurisdiction over solely intrastate waters, while in *Rapanos, et ux., et al. v. United States*, the court provided two competing tests for determining jurisdiction.

In that context, Oberstar is arguing the savings clauses in the legislation he introduced in the 110th Congress, and which Feingold and other senators are backing in the 111th Congress, is sufficient to address critics' concerns.

The savings clause in Oberstar's bill states that nothing in the bill "shall be construed as affecting the authority of the Secretary of the Army or the Administrator of the Environmental Protection Agency (as the case may be)," and lists key authorities under the law.

The savings clauses "clearly spell out and restate the coverage of the '72 act, so that does not create new law.

That just reestablishes what was already there," Oberstar said.

**EPA 'Buy American' Waiver Sought To Prevent Boost For Convicted Firm (*Inside EPA*)**

EPA 'BUY AMERICAN' WAIVER SOUGHT TO PREVENT BOOST FOR CONVICTED FIRM
Critics of the stimulus law's "Buy American" procurement rules are urging the Obama administration to waive the rules for EPA water infrastructure funds, charging it could secure a partial monopoly for McWane, Inc. -- a U.S. pipe manufacturer recently convicted of multiple environmental crimes and still under active investigation.

The critics -- including Canadian government officials, as well as industry and states -- are also lobbying Congress to strip "Buy American" language from a recently passed House bill authorizing EPA water infrastructure funds through 2014 when the bill is conferenced with a companion Senate bill that is silent on the issue.

"I'm not sure making a winner of a company that openly flouts our environmental laws is a net plus for American workers," says one Democratic congressional source opposed to the rules.

But waiving the requirements for EPA-funded water projects may pose political difficulties for the administration because they are strongly supported by House Transportation & Infrastructure Committee Chairman James Oberstar (D-MN). Many Rust Belt Democrats, labor unions and environmental groups also generally support the requirements, arguing that they will help create domestic jobs.

Also, many of the "Buy American" critics are doubtful they will get a reprieve from the Obama administration, with one source noting that "at every turn" the administration has interpreted "Buy American" very strictly. For example, the White House Office of Management & Budget has ruled that if a portion of a project is funded with stimulus dollars, the entire project is subject to "Buy American" rules, sources say.

“Their attitude is, ‘we don’t care’” about EPA’s response to concerns the trade rules are creating monopolies, one industry source says.

The “Buy American” provision in the economic stimulus law generally requires projects to use 100 percent American-made goods. The rules are most strict for goods containing iron and steel, such as water pipes and other infrastructure equipment, which must be wholly manufactured in the United States. “Manufactured goods” may include foreign-made components and subcomponents, but the final manufacturing process must take place domestically.

Water equipment manufacturers in particular have been concerned about the trade rules because only a limited amount of water infrastructure equipment and materials is manufactured in the United States, sources say.

Many critics of the provisions are now calling on the administration to waive the “Buy American” requirements under provisions in the law that allow for such waivers if they are deemed to be “in the public interest.”

Canadian officials are urging a public interest waiver for the entire water infrastructure sector, while industry officials are urging waivers for instances where they say monopolies have been created by the rules. In a speech closed to the public at the National Clean Water Policy Forum May 4 in Washington, DC, Guy Saint-Jacques, Deputy Head of Mission for the Canadian Embassy cited the issue as a concern and called on the administration to grant the waiver.

“We . . . ask you to consider supporting a public interest waiver from the Buy American requirements for [the water infrastructure] sector in the interest of preserving the important economic integration between our two countries,” he said. *The speech is available on InsideEPA.com.*

The industry officials also say EPA could issue guidance that would allow the Federal Trade Commission to review whether “Buy American” is creating a monopoly for certain products.

While the administration has created a process, consistent with the stimulus law, to grant the waivers, so far they have given no public indication how they plan to act. EPA Administrator Lisa Jackson acknowledged in an interview that the agency has been concerned about the “Buy American” provisions limiting the ability of stimulus projects to use specialty equipment but was unaware that the measure could bolster McWane.

“The bigger issue for us, obviously, was that the ‘Buy American’ provisions in the case of some water infrastructure was interfering with our ability to get the specialty valves and pipes that aren’t made in this country,” Jackson said.

But proponents say that without a waiver, McWane stands to gain significant new market share from the “Buy American” provision because it is the only company that

produces certain pipe fittings domestically. Domestic rivals Sigma Corp. and Star Pipe Products sell the same fittings but produce them abroad.

The commercial boost for the company, one of the world's largest cast-iron and sewer pipe manufacturers, comes as federal environmental enforcement officials are touting the latest in a series of felony convictions against the company for criminal violations of environmental law.

A federal district court last month sentenced Atlantic States Cast Iron Pipe Co., a McWane subsidiary, and several of its executives as part of a broad prosecution under environmental and worker safety laws against the parent company that dates back several years. Under the latest ruling, Atlantic States is required to pay an $8 million fine for violations of environmental and worker safety laws as well as obstructing the federal investigation of its conduct. Several former executives were also sentenced to federal prison.

In the wake of the sentencing, Associate Attorney General Thomas Perrelli said in an April 24 statement that the case "should serve as an example for company execs and plant operations managers -- ignoring environmental laws and disregard for workers' lives and limbs will be met with prosecution and stiff sentences including multi-million dollar fines and prison time."

Fred Burnside, director of EPA's Office of Forensics and Training within the criminal enforcement office, told a May 14 meeting in Washington, DC that the company was still under active investigation and that there is a "pervasive attitude within McWane that they would sort of fly fast and loose."

In a statement to *Inside EPA*, McWane officials acknowledged that they currently hold a monopoly for some water infrastructure products but blamed unfair competition from developing countries that lack environmental and safety regimes.

"While it is true that we are the only domestic supplier in a limited range of products at the present time, that is because the other domestic suppliers have left the business because of unfair competition from China and India, where environmental and safety rules are almost non-existent. We are the last American company standing because of the unfair acts of the same countries and companies who now complain about Congress's effort to preserve these few remaining domestic jobs," the statement says.

The company said it has "more than adequate inventory and capacity" to service stimulus projects for the products in question, adding that some of its domestic competitors are capable of making fittings if the market has the need.

But critics are rejecting McWane's arguments that the "Buy American" rules will preserve domestic jobs. Several sources note that some businesses are being shuttered because they can not meet the procurement requirements, forcing additional job losses. "It would be a sad irony if more jobs were lost because of the stimulus than

created," one industry source says, adding that he knows of scores of businesses that are preparing to lay-off workers because of the "Buy American" requirement and the poor economy.

This source says that suppliers are finding the "Buy American" requirement creep into even private contracts because supplies are often contracted in bulk and clients are seeking assurances that all of the supplies are manufactured only in the United States.

Canada's Saint-Jacques echoed this concern, noting that there are cases where application of the requirements is creating monopolies at the sub-contractor level. "This will lead to artificially inflated prices and costs, wasting taxpayer money, and limiting the value of the stimulus itself," he said. "It is thus of concern to see Congress adopting renewed efforts in this sector that seem at odds with one of the most important interests that our publics share -- a competitive, market-based economy," Saint-Jacques said. -- *Jonathan Strong*

**60 environmental groups form bay coalition (*Baltimore Sun*)**

Choose Clean Water Campaign seeks stronger efforts from federal government
By Timothy B. Wheeler
May 21, 2009
More than 60 environmental groups from the six states whose rivers drain into the Chesapeake Bay have formed a coalition to press for stronger federal government efforts to clean up their local waterways, it was announced yesterday.

"Clean, healthy water is vital to the health of every one of the nearly 17 million people that live in this region," Jan Jarrett, executive director of Citizens for Pennsylvania's Future, said in a statement announcing the formation of the Choose Clean Water Campaign.

"For years, the Clean Water Act has offered the promise of cleaning up our waters," Jarrett said. "We need to move from promises to results for the more than 900 rivers, streams, and creeks that flow into the Chesapeake Bay."

The announcement comes a week after President Barack Obama signed an executive order calling for a greater federal role in the struggling 26-year-old bay restoration effort. Hilary Harp Falk, the new coalition's director, called the presidential order a "unique opportunity" to assure that local communities get the legal authority and resources to clean up and protect their waterways so they're safe for fishing and swimming, as federal law requires.

The group includes national groups such as American Rivers, Ducks Unlimited and the Natural Resources Defense Council, as well as regional and local organizations such as the Chesapeake Bay Foundation and 1000 Friends of Maryland. It plans to focus on

reducing all sources of pollution degrading the Chesapeake, but it also intends to press for changes in federal transportation policy to reduce environmental harm from highway construction, and for national legislation to address climate change.

"By coordinating our experiences, our expertise and our members, we will be able to speak with a clear, strong voice to make the tough choices that will give us clean water," said Tony Caligiuri, regional executive director at the National Wildlife Federation.

**Court Rejects Attempts To Block Manure Spreading Under RCRA (*Inside EPA*)**

A federal appeals court has rejected efforts by the Oklahoma Attorney General Drew Edmondson (D) to block poultry concentrated animal feeding operations (CAFOs) from spreading manure as fertilizer, a practice the state argues is polluting the water and threatening human health, while his pending lawsuit against the practice proceeds.

The U.S. Court of Appeals for the 10th Circuit in a May 14 decision in the case *Oklahoma v. Tyson Foods Inc.* ruled to uphold the district court's decision against the state's request for a preliminary injunction under the Resource Conservation & Recovery Act (RCRA), which would would have blocked the defendants from land-applying poultry waste until the state's broader case -- including cleanup and damages claims under Superfund law -- is resolved. *Relevant documents are available on InsideEPA.com.*

Last fall, the district court rejected Oklahoma's effort to win a preliminary injunction, arguing the state did not prove water pollution was coming from the poultry waste fertilizer -- and not human or other animal sources -- and rejected testimony from two key scientific witnesses in the case. But Oklahoma sought an interlocutory appeal of the district court's decision, which allowed the circuit court to hear an appeal of the injunction decision while the rest of the case continued in the district court.

The state argued that the district court incorrectly based its decision on whether the practice caused the pollution, rather than the more lenient RCRA standard that only requires that the plaintiff show the waste "contributed" to pollution that "may" endanger health or the environment. Oklahoma also argued that the district court unfairly rejected the expert testimony and did not provide enough facts to support its decision.

But the appeals court backed the district court's decision on all three issues. Although RCRA has a lower burden of proof than is usually required for a preliminary injunction, "given the district court's view of the evidence, Oklahoma failed to link land-applied poultry litter and the bacteria in the [Illinois River Watershed], so it could not meet even this low hurdle," Judge Paul J. Kelly said in the opinion. The court also agreed to reject the testimony of two scientists whose research showed a link between poultry waste and contamination, and argued that the district court provided enough facts to support its decision.

However, Judge David M. Ebel dissented in part from the opinion, arguing that even after excluding testimony from the two witnesses, the district court had enough credible evidence to show that the poultry waste posed a risk to the water. Ebel also argued the district court should have had a better factual basis for its decision.

But the judge notes, “Even with its evidence of risk evaluated under the correct legal standard, Oklahoma faces a steep uphill battle in order to succeed on its motion for preliminary injunction.” For example, the state would still have to prove irreparable injury that is not outweighed by injury to the defendants and prove that the injunction is not adverse to the public interest.

However, a source with the Oklahoma attorney general’s office says the 10th Circuit’s ruling on the preliminary injunction will not negatively impact the district court case because the two cases have different thresholds for proving the waste causes pollution. “It really doesn’t cause us concern because of the different personalities of the cases,” the source says.

For example, in the district court case, the state will not have to trace the bacteria in the water back to the operations or rely on testimony from the discredited experts as it had in the appellate case, the source says. The state simply has to show that the poultry waste contributes to water pollution, including nutrients, metals and hormones, which is a lower bar than proving likely harm from pathogens in the injunction case.

**Key Lawmaker Vows FY10 Bill Rider To Boost Water Grants Over Loans (*Inside EPA*)**

Rep. Norman Dicks (D-WA), chair of the House appropriations panel responsible for EPA’s budget, is vowing to include a provision in the agency’s fiscal year 2010 spending bill to allow states to award grants out of their water loan funds in an effort to help small communities afford infrastructure maintenance.

In recent years lawmakers have placed a greater emphasis on loans rather than grants in awarding EPA drinking water and wastewater funds, which are replenished as the loans are paid back. However, some in Congress now fear that smaller communities are being forced to forgo water projects because they cannot afford to repay the loans.

At a May 19 hearing of the House appropriations interior panel, Dicks expressed concern that Congress’ current focus on loans fails to meet communities’ needs. Many communities “simply cannot afford . . . to do the projects with the loans alone. The rates get so high that the communities can’t afford it. I really feel that we walked away.”

As a result, Dicks vowed to include language in the pending FY10 budget bill that would allow states to “forgive” a percentage of their revolving loans, allowing them to perform more like grants. Similar language was included in the stimulus act that required states

to use 50 percent of the water funds to forgive loan principal -- the actual loan amount not including interest -- or offer negative interest that would forgive a portion of the loan over time, or give grants.

Dicks' vow comes as two state revolving fund authorization bills that are being considered by congress -- one that was passed by the House and one that was approved by the Senate environment committee -- include language that allows principal forgiveness and negative interest to make the loans more affordable.

EPA Administratior Lisa Jackson, who testified at the hearing, lauded Dicks' move, but cautioned that if the loans are given out in grants, the funds will not replenish themselves. "The only thing I have to point out obviously in these fiscal times is that a revolving fund doesn't revolve if we give the money out in grants and so that's a serious issue in terms of financing a grant-based program," Jackson said.

Lawmakers also raised concern that Obama's budget had eliminated programs that provided grants to small communities but had no way to direct other funds to these areas.

Rep. John Olver (D-MA) pointed out that the administration had halted EPA funding for two programs that fund rural water projects, arguing that they were earmarks, but had no way to ensure that the increase in funding for water revolving funds would be directed to small communities, which may struggle to qualify for the funds.

Jackson acknowledged that the Obama administration's proposed FY10 EPA budget would eliminate funding for the National Rural Water Association and the Rural Communities Assistance Program, even though the programs had achieved good results in the past. And the states, not EPA, have discretion to decide where the revolving funds are used, which may be a problem for small communities that cannot meet loan repayment terms or grant requirements that require states to provide matching funds, Jackson said.

However, EPA cannot direct states how to spend the funds without additional authority from Congress, Jackson said. "[O]bviously if the communities can't afford to meet the match or can't afford the loan then there is an issue there, and not one that we can address without legislation," Jackson said.

**Activists, Industry Reach Consensus On EPA CO2 Storage Rule Issues (*Inside EPA*)**

Environmentalists and the energy industry have agreed on a few more changes they would like to see EPA make to its proposed rule designed to protect drinking water sources from contamination caused by carbon capture and sequestration (CCS) wells, including new limits on what type of storage wells are governed by the rule.

The 20 groups -- including American Petroleum Institute, BP America, Edison Electric Institute, Environmental Defense Fund and Natural Resources Defense Council -- are calling for EPA to narrow its rule to limit the types of formations included under the new Class VI well category to hydrocarbon reservoirs and deep saline formations.

The groups say that there is not enough information yet to trust that the Class VI regulations would be accurate and safe for other types of geologic structures, such as basalts, coal seams, salt caverns and shales. The groups say that until there is more information available, the alternate types of formations should be tested under Class V as experimental wells.

The groups last year had sought to reach a broad agreement on changes they hope to see to the rule but their final agreement fell short of their initial goals. EPA plans to issue before the end of May a notice of data availability to consider new data relevant to the rule.

The groups' new call to narrow the scope of the rule and other changes is included in supplemental comments the groups jointly filed May 14 and 15 on EPA's proposed drinking water act rule to address carbon capture and storage (CCS). *The comments are available on InsideEPA.com.*

The groups also suggested additional language in several other areas, including expanding a "non-interference principle," which is aimed at keeping separate sequestration areas from intersecting or interfering with each other. "Until more comprehensive approaches to basin-scale management are developed," the comments say, the groups recommend language that requires notification to a state's program director, and allows directors to modify requirements to "avoid such interference."

And the May 14 comments say that the agency's proposed language about well casing requirements -- that "the long string casing be cemented by circulating cement to surface in one or more stages" -- could limit monitoring for well integrity and be very difficult with deeper wells, and limits possibilities for use of future technologies.

The comments also ask EPA to adjust the rule's language regarding emergency and remedial response to require state director approval and notification during remediation of a project, though not in the event of an emergency situation. The comments do note, however, that environmentalists "reserve the respective views they have expressed regarding the appropriate legal authority for the rule, the definition of geologic sequestration, and necessary requirements needed if injection is to be allowed above the lowermost underground source of drinking water."

**Feds get to work on plan for bay (*Lancaster Newspapers*)**

EPA official tells local stakeholders that states will have to meet targets or face consequences for polluting the Chesapeake.
Lancaster New Era
Published: May 21, 2009
11:58 EST
LANCASTER
By CHAD UMBLE, Staff Writer
Now that it is in charge of the Chesapeake Bay cleanup, the federal government is working on the specifics of its plan to reduce the pollution that pours into the bay from Pennsylvania and other states.

And while it's too early to know if there will be a devil in the upcoming details, there will be at least some new consequences for states that don't measure up.

An executive order President Barack Obama issued last week establishes a Federal Leadership Committee, led by the Environmental Protection Agency, to oversee restoration programs previously led by states in the bay's watershed.

"In the last part of this whole implementation framework EPA is preparing to implement what we're calling some consequences, but frankly we don't know what those consequences are yet," said Robert Koroncai, associate director of the EPA's water protection division.

On Wednesday afternoon, Koroncai described the new federal role for the Chesapeake Bay Tributary Strategy Task Force, a local group of business leaders and government officials that has been considering the impacts of the cleanup effort.

As part of the new federal oversight, the EPA is pushing to double the pollution reductions and is moving from 10-year goals to establishing two-year periods for meeting agreed-upon benchmarks.

"This is dramatic to say the least," said state Sen. Mike Brubaker, who leads the local task force and is vice chairman of the state-federal Chesapeake Bay Commission.

Nitrogen, phosphorus and sediment are the key pollutants that make their way from streams and rivers into the Chesapeake Bay where they spur the growth of algae, choking off other aquatic life.

About half of Pennsylvania's waterways drain into the Chesapeake Bay.

By December 2010, Koroncai said the EPA will determine how much pollution the bay can handle, then leave it up to states in the bay's watershed to make sure they aren't contributing more than their share.

When Koroncai told the roughly 30 members of the task force that the federal government is looking to "enhance our tools" to get the bay cleaned up, Brubaker

pressed him.

"And one of the tools in your toolbox is a bigger hammer, and you've told us earlier that you don't know where the hammer is, what is looks like, you don't know the size of it, but you know it's in there somewhere," Brubaker said.

Koroncai agreed.

Koroncai added that while the federal government will be looking at the "affordability" of the cleanup program, it won't push anything that would put farmers out of business.

After the meeting, Brubaker said that while he didn't like the vagueness of the possible federal sanctions, he appreciated the EPA's willingness to meet with Lancaster stakeholders on what needs to be done for the health of the Chesapeake Bay.

"Doing nothing is not an option," he said.

*Staff writer Chad Umble can be reached at* cumble@LNPnews.com *or 481-6031*

**New bay coalition urges federal action (*The Capital*)**

Annapolis, Maryland
64 groups represent 400,000 people
By PAMELA WOOD, Staff Writer
Published 05/21/09
WASHINGTON, D.C. - With the slogan "Choose Clean Water," a new coalition of environmental and conservation groups is pressing the federal government to take more action to improve the health of the Chesapeake Bay.

The bay watershed coalition made its official debut in an event on Capitol Hill yesterday, though members have been working together behind the scenes for months.

The kickoff event attracted four congressmen and one U.S. senator, who all said they look forward to working with coalition members on bay issues.

"It's an incredible, valuable resources to our country and we are charged with bringing it to the quality it deserves. ... We want to use every opportunity we can to make progress," said Sen. Benjamin L. Cardin, D-Md.

Coalition organizers said the various groups can be more successful if they coordinate their efforts instead of working individually. The coalition consists of 64 groups representing 400,000 people.

"No one of us individually could make the kind of changes necessary," said Tony Caliguiri, an official with the National Wildlife Federation, one of the coalition member groups.

The coalition membership roster is a who's who of advocacy groups from throughout the six-state, 64,000-square-mile watershed that drains into the Chesapeake. It includes big regional and national groups such as the Chesapeake Bay Foundation and the Natural Resources Defense Council, as well as small, local groups such as the Friends of Dyke Marsh in Alexandria, Va.

The coalition has two employees who technically work for the National Wildlife Federation and are based in Annapolis.

Coalition members have picked three areas to target: the U.S. Environmental Agency's forthcoming "pollution budget" for the bay and its rivers, a federal highway bill, and climate-change legislation.

They want to make sure the EPA's pollution plan - which will set how much nutrient and sediment pollution can flow into the water - has penalties for noncompliance. The group has already sent a letter to the EPA making its case for a strong pollution plan.

Doug Siglin, the Chesapeake Bay Foundation's federal lobbyist, said coalition members want to make sure the pollution plan doesn't turn out to be a "farce."

For the highway bill, the coalition will seek to include requirements for controlling rainwater that rushes off the pavement when new highways are built.

And finally, members said they hope climate-change legislation will pass to ensure the Chesapeake's shores aren't overcome by sea-level rise.

The coalition promised to have a strong presence on Capitol Hill.

Jan Jarrett, president of coalition member group PennFuture, said the coalition has its work cut out for it.

"We solved the problems that were easy and now we're left with the hard problems," she said.

For more information, visit the Web site at www.choosecleanwater.org.

**Federal dollars flow to state water projects (*San Francisco Chronicle*)**

Kelly Zito, Chronicle Staff Writer
Friday, May 22, 2009
Petaluma kindergartners, coho salmon in West Marin County and golfers in Antioch are among those who stand to benefit from $439 million in federal stimulus money flowing into California's water systems.

The money, in the form of grants, subsidies and low-interest loans, is expected to spur hundreds of new water infrastructure projects as well as jump-start those stalled by California's budget disaster, state and federal officials said.

The U.S. Environmental Protection Agency Thursday awarded $280 million to the State Water Resources Control Board's Clean Water State Revolving Fund program for wastewater treatment, pollution control and estuary management projects. The state Department of Public Health's Drinking Water State Revolving Fund program received $159 million for drinking-water infrastructure improvements.

The award is one slice of the $6 billion in water system improvement funds contained in President Obama's American Recovery and Investment Act of 2009 - Washington's effort to shore up the nation's infrastructure while providing much-needed jobs.

The money comes with a catch - about 20 percent of it must go toward conservation, green infrastructure and energy-efficiency projects. In addition, the agencies will strongly favor "shovel-ready" projects because funds not used by February will disappear.

**Top priority**

Top priority will go to projects in disadvantaged communities - where the population makes 80 percent or less of the state median household income.

"This money is wonderful for those communities that don't have the ability to pay back those loans," said Barbara Evoy, deputy director of the State Water Resources Control Board. "The jobs they need in those areas are extra important, and we're very happy to solve a water-quality problem as well as help in job creation."

The size of projects vying to receive grants or loans runs the gamut - from $8,000 to install water meters in the Adams Springs Water District in Lake County to $22 million for a similar, though much larger, project in the city of Sacramento.

Downstream in Antioch, Gary Darling, general manager of the Delta Diablo Sanitation District, is counting on a $9.7 million loan to build a water recycling facility for the city of Antioch.

If completed as scheduled next summer, the sanitation equipment and pipelines will deliver about 700 acre-feet of recycled wastewater annually to a golf course and five city parks (1 acre-foot is equal to about 326,000 gallons).

The region must recognize that it makes little sense to water lawns with drinking water from Lake Shasta or Lake Oroville, two of the state's largest reservoirs, Darling said.

"We've turned the corner - we're now putting the 'waste' in wastewater in quotes, because we don't want to waste it any longer."

Dozens of other projects around the Bay Area maintain different goals.

In Sonoma County, Wilson Elementary School has applied for a project linking the school's water system into the city of Petaluma's system. The $1.1 million job would ensure a better drinking water supply for the school, which serves about 225 students from kindergarten through sixth grade.

**Reducing sediment**

Ecologists in West Marin County, armed with $564,000 in federal grant money, hope to restart efforts to reduce sediment deposited in Olema Creek, one of Central California's most important habitats for coho salmon.

The Marin Conservation Corps' effort was halted after California officials froze billions of dollars worth of water-quality and habitat-restoration projects late last year as a result of the state's financial crisis.

E-mail Kelly Zito at kzito@sfchronicle.com.

*http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/05/22/BA9117ORCF.DTL*

*This article appeared on page **B - 4** of the San Francisco Chronicle*

**Elkhart considering sewer rate hike to combat sewage overflow problem (*WNDU-TV*)**

Posted: 10:11 PM May 21, 2009
Last Updated: 10:11 PM May 21, 2009
Elkhart residents could soon be paying more on their sewer bills, as the city comes up with ways to pay to stop sewage overflow.
The city needs more money to pay for a federally-ordered plan to control overflows into area rivers.
The EPA has given Elkhart 25 years to implement its $134-million plan, and the city wants to raise part of the money by raising sewer rates by four percent in 2010 and 2011.
The rest will come from the federal stimulus package.
If you would like to voice your opinion about the possible rate hike, the city will be holding town hall meetings and taking comments via email.
The meetings will be held at the following times and locations:
June 17th at High Dive Park Pavilion
500 E. Beardsley Ave.
June 18th at Pierre Moran Pavilion
201 W. Wolf Ave.

The public can stop by from 4:00 until 8:00 p.m. to view displays and talk with project managers. Half-hour informational presentations will be offered at 5:00 and 7:00 p.m.

Elkhart will be accepting public comments until July 17th. You can email the city at cleanrivers@coei.org or send them a letter addressed to:

Utility Engineer
Elkhart Public Works
1201 S. Nappanee St.
Elkhart, IN, 46516

**Volunteer effort to monitor Connecticut River water quality (*ABC News 40*)**

Posted: May 20, 2009 11:23 AM EDT
By: Eric Fisher
HOLYOKE, Mass. (abc40) -- The Connecticut River has made great strides in water quality over the past few decades, but there are still days where it may be unsafe to enter the water.
"We have 3 different criteria," says Pooja Kanwar, Water Project Coordinator from Umass. "You can swim, boat but not swim, or you shouldn't do any of the above."

Typically, the poorest water quality is found during the summer months, and especially after heavy precipitation events. That's when runoff can boost counts of E. Coli, a bacteria that can make humans sick if there's too much of it in the water.

Until now, there have been few ways for the public to know what the water's current health is. But this year, a group of volunteers hope to change that. They're known as the Tri-State Connecticut River Watershed Initiative.

"I've seen the river in the 70s and 80s, and even the 90s" says volunteer Dave Jarret. "It's been coming uphill the whole time and I want that to continue."

Most of the volunteers spend a lot of time on the water, or they have personal attachments with the areas largest river.

"I'm doing it in memory of my husband who rode on the river for 20 years" says Kathleen Lovell, who will be testing water in Longmeadow. "He was always trying to encourage pepole to get down on the river and make use of it."

The volunteers will be required to visit one of several locations along the river. Participants range from Vermont to Connecticut, and are being trained by the water quality experts at Umass. They'll collect samples and record observations twice a week, every week until the end of August. Their information will be available to anyone who's interested in checking on the water quality, and it may also be submitted to the EPA to record the river's health.

Each volunteer will not test the sample themselves. They will only collect it, and then drive the sample to one of three labs. The labs are located in Hartford, Vermont, Greenfield, and Holyoke.

"A lot of people like to go swimming and boating in it, and we want to make sure they're aware of what's going on in the water," says Kanwar.

Anyone will be able to view the data at
www.umass.edu/tei/mwwp/ctrivermonitoring.html.

May 22, 2009

**Arsenic treatment plants are on line (*Desert Valley Times*)**

Bob Challinor / Desert Valley Times
Quietly for five weeks arsenic has been removed from groundwater pumped by Well #31.

The Well #32 arsenic treatment plant has been running three weeks. Plants at wells 28 and 29 are not currently running but are in compliance with federal standards that set a 10 parts-per-billion ceiling on arsenic in culinary water.

Most Virgin Valley Water District customers might be surprised that four of the district's federally-mandated five arsenic treatment plants are on line. The federal government told VVWD that four of the treatment plants had to comply with the new arsenic standards by May 23 or face expensive fines.

The district's last plant, which will treat water from Well #27, is expected to be on line before the Sept. 30 deadline set by the federal government.

"We are years ahead of everybody else," said Mike Winters, VVWD general manager. "We were fortunate to get the funding we got from the Army Corps (of Engineers), the EPA (Environmental Protection Agency) and the state, or our rates would be outrageous. As soon as the buildings are complete with the paint and trimming, we'll have a public open house. We'll let people take a look at them. It's so quiet in those plants the guys might have to take No-Doze to stay awake."

"We're making good water," said William (Pete) Peterson, VVWD treatment plant manager. "Whether or not the trace detector is dead on, we're below 10 parts per billion. Four plants are run-able. We're running 32 and 31. Plant at 28 and 29 are not running, but can be run. They're no less effective than the other two.

"We have nothing automated yet. We're trying to keep up. When we get automated, it will be a lot easier on Phillip (Abbott) and me. The job requires that we're up at the plants eight hours a day. We're pretty happy with where we are right now. All the water we're putting out is treated water. Bunkerville #2, which puts out water that has less than 10 parts per billion of arsenic, does not need treatment."

Winters has allowed himself a big sigh of relief now that the arsenic treatment plants are on line. Now he'll have to monitor operation and maintenance costs.

"The main goal was to get up and running to beat the deadline," he said. "The second goal is to get them to run on automatic. Right now we can do what we need manually to treat the arsenic. The big unknown is how much it will cost to run them (the plants) each year. It's possible that we could have another rate hike to take care of the maintenance. Until we get a year behind us, we won't know exactly how much it's going to cost."

Inside the Well #31 arsenic treatment plant two miles southwest of Scenic, big intake pipes move 2,222 gallons of water per minute into tanks containing filters. According to the "Arsenic Guard" trace detector, water coming into the plant contained 23.3 parts per billion of arsenic. Treated water contained 3.73 parts per billion of arsenic.

"We'll send samples to the lab and to the state," Peterson said. "The state will send back official results."

There is no chemical odor lingering in the plant. The operation is quiet.

“We’ve got a discharge permit for the water we pump out to two ponds,” Peterson said. “The water never goes outside the property. We pump clear water. We backwash the dirty water to a settling vessel, then we do decanting. We turn on the pump and run that water through the plant. We recycle the water and treat it again, so we’re losing only 15 percent to the backwash process.

“We’re washing filters now. That’s why the ponds have water in them. Right now we’re doing everything manually. As time goes on and we get automated we’ll see the basins without water.”

The filtering vessels inside the plant are measured for flow rate and pressure differential – the pressure of water coming in as opposed to the pressure of it going out. Peterson can tell from the monitoring screen which filter will require backwashing. A duplicate screen with flow rate and pressure differential readings is mounted in the filtering room.

“We can check the filtering system within the filtering room if we need to keep an eye on something in this room,” he said. “If a valve is not functioning properly. I climb up a ladder, throw a switch, push a button and close down the valve. We always have the ability to do these types of things manually if there’s a problem with our automated system.”

Peterson said the system is simple – a basic filtration system with chemical added – but is a proven method of treating arsenic in the water.

“It was a long hard road to this point,” he said. “I started off with this pilot (program) in Well #26 and run it eight and a half months. This is the culmination of all those hours running the pilot plant. We are providing water to people well within the EPA’s guideline. I’ve got damn good help with Phillip.”

MMC, the contractor that constructed the arsenic treatment plants, has conducted seven-day function tests on four of the arsenic treatment plants.

“The truth is the plants aren’t really turned over to us,” Peterson said. “The engineers are still doing partial usage – that allows us to run them. These things are nowhere near done. They still need to be painted and automated. I’ve been running #31 for three weeks and Phillip has been running #32 this week. It was seamless.”

Peterson said although some might consider the district’s arsenic treatment plant systems primitive, he considers them simple and effective for the setup the district uses.

“We have tremendous distances to move water,” he said. “We could use the media that’s disposable, and that probably would work as well and might be cleaner, but for the amount of vessels we have, it’s not cost effective, based on the studies we did.

Sometimes simple is the best. It does, in fact, work."

"We're excited to get it done," Winters said. "This was a big undertaking. The contractor did an extremely good job. We had just under one and a half percent in change orders. The engineers (Bowen and Collins) did a great job."

"I can't think of anything more important than what we're doing," Peterson said. "I take it very seriously."

**How clean is our water? (*Stuttgart Daily Leader*)**

By Lesley Valadez
5-21 Front-Water Level Graphic.tif
Leigh Kreimeier
Daily Leader
Thu May 21, 2009, 12:59 PM CDT
Stuttgart, Ark. -
Every household — or structure with a water meter — has likely already found the 2008 Annual Drinking Water Quality Report in their mailbox. This report is designed to inform citizen's of their water quality, which was assessed for 2008 in Stuttgart as safe to drink.

The Arkansas Department of Health has completed a Source Water Vulnerability Assessment for Stuttgart Municipal Waterworks. They found the water sources to have low to medium susceptibility to contamination.

Water can come in contact with contaminants of many forms and in several ways. Water travels naturally over the surface of the land and through the ground where it dissolves naturally. But during this journey it can pick up substances from the presence of animals or that of human activity.

In Stuttgart, the six water sources are wells that pump from the Quaternary System and Sparta Aquifers to two water treatment plants.

Contaminants can include microbial, inorganic, pesticides or herbicides, organic chemical and radioactive. In order to ensure tap water is safe to drink, the Environmental Protection Agency (EPA) has regulations, that limit the amount of certain contaminants.

Lead is another concern for drinking water, which can be harmful for pregnant women and children. The Stuttgart Municipal Waterworks is responsible for high quality drinking water, but is not responsible for the type of material used in plumbing components.

Stuttgart Municipal Water Works is on a reduced monitoring schedule for lead and copper. The last test was done in 2007. From that test, Stuttgart's water was found to

have no lead. However, pipes and other plumbing can deposit traces of lead in to water during travel from the well to the home. The next test will be conducted in 2010.

To minimize lead content, always let the tap run from 30 seconds to two minutes before using the water to drink or cook with.

If anyone is concerned about possible lead content visit www.epa.gov/safewater/lead for further information.

Stuttgart Municipal Waterworks routinely monitors for constituents in drinking water according to Federal State laws. If anyone has question about this report or concerning you water utility contact Darnell Bledsoe, Chief Water Plant Operator, at (870) 673-3246.

“We want our valued customers to be informed about their water utility,” the report said.

**********

**E-Clips contain copyrighted materials and are made available to designated recipients. Neither the E-Clips nor any individual article within may be further distributed.**

**********