**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

**Wednesday, August 04, 2010**


ADMINISTRATOR JACKSON ..... 3
- Fishermen circle boats in Alaska (*Los Angeles Times*) ..... 3
- Feinstein fights methyl iodide crop fumigant (*San Francisco Chronicle*) ..... 6
- Texas officials denounce EPA on two fronts (*Austin American Statesman*) ..... 7
- EPA's environmental center in N.J. getting upgrade (*Associated Press*) ..... 8
- Story also appeared: *North Jersey.com* ..... 8
- EPA: Dispersants no more toxic than oil (*UPI*) ..... 9
- EPA releases findings of latest spill dispersant tests (*Oil & Gas Journal*) ..... 10
- Texans Weigh In as EPA Considers New Air Pollution Regs for Oil and Gas Industry (*New York Times*) ..... 11
- Sierra Club, States File Challenges to EPA's 'Tailoring' Rule for Greenhouse Gases (*New York Times*) ..... 14
- Senators Press EPA and DOE on Ethanol Issues (*Domestic Fuel*) ..... 16

AIR ..... 16
- EPA undertakes overdue review on oil, gas rules (*Associated Press*) ..... 16
- Backers of measure to suspend greenhouse emission curbs prevail in wording dispute (*Los Angeles Times*) ..... 18
- Eastern Neb. landfill agrees to EPA penalty (*Associated Press*) ..... 19
- Texans weigh in as EPA considers new oil and gas regs (*Greenwire*) ..... 19

BP SPILL ..... 22
- EPA: Dispersant-oil mix no more toxic than oil alone (*CNN*) ..... 24

CLIMATE CHANGE / GLOBAL WARMING ..... 26
- EPA left to pick up climate change where Congress dropped the debate (*Washington Post*) ..... 26

Forget being nice. Environmentalists must get tough on climate change (*Los Angeles Times*) ..... 28
EPA rejects challenges to GHG 'endangerment' finding (*Today's Trucking*)..... 30
Sierra Club, states file challenges to EPA 'tailoring' rule (*Greenwire*) ..... 31
FUEL ..... 33
Nalco supports EPA oil dispersant research (*Naperville Sun*) ..... 33
EPA holds public meeting on Michigan oil spill (*World Socialist Web Site*)..... 34
Company offers to buy homes near Mich. oil spill (*Associated Press*) ..... 38
PESTICIDES ..... 39
Miss. order follows same ban issued by EPA (*Businessweek*) ..... 39
Feinstein objects to methyl iodide fumigant (*San Francisco Chronicle*) ..... 39
RECYCLING ..... 41
D.C. High on EPA's Green List (*NBC Washington*)..... 41
SUPERFUND ..... 42
Where Brooklyn And Queens Meet, A Quiet Parallel To the Gulf Spill (*New York Times*) ..... 42
TOXICS ..... 45
Groups seek ban on lead ammunition, fishing tackle (*Associated Press*) ..... 45
Inside the Beltway (*Washington Times*) ..... 45
EPA petitioned to ban lead sport hunting ammo (*Greenwire*) ..... 48
Agencies Seek EPA Meeting To Air Concerns Over Risk Studies, Methods (*Inside EPA*)..... 48
WATER ..... 51
EPA Faces New Hurdles In Bid To Craft Landmark Florida Nutrient Criteria (*Inside EPA*)..... 51

**ADMINISTRATOR JACKSON**

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

**Fishermen circle boats in Alaska (*Los Angeles Times*)**

August 4, 2010 Wednesday
Home Edition
SECTION: MAIN NEWS; National Desk; Part A; Pg. 1
Fishermen circle boats in Alaska;
They worry that a massive mine would destroy some of the world's last pristine salmon streams.
By Kim Murphy
DATELINE: DILLINGHAM, ALASKA
It is an unfortunate coincidence of geography that this lush region of wild rivers, grassy tundra and windy sea is home to two competing treasures of almost unimaginable value: the world's largest sockeye salmon run, supporting a fishery worth $440 million a year; and in the hills behind it, a massive deposit of copper, molybdenum and gold worth at least $300 billion.

With that much money at stake, preventing the construction of what could be the largest open-pit mine in North America -- at headwaters above Bristol Bay -- seems an impossible task.

As Pebble Ltd. Partnership prepares to submit its permit application outlining what kind of mine it wants to build by late this year or early next, Bristol Bay fishermen are fighting a fierce advance assault, hoping to convince government decision-makers and the public that poisonous mine drainage and some of the world's last pristine salmon streams are a combination too risky to contemplate.

"The location could not possibly be worse on the face of the earth," said former state Senate President Rick Halford, a Republican from the Bristol Bay region. "This is a place of incredible value. It's going to be probably the biggest environmental resource fight of our lifetime."

Last week, Environmental Protection Agency Administrator Lisa P. Jackson met with dozens of mine opponents at Dillingham High School, where tribal leaders and commercial fishermen began a push to have the EPA wield its veto authority.

For many fishermen here, it is inconceivable that an industrial-scale mine that could produce 8 billion tons of waste is being contemplated in an area home to rare, healthy runs of all five species of salmon. Interior Secretary Ken Salazar this year called the area "simply too special to drill" and placed it off-limits to offshore oil and gas development.

"It is a national treasure that we must protect," Salazar said.

Construction of the mine would bring an unprecedented level of industrial development to a region known until now for its majestic solitude. It would require an 86-mile road and miles of pipelines straddling salmon streams, a deep-water port in Cook Inlet, a power plant capable of generating up to 300 megawatts of electricity and 200 miles of power transmission lines.

Pebble Ltd. Partnership has withdrawn the 2006 permit applications that originally outlined the project, and company officials say they no longer know the scope of what they will propose. The initial plan included an open pit possibly 2 square miles in size, with tailings impoundments of at least 10 square miles, behind embankments up to 740 feet high.

Since then, Pebble has acquired additional land and discovered even more mineral deposits. But the company has hinted that it will limit the size of the project if the environmental risks are too great.

"One of our core operating principles is to be able to demonstrate coexistence with the fishery. It's not going to be one industry at the expense of another," said Mike Heatwole, spokesman for the partnership, a 50-50 venture between London-based global mining company Anglo American and Northern Dynasty Minerals Ltd. of Canada.

The Legislature has appropriated $750,000 for a full scientific review of the project's potential effects on Bristol Bay. In addition, a series of science panels paid for by Pebble is scheduled to begin public meetings in December.

But at last week's meeting with the EPA, many local residents said they feared the meetings were aimed at railroading approval for the mine.

The Pebble Mine is only the largest of several being contemplated on 1.1 million acres of the Bristol Bay watershed.

It would lie near the headwaters of the Kvichak and Nushagak rivers and just north of the 1,000-square-mile Lake Iliamna, nursery of many of the sockeye salmon.

Here in Dillingham and other communities along the bay, many fishermen fear that even a small amount of toxic copper sulfide generated when copper is mined -- leached through the porous rock or leaked from a broken pipe -- could be fatal to the fish that are their livelihood.

"Every other mine of this size, this type, near water, has contaminated the water. There is not one example they can give us of something this size and this type that hasn't," said Lindsey Bloom, 30, a commercial salmon fisherwoman from Juneau who has been working with the conservation group Trout Unlimited to fight the mine.

"I don't have problems with mining in Alaska in general," said Katherine Carscallen, a third-generation fisherwoman from Dillingham. "But Pebble isn't really something you can compare to the rest. It's unbelievably huge. All the rest of the mines in Alaska could fit inside Pebble."

Though polls show 80% of Bristol Bay residents opposed to the mine, many residents of the Alaska Native villages closest to the Pebble site, on the shores of Lake Iliamna, have broken ranks with the fishing towns along Bristol Bay and elected to remain neutral until mine operators conduct their studies and make a specific proposal.

They admit they are lured by the promise of 1,000 skilled, high-wage jobs over the 30-year life of the mine, 2,000 additional jobs during construction, and hundreds of millions of dollars in annual operating expenditures.

"Commercial fishing isn't sustaining and supporting our communities. We're basically dying up here," said Lisa Reimers, chief executive of the Iliamna Development Corp., a Native-owned venture at Iliamna which has already won some work during Pebble's exploratory operations.

The village lies just 15 miles from the mine site, and Reimers said she and other village leaders conducted their own research, which convinced them that healthy fisheries and mining can coexist.

"We're not pro-Pebble. We're neutral. We're trying to be open-minded about everything in our economy and figure out how our young people are going to support themselves," Reimers said. "Of course we care about the environment. This is our home."

In Dillingham and the surrounding communities, residents are settling in for what they expect will be a long, expensive and intense fight that they are coming to realize could outlast them.

"Our opponents are multinational corporations. They have great advantages. They often pay the most, they hire the best, and they're perpetual. They go on forever. We die. They can work on this kind of project for generations, and they often do," Halford said.

At a celebration for the end of sockeye season July 24 in Dillingham, Curyung tribal chief Tom Tilden, who runs his own salmon boat, warned the community that they must teach their children how to fight the mine.

"It's going to be a long battle," he said afterward. "When you have that kind of wealth laying in the earth, it's eventually going to be dug up."

kim.murphy@latimes.com

**Feinstein fights methyl iodide crop fumigant (*San Francisco Chronicle*)**

Carolyn Lochhead, Chronicle Washington Bureau
Wednesday, August 4, 2010
(08-04) 04:00 PDT Washington - -- Sen. Dianne Feinstein weighed in Tuesday against the use of methyl iodide as a crop fumigant in California, saying she has asked the Environmental Protection Agency to "reconsider" its approval of the chemical.

Federal intervention could override a proposal by state pesticide regulators to register the chemical for use on strawberry and other fruit crops to replace methyl bromide, which is being phased out because it damages the ozone layer. California grows 90 percent of the nation's strawberries.

Feinstein is a reliable and powerful ally of California farmers in immigration and water fights. But she has taken them by surprise with her efforts against a chemical they consider the only alternative to grow some of the state's biggest fruit crops.

Feinstein has developed a keen interest in the use of chemicals in food production, blocking a major food safety bill because it does not include a ban on bisphenol A, used to line food cans.

"I think we ought to be very careful what we do, and I've asked EPA to take a look" at methyl iodide, Feinstein said, adding that she is concerned that it could pose a hazard to field workers, especially pregnant women.

"This is very powerful stuff and I am increasingly of the view that chemicals do play a role in increasing disease in this country, whether it's asthma, whether it's cancer."

State farmers are pushing hard for approval of methyl iodide, saying they have no substitute to protect fruit crops from pests, other than using costly organic methods that many say are unworkable for large-scale commercial production.

Fruit crops are particularly prone to insects and disease and notoriously difficult to grow organically, at least in the flawless form consumers now expect.

"Nothing else is developed and ready to go, and gone through years of testing," said Wendy Fink-Weber, director of communications for Western Growers, which represents produce farmers in California and Arizona.

Under the proposed applications, Fink-Weber said farmers would be required to follow strict safeguards.

Feinstein acknowledged that "the farmers need a substitute. I understand that and I want to be helpful. I just want to know that it is a prudent standard and that it protects public health."

The EPA approved methyl iodide in 2007, during George W. Bush's administration. Feinstein wrote to EPA administrator Lisa Jackson on July 15 saying that decision was made "despite opposition by hundreds of leading scientists."

She cited a recent study by the state's Medical Toxicology Branch that found the exposure limits to methyl iodide under the EPA standard are much higher than required to protect farm worker health. The chemical is an endocrine disruptor and at various exposures has been linked to thyroid cancer and neurotoxicity.

Provisional approval of methyl iodide by the state Department of Pesticide Regulation provoked strong criticism from members of its scientific review panel.

E-mail Carolyn Lochhead at clochhead@sfchronicle.com.

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/08/04/MNB41EO86P.DTL

This article appeared on page A - 8 of the San Francisco Chronicle

**Texas officials denounce EPA on two fronts (*Austin American Statesman*)**

Letter rejects greenhouse gas rules, recent air permit issues.
By Asher Price

AMERICAN-STATESMAN STAFF

Published: 8:45 p.m. Tuesday, Aug. 3, 2010

Consolidating the fronts on which they're doing battle with Washington, Texas officials sent a defiantly worded letter to environmental officials Monday that merged attacks against greenhouse gas regulation and federal disapproval of the state's air permitting program.

"In order to deter challenges to your plan for centralized control of industrial development through the issuance of permits for greenhouse gases, you have called upon each state to declare its allegiance to the Environmental Protection Agency's recently enacted greenhouse gas regulations — regulations that are plainly contrary to United States law," reads the Aug. 2 letter from state Attorney General Greg Abbott and Texas Commission on Environmental Quality Chairman Bryan Shaw to EPA head Lisa Jackson and EPA regional administrator Al Armendariz .

"To encourage acquiescence with your unsupported findings you threaten to usurp state enforcement authority and to federalize the permitting program of any state that fails to pledge their fealty to" the EPA, the letter says.

In its railing against the federal government, the letter is nothing new. For months, the state's Republican leadership has framed the environmental debate as a state rights issue.

But the six-page letter marks what appears to be the first time that state officials have linked the EPA's effort to regulate greenhouse gases with its disapproval of permits for large refineries and power plants.

EPA officials had no comment on the letter. The agency proposed in September a rule to regulate greenhouse gases from large, stationary sources, such as coal-burning power plants and cement kilns. In Texas, many of those facilities carry state-issued pollution permits that the EPA now says are too lax.

If those businesses have to get new permits, they might have to add controls for carbon dioxide emissions, which they have said will cost them and their customers. The Texas officials argue in their letter that businesses whose permits are overturned should not have to add new pollution controls for greenhouse gases.

The letter "childishly and churlishly" blames the federal government, said Andy Wilson, who works on global warming issues for the Texas office of the nonprofit government watchdog Public Citizen.

"This is almost entirely political and not very substantive," he said.

"This is about protecting the climate. This is about clean air for Texas families and children, and protecting our natural resources in a responsible manner. We need less crass political partisanship and more hard work to solve the very real problems we face."

The letter also says that "Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emissions."

Under Texas' health code, the state has the power to "control air contaminants as necessary to protect against adverse effects related to \u2026 climatic changes, including global warming."

asherprice@statesman.com; 445-3643

**EPA's environmental center in N.J. getting upgrade (*Associated Press*)**

**Story also appeared: *North Jersey.com***

Tuesday, August 3, 2010

Last updated: Tuesday August 3, 2010, 6:54 PM
The Record
THE ASSOCIATED PRESS

EDISON — A federal environmental facility in New Jersey whose projects include testing
air quality at oil spills in the Gulf of Mexico and Michigan is getting an upgrade.

Five new trailers that will house testing laboratories are being outfitted at the Environmental Protection Agency's Edison Environmental Center. The total cost for the new trailers is between $4 million and $5 million, according to EPA Administrator Lisa Jackson, who toured the 205-acre site on Tuesday.

The laboratories test samples from Superfund and brownfields sites as well as chemicals and materials from hazards such as contaminated beaches, chemical fires and train derailments, according to David Wright, director of the EPA's Environmental Response Team.

Wright said the current labs are at least 20 years old.

The Edison facility's two mobile labs monitor air quality for toxic chemicals such as benzene and toluene, Wright said. They currently are supporting the EPA's efforts at oil spills in the Gulf of Mexico and in Michigan, where a ruptured pipeline sent hundreds of thousands of gallons of oil into a Kalamazoo River tributary last week.

"The ongoing response to the BP oil spill in the Gulf and the Enbridge spill in Michigan demonstrates just how crucial good science is to protecting communities and confronting
environmental emergencies," Jackson said.

About three dozen scientists work at the Edison environmental labs, out of a total work force of about 450, according to the EPA. The site also hosts the EPA's national emergency operations center and a research lab that studies approaches to treating contamination from storm water runoff.

**EPA: Dispersants no more toxic than oil (*UPI*)**

Published: Aug. 2, 2010 at 8:39 PM
WASHINGTON, Aug. 2 (UPI) -- Results of toxicity testing on dispersants used in the gulf oil spill found them no more toxic than the oil they disperse, U.S. officials say.

The Environmental Protection Agency published peer-reviewed results from the second phase of its independent toxicity testing on mixtures of eight oil dispersants, an agency release said Monday.

The dispersant used by BP in response to the oil spill in the gulf, Corexit 9500A, when mixed with oil, is generally no more or less toxic than mixtures with the other available alternatives, the report said.

The results indicate dispersant-oil mixtures are generally no more toxic to the aquatic test species than oil alone.

"EPA has committed to following the science at every stage of this response -- that's why we required BP to launch a rigorous dispersant monitoring program, why we directed BP to analyze potential alternatives and why EPA undertook this independent analysis of dispersant products," EPA Administrator Lisa P. Jackson said.

While there has been almost no dispersant use since the well was capped July 15 -- only 200 gallons were applied July 19 -- EPA's environmental monitoring continues, the agency said.

**EPA releases findings of latest spill dispersant tests (*Oil & Gas Journal*)**

Nick Snow
OGJ Washington Editor
WASHINGTON, DC, Aug. 2 -- The dispersant used in response to the BP PLC crude oil spill in the Gulf of Mexico is generally no more or less toxic when mixed with oil than other oil-dispersant mixtures, the US Environmental Protection Agency said. Results of its test of dispersant and oil mixtures indicate that they were generally no more toxic than crude alone, it added.

“EPA has committed to following the science at every stage of this response; that’s why we required BP to launch a rigorous dispersant monitoring program, why we directed BP to analyze potential alternatives, and why EPA undertook this independent analysis of dispersant products,” said Lisa P. Jackson, the agency’s administrator.

“We have said all along that the use of dispersant presents environmental tradeoffs, which is why we took steps to ensure other response efforts were prioritized above dispersant use and to dramatically cut dispersant use,” she continued as EPA released the test’s results on Aug. 2. “Dispersant use virtually ended when the cap was placed on the well, and its use dropped 72% from peak volumes following the joint EPA-US Coast Guard directive to BP in late May.”

The findings were released 2 days before the US Senate’s Environment and Public Works Committee was scheduled to hold a hearing on the use of dispersants after oil began to leak from BP PLC’s Macondo well in the gulf after it blew out on Apr. 20. The explosion of Transocean Ltd.’s Deepwater Horizon semisubmersible rig killed 11

workers, and the rig's collapse into the water ruptured connecting lines immediately beneath, setting off a massive spill.

A provision of HR 3534, which the House passed by 16 votes on July 30, also dealt with dispersants and their use in combating offshore oil leaks and spills.

EPA said it tested Corexit 9500 A, which BP used to battle the spill, as well as Dispersit SPC 1000, Nokomis 3-F4, Nokomis 3-AA, ZI-400, SAFRON Gold, Sea Brat No. 4, and JD 2000 in mixtures with Louisiana sweet crude oil during this second toxicity testing round on juvenile shrimp and small fish found in the gulf. The same eight dispersants were tested in the first round.

It found all eight dispersants were less toxic than the dispersant-oil mixture to the test species, that Louisiana sweet crude was more toxic to mysid shrimp than each dispersant alone, and that oil by itself had similar toxicity to mysid shrimp as the dispersant-oil mixtures with the exception of Nokomis 3-AA, which was found to be more toxic than oil.

EPA ordered BP to analyze potential alternatives to Corexit 9500 A for toxicity and effectiveness before it directed the damaged well's operator to reduce its use of dispersants. When BP reported it could not find an alternative less toxic than Corexit, EPA began its own scientific tests of the eight dispersant products, it said.

Contact Nick Snow at nicks@pennwell.com.

August 3, 2010

**Texans Weigh In as EPA Considers New Air Pollution Regs for Oil and Gas Industry (*New York Times*)**

By GABRIEL NELSON of Greenwire
ARLINGTON, Texas -- In the face of growing public concerns about pollution from shale gas development, industry officials and environmentalists urged U.S. EPA yesterday to modernize air regulations without blocking development of an energy source that could reduce U.S. dependence on foreign oil and coal-fired electricity.

In a meeting at Arlington City Hall, EPA officials offered the first public explanation of their goals in the review of four sets of air pollution standards for the oil and gas industry. A settlement with an environmental group requires that EPA issue proposals by Jan. 31, 2011, for the industry's new source performance standards (NSPS) and air toxics rules, some of which have not been updated in 25 years.

EPA Region 6 Administrator Al Armendariz, whose Dallas office oversees Texas and four other oil-heavy states, said the agency will take a "good long look" at regulations

that improve protection for human health and the environment. At issue are emissions that escape leaky valves, indiscriminate gas venting and uncovered storage tanks.

While dozens of homeowners and community leaders told agency officials yesterday that gas facilities are contributing to asthma and other health problems, Armendariz urged them to be patient.

"If we don't have these rules, then we don't have rules to enforce," Armendariz said. "We intend to move forward and move forward aggressively, but at the same time, where we don't have regulations to enforce, it puts us in a very difficult position."

EPA reviews will focus on shale gas, which has emerged over the past decade as a potential "bridge fuel" toward renewable energy. But while technological breakthroughs in drilling technology have allowed the natural gas sector to grow rapidly, that growth has not come without an environmental price.

The 279,000 active oil and gas wells that dot the Texas landscape are among the state's largest sources of nitrogen oxide (NOx) and volatile organic compounds (VOCs). Those emissions react with sunlight to form ground-level ozone, a main component of smog, which has been a persistent problem in the Dallas-Fort Worth region.

Improving air quality without setting back the natural gas industry will be a challenge, EPA officials acknowledged yesterday, a day when elevated ozone levels and triple-digit temperatures prompted the Texas Commission on Environmental Quality to issue an air pollution alert for the Dallas-Fort Worth area. Another hearing on oil and gas regulation is scheduled for today in Denver, where heavy energy development has also contributed to ozone problems.

Natural gas trade groups, as well as environmental organizations such as the Sierra Club and the League of Conservation Voters, voiced concerns yesterday that excessive regulations could give the upper hand to coal, which produces more emissions than natural gas when burned.

"A lot of people agree that natural gas is a clean bridge fuel," said Dallas resident Rita Beving, an environmental consultant for Public Citizen, in comments to the panel. "But what good is it if it's destroying people's water, land and air?"

Debbie Hastings, vice president for environmental affairs at the Texas Oil & Gas Association, said the type of emissions controls used by oil and gas producers depends on a variety of factors, including the age, location and size of a facility. When it comes to oil and gas development, she said, "one control scheme does not fit all," so EPA should let states come up with equivalents that achieve the same reductions in the most cost-effective way.

"We can develop this resource, to the benefit of our economy and energy security, and we can do so in a safe and responsible way," said Michelle Bloodworth, vice president for business development at the American Natural Gas Association.

Ozone as a backstop

Tighter new rules for the oil and gas industry, which would need to be finalized by next October under EPA's settlement with WildEarth Guardians, could impose additional costs but make it easier for states to meet federal ozone standards. One way or the other, though, ozone regulations would likely drive crackdowns on air pollution from the oil and gas sector, experts said.

EPA is currently reconsidering the nationwide ozone standard of 75 parts per billion that was finalized under the George W. Bush administration. By the end of the month, the agency is expected to release a proposal to lower the standard to between 60 and 70 ppb.

Jeremy Nichols, the WildEarth Guardians attorney who filed the lawsuit seeking review of EPA's standards, said the ozone standards would lead many petroleum-producing states to restrict drilling emissions without any additional prodding.

Though states might choose to impose new restrictions on the oil and gas industry, they have a great deal of flexibility in crafting their plans, Nichols said. And because much of the concerns about shale gas have focused on the localized effects of benzene and other toxics, it is crucial for the federal government to separately review the industry's maximum achievable control technology (MACT) standards, he said.

"Planning for the ozone standards is going to be inclusive. It's not going to be a lynching of the oil and gas industry," Nichols said in an interview. "Our feeling is, let's focus on this opportunity -- the review of NSPS and MACT -- to really target oil and gas, to focus on them and ensure that they're brought into the 21st century with regard to their air pollution practices."

That type of approach has frustrated industry groups, who feel they are being confronted with conflicting and redundant regulations from state and federal regulators.

Sen. James Inhofe of Oklahoma, the top Republican on the Senate Environment and Public Works Committee, sent a letter to EPA Administrator Lisa Jackson last month suggesting that the agency should delay the imposition of tougher oil and gas requirements until states submit their updated implementation plans for the ozone standard.

EPA's Armendariz has told the oil and gas industry to provide emissions inventories for NOx and VOCs, planning to use the data for the review of oil and gas regulations. But because broader surveys would be produced by the states in their 2012 implementation plans, Inhofe wrote, it is unreasonable to ask a single industry for them now.

"The focus of the information appears to be on areas with shale production and exploration," Inhofe wrote. If the agency is reviewing broader ozone standards, he added, "what is the basis for only requesting information from the oil and gas production and exploration industry?" (Greenwire, July 16).

August 3, 2010

**Sierra Club, States File Challenges to EPA's 'Tailoring' Rule for Greenhouse Gases (*New York Times*)**

By ROBIN BRAVENDER of Greenwire
The Sierra Club is challenging U.S. EPA's "tailoring" rule for greenhouse gases in a federal appeals court, asking judges to review the agency's determination about when greenhouse gases ought to be regulated under the Clean Air Act.

The group, along with a host of states and industry groups, wants the U.S. Circuit Court of Appeals for the District of Columbia to review the EPA rule, which would limit greenhouse gas permitting rules to only the largest emitters. The Sierra Club is supportive of the goals of the tailoring rule but filed a **lawsuit (pdf)** asking the court to review EPA's determination about when the agency must begin to limit industrial sources' emissions under the Clean Air Act -- a decision that was formalized in the final rule.

EPA has determined that greenhouse gas regulations for stationary sources will kick in starting in January, but the Sierra Club has argued that greenhouse gases have been subject to regulation under the Clean Air Act for many years and has warned that the decision could set a dangerous precedent.

"Through this petition, the Sierra Club seeks review only of the definition of 'subject to regulation' adopted by this rulemaking," said Joanne Spalding, a Sierra Club attorney.

EPA Administrator Lisa Jackson laid out the agency's timeline for starting regulation of heat-trapping emissions in March, when she formally announced her reconsideration of the George W. Bush administration's "Johnson memo."

Jackson said EPA would uphold former Administrator Stephen Johnson's determination that facilities are required to obtain New Source Review and operating permits only for pollutants that are subject to "actual control" under the Clean Air Act, as opposed to those that are subject to monitoring and reporting requirements, or other definitions (*E&ENews PM*, March 29).

Clean Air Act permitting requirements will be triggered in January, when automakers must begin to comply with EPA's first greenhouse gas standards for cars and light trucks, EPA determined.

State, industry petitions

A series of state and industry groups also filed petitions with the appeals court before the midnight deadline.

Alabama, North Dakota, South Dakota, Mississippi Gov. Haley Barbour (R), South Carolina and Nebraska filed a joint petition July 30 challenging the rule. The Louisiana Department of Environmental Quality filed a separate lawsuit yesterday.

Also among the challengers are the National Alliance of Forest Owners and the American Forest and Paper Association, which are demanding that EPA reconsider how the tailoring rule treats emissions generated by burning biomass.

EPA has said it is still evaluating how its climate regulations will treat biomass, but the tailoring rule as published treats biomass emissions the same as emissions from fossil fuels. But the groups want EPA to exempt biomass emissions from the regulation because they argue the energy source is "carbon neutral."

Unlike burning fossil fuels -- which releases carbon that had been trapped underground -- burning tree limbs, wood pellets and other organic materials are part of a natural cycle of growth and decomposition, the groups say.

Other groups that filed petitions yesterday: the Portland Cement Association, the National Federation of Independent Businesses, an industry coalition led by the National Association of Manufacturers, the Clean Air Implementation Project, the Missouri Joint Municipal Electric Utility Commission, the Utility Air Regulatory Group, the National Environmental Development Association's Clean Air Regulatory Project, Mark R. Levin and the Landmark Legal Foundation, the South Carolina Public Service Authority, and the Energy Intensive Manufacturers Working Group on Greenhouse Gas Regulation.

The Center for Biological Diversity also filed a petition yesterday, arguing that the tailoring rule exempts too many big polluters (*Greenwire*, Aug. 2).

Groups that filed lawsuits last week include Peabody Energy Corp., the American Farm Bureau Federation, the National Mining Association, the Georgia Coalition for Sound Environmental Policy and the U.S. Chamber of Commerce.

Two steel groups -- Gerdau Ameristeel US Inc. and the American Iron and Steel Institute -- and the industry-backed advocacy groups Coalition for Responsible Regulation and the Southeastern Legal Foundation filed additional challenges in June.

**Click here** **(pdf)** to read Sierra Club's petition.

*Reporter Patrick Reis contributed.*

**Senators Press EPA and DOE on Ethanol Issues (*Domestic Fuel*)**

Comment on this post Posted by Cindy Zimmerman – August 3rd, 2010
Senator Tom Harkin (D-IA) and a group of bipartisan senators met with EPA Administrator Lisa Jackson and Department of Energy (DOE) Deputy Secretary Daniel Poneman this week to discuss delays in the approval of E15 ethanol blend for vehicles, as well as other key issues related to the ethanol industry.

Harkin says they talked with the officials about the importance of moving to E15, the need to mandate the manufacturing of flexible fuel vehicles and the installation of pumps that provide for high ethanol fuels and loan guarantees for biofuel pipelines. “We all agree that we must reduce our dependence on foreign oil, and that this will require a multi-pronged strategy, including more efficient use of transportation fuels and expanded use of alternatives to petroleum-based fuels,” Harkin said in a statement. “We also recognized that biofuels have already significantly displaced petroleum based fuels in the transportation fuels markets, reducing our reliance on oil imported from overseas. And we all agreed that biofuels have the potential to make much larger contributions.”

Harkin says he was pleased to hear in today’s meeting that DOE is also evaluating E20 in its battery of vehicle tests. “This may well provide the basis for EPA approval of E20 as well as E15 for use in all gasoline-fueled vehicles early next year,” he said. However, Harkin noted that he remains frustrated that testing is not yet complete on E15 and that the deadline has been extended twice. “This process seems so much more difficult that it was when E10 was approved. While I had hoped that E15 would be available by now to consumers, Secretary Jackson and Deputy Secretary Poneman were very helpful in fully explaining the rationale for the protracted timeline, and I am looking forward to hearing EPA’s decision on E15 soon,” said Harkin.

**AIR**

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

**EPA undertakes overdue review on oil, gas rules (*Associated Press*)**

By CATHERINE TSAI (AP)
DENVER — The Environmental Protection Agency is reviewing four air emission rules for oil and natural gas operations, albeit many years later than it should have done so.

The EPA is supposed to review the standards every eight years under the Clean Air Act, but some of the regulations in question haven't been updated since 1985, while others were last fully reviewed in 1999.

WildEarth Guardians and the San Juan Citizens Alliance noticed and sued the EPA to force a review.

"That's kind of a slam dunk. It's hard to win a case like that," said Bruce Moore, senior technical adviser with the EPA's Office of Air Quality, Planning and Standards.

The EPA reached a settlement in which it agreed to propose any changes by Jan. 31 and take final action by Nov. 30, 2011.

The agency is going a step further, though. It also will take a broad look at the oil and gas industry to identify and quantify sources of air pollutants, consider strategies for reducing them, and determine the environmental and economic effects of those strategies.

The EPA held public meetings in Arlington, Texas, on Monday and in Denver on Tuesday to get information from the public and industry representatives to help with its review.

Two regulations the EPA is reviewing cover new gas processing plants. One involves leak detection of volatile organic compounds, and the other involves sulfur dioxide emissions.

The EPA also is reviewing national emissions standards for hazardous air pollutants in oil and gas production, and in natural gas transmission and storage operations.

Regulators have lagged in updating rules, even as new strategies like horizontal drilling and hydraulic fracturing have boosted the amount of natural gas that is considered recoverable.

Elevated ozone levels in the winter in the West have been attributed to volatile organic compounds from the oil and gas industry, Moore said.

While the EPA has rules for some aspects of oil and gas operations, other areas are not covered by current regulations.

Kathleen Sgamma of Western Energy Alliance, a trade group, said at the EPA meeting Tuesday that onerous regulations would make it more difficult to produce energy domestically and lead to more importation. She noted other sources of air pollution and said regulators should focus on industries with higher emissions.

Environmental groups noted that industry has undertaken some voluntary measures to mitigate pollution but said those efforts were insufficient. They also said natural gas is

cleaner than coal but that they want to ensure industry makes use of modern technology to reduce emissions.

**Backers of measure to suspend greenhouse emission curbs prevail in wording dispute (*Los Angeles Times*)**

August 4, 2010 Wednesday
Home Edition
LATEXTRA; Metro Desk; Part AA; Pg. 4
Judge alters Prop. 23 label;
By Margot Roosevelt
A Sacramento Superior Court judge Tuesday amended the ballot description of Proposition 23, the November initiative that seeks to delay the state's global warming law.

Judge Timothy Frawley agreed with backers that parts of the original language were misleading and would prejudice voters. The new language changes the description of the law's intended target from "major polluters," a term Frawley criticized as having "an obvious negative connotation," to "major sources of emissions."

Frawley also ordered removed a reference that Proposition 23 would cause the state to "abandon" its law to control greenhouse gases. The new language will say the initiative would "suspend" the law.

The ruling came in a lawsuit by the Howard Jarvis Taxpayers' Assn. against state Atty. Gen. Jerry Brown, who drafted the title and summary of the initiative for the ballot. Brown, who is also the Democratic nominee for governor, called the judge's ruling reasonable and said he would not appeal.

The tussle over a handful of words might seem arcane. But the title and summary printed on ballots can influence the outcome of an election when it comes to voting on a slew of complex initiatives, which is why the language often ends up in court.

Anita Mangels, a spokeswoman for the Yes on 23 campaign, called the ruling "a tremendous victory. It is much clearer now that Proposition 23 is not a blanket repeal of every anti-pollution measure the state of California has ever enacted."

But Jane Warner, president and chief executive of the American Lung Assn. in California, countered: "Despite the court's changes, the simple fact remains: Proposition 23 is a deceptive proposition bankrolled by Texas oil companies that will kill California's clean air and clean energy standards, resulting in more pollution."

The initiative was launched by San Antonio-based Valero Energy Corp. and Tesoro Inc., which operate refineries in California. It would suspend AB 32, the greenhouse

emissions law that is the strictest in the nation, until the state's unemployment rate drops to 5.5% for at least a year, which has not occurred in three decades.

Under AB 32, emissions from transportation, industry and other sources would be slashed about 15% from today's levels by 2020. Its suspension would delay such regulations as a low-carbon fuel standard to reduce greenhouse gases from gasoline and a renewable energy standard designed to move the state toward solar and other alternatives to fossil fuel.

Proposition 23's new title reads: "Suspends Implementation of Air Pollution Control Law (AB 32) Requiring Major Sources of Emissions to Report And Reduce Greenhouse Gas Emissions That Cause Glo- bal Warming Until Unemployment Drops to 5.5% or Less for One Full Year."

The new summary reads: "Suspends state law that requires greenhouse gas emissions be reduced to 1990 levels by 2020, until California's unemployment drops to 5.5% or less for four consecutive quarters. Suspends comprehensive greenhouse-gas-reduction program that includes increased renewable energy and cleaner fuel requirements, and mandatory emissions reporting and fee requirements for major emissions sources such as power plants and oil refineries...."

margot.roosevelt@latimes.com

**Eastern Neb. landfill agrees to EPA penalty (*Associated Press*)**

Associated Press - August 4, 2010 5:35 AM ET
SPRINGFIELD, Neb. (AP) - The Sarpy County Sanitary Landfill has agreed to pay a $10,080 civil penalty as part of a settlement with the federal government over a permit violation.

The U.S. Environmental Protection Agency says the landfill at Springfield also will spend an additional $34,000 on heavy equipment improvements to reduce harmful diesel engine emissions.

The federal agency says the landfill failed to make a timely application for a proper environmental permit following the landfill's expansion in 2005, violating the federal Clean Air Act.

A message left Tuesday at the landfill seeking comment was not immediately returned.

**Texans weigh in as EPA considers new oil and gas regs (*Greenwire*)**

(08/03/2010)
Gabriel Nelson, E&E reporter
ARLINGTON, Texas -- In the face of growing public concerns about pollution from shale gas development, industry officials and environmentalists urged U.S. EPA yesterday to modernize air regulations without blocking development of an energy source that could reduce U.S. dependence on foreign oil and coal-fired electricity.

In a meeting at Arlington City Hall, EPA officials offered the first public explanation of their goals in the review of four sets of air pollution standards for the oil and gas industry. A settlement with an environmental group requires that EPA issue proposals by Jan. 31, 2011, for the industry's new source performance standards (NSPS) and air toxics rules, some of which have not been updated in 25 years.

EPA Region 6 Administrator Al Armendariz, whose Dallas office oversees Texas and four other oil-heavy states, said the agency will take a "good long look" at regulations that improve protection for human health and the environment. At issue are emissions that escape leaky valves, indiscriminate gas venting and uncovered storage tanks.

While dozens of homeowners and community leaders told agency officials yesterday that gas facilities are contributing to asthma and other health problems, Armendariz urged them to be patient.

"If we don't have these rules, then we don't have rules to enforce," Armendariz said. "We intend to move forward and move forward aggressively, but at the same time, where we don't have regulations to enforce, it puts us in a very difficult position."

EPA reviews will focus on shale gas, which has emerged over the past decade as a potential "bridge fuel" toward renewable energy. But while technological breakthroughs in drilling technology have allowed the natural gas sector to grow rapidly, that growth has not come without an environmental price.

The 279,000 active oil and gas wells that dot the Texas landscape are among the state's largest sources of nitrogen oxide (NOx) and volatile organic compounds (VOCs). Those emissions react with sunlight to form ground-level ozone, a main component of smog, which has been a persistent problem in the Dallas-Fort Worth region.

Improving air quality without setting back the natural gas industry will be a challenge, EPA officials acknowledged yesterday, a day when elevated ozone levels and triple-digit temperatures prompted the Texas Commission on Environmental Quality to issue an air pollution alert for the Dallas-Fort Worth area. Another hearing on oil and gas regulation is scheduled for today in Denver, where heavy energy development has also contributed to ozone problems.

Natural gas trade groups, as well as environmental organizations such as the Sierra Club and the League of Conservation Voters, voiced concerns yesterday that excessive

regulations could give the upper hand to coal, which produces more emissions than natural gas when burned.

"A lot of people agree that natural gas is a clean bridge fuel," said Dallas resident Rita Beving, an environmental consultant for Public Citizen, in comments to the panel. "But what good is it if it's destroying people's water, land and air?"

Debbie Hastings, vice president for environmental affairs at the Texas Oil & Gas Association, said the type of emissions controls used by oil and gas producers depends on a variety of factors, including the age, location and size of a facility. When it comes to oil and gas development, she said, "one control scheme does not fit all," so EPA should let states come up with equivalents that achieve the same reductions in the most cost-effective way.

"We can develop this resource, to the benefit of our economy and energy security, and we can do so in a safe and responsible way," said Michelle Bloodworth, vice president for business development at the American Natural Gas Association.

**Ozone as a backstop**

Tighter new rules for the oil and gas industry, which would need to be finalized by next October under EPA's settlement with WildEarth Guardians, could impose additional costs but make it easier for states to meet federal ozone standards. One way or the other, though, ozone regulations would likely drive crackdowns on air pollution from the oil and gas sector, experts said.

EPA is currently reconsidering the nationwide ozone standard of 75 parts per billion that was finalized under the George W. Bush administration. By the end of the month, the agency is expected to release a proposal to lower the standard to between 60 and 70 ppb.

Jeremy Nichols, the WildEarth Guardians attorney who filed the lawsuit seeking review of EPA's standards, said the ozone standards would lead many petroleum-producing states to restrict drilling emissions without any additional prodding.

Though states might choose to impose new restrictions on the oil and gas industry, they have a great deal of flexibility in crafting their plans, Nichols said. And because much of the concerns about shale gas have focused on the localized effects of benzene and other toxics, it is crucial for the federal government to separately review the industry's maximum achievable control technology (MACT) standards, he said.

"Planning for the ozone standards is going to be inclusive. It's not going to be a lynching of the oil and gas industry," Nichols said in an interview. "Our feeling is, let's focus on this opportunity -- the review of NSPS and MACT -- to really target oil and gas, to focus on them and ensure that they're brought into the 21st century with regard to their air pollution practices."

That type of approach has frustrated industry groups, who feel they are being confronted with conflicting and redundant regulations from state and federal regulators.

Sen. James Inhofe of Oklahoma, the top Republican on the Senate Environment and Public Works Committee, sent a letter to EPA Administrator Lisa Jackson last month suggesting that the agency should delay the imposition of tougher oil and gas requirements until states submit their updated implementation plans for the ozone standard.

EPA's Armendariz has told the oil and gas industry to provide emissions inventories for NOx and VOCs, planning to use the data for the review of oil and gas regulations. But because broader surveys would be produced by the states in their 2012 implementation plans, Inhofe wrote, it is unreasonable to ask a single industry for them now.

"The focus of the information appears to be on areas with shale production and exploration," Inhofe wrote. If the agency is reviewing broader ozone standards, he added, "what is the basis for only requesting information from the oil and gas production and exploration industry?" (*Greenwire*, July 16).

**BP SPILL**

==========

* U.S. NEWS
* AUGUST 4, 2010

Success on Surface, Questions Below (Wall Street Journal)

By JEFFREY BALL
HOUMA, La.—For decades, the oil industry has lobbied regulators to let it use chemicals to stop spilled oil from washing ashore.

Following the April 20 explosion of a well owned by BP PLC, which dumped millions of barrels of oil into the Gulf of Mexico, the industry succeeded in using chemical dispersants on a broad scale.

But the question remains whether the industry's tactical success will come at an acceptable cost to the environment.

In the Gulf, the U.S. accepted dispersants as a cost-effective and reliable way to keep spilled oil off shorelines. The chemicals break the oil into tiny particles that drop below the water's surface, where natural bacteria can eat them. But dispersants present an environmental trade-off, putting oil in the path of organisms that live underwater.

Regulators discussed risks to marine life: that the oil particles could reduce underwater oxygen levels, or be eaten by fish, or get into their skin. But faced with the alternative of oiled beaches and marshes, they allowed the chemicals to be sprayed at unprecedented levels—about 1.8 million gallons overall.

The Senate Environment and Public Works Committee is scheduled to hold a hearing Wednesday on the use of dispersants. The move follows test results released earlier this week by the Environmental Protection Agency showing that oil mixed with dispersants on a kind of shrimp and fish weren't measurably more toxic than oil alone.

The EPA tests looked at how dispersed oil would affect shrimp and fish in a lab over hours or a few days. But there's little research on how the oil might affect the range of ocean life long term, scientists say.

Robert Carney, an oceanographer at Louisiana State University, likened the EPA tests to gauging the health effects of sugar by testing people right after they gorged on it.

"It would conclude that it isn't great for our health but it isn't going to kill us, yet a lifetime of sugar can kill you," he said. "We worry about similar things in the environment."

Paul Anastas, an EPA assistant administrator, said using so much dispersant on the Gulf "was an effort of last resort" and that the agency would continue to monitor the situation.

Scientists under the auspices of the National Oceanic and Atmospheric Administration are studying long-term effects of dispersants on the deep Gulf. Their findings will figure into negotiations between the government and BP about how much the company will have to pay to fix the environment.

According to government figures issued Monday, 4.1 million barrels of oil flowed into the Gulf from the BP spill—some 16 times as much oil as in the 1989 Exxon Valdez disaster. Yet less than one-quarter of the amount of shoreline has been oiled in the Gulf spill as was affected in the Valdez incident, according to estimates from officials overseeing the Gulf response.

The difference is largely due to dispersants sprayed on the Gulf spill, some officials say, and it shows how differently this spill was handled than many previous ones.

In the 1989 Exxon Valdez disaster, regulators declined to let the company spray much dispersant, worried about potential environmental effects and whether the chemicals would effectively break up the oil. Much of it washed onto beaches, costing Exxon in money and reputation.

Afterward, as Exxon and the oil industry drilled farther offshore, they vowed not to get caught in the same bind again. They developed a new dispersant, called Corexit 9500, strong enough to "take away some of that reluctance" by regulators over the chemicals'

effectiveness, recalled Dick Lessard, a scientist who spent years developing dispersants at Exxon.

The industry hired consultants who held workshops and produced reports to persuade regional panels of government oil-spill-response officials to embrace the chemicals.

An Exxon spokesman declined to comment on the company's dispersant work.

Energy executives realized the industry was "going to get beat up repeatedly" by politicians and the public if it didn't come up with an effective way to keep spilled oil offshore, said Greg Pollock, who oversees oil-spill response on the Texas coast and is a member of the panel for the region that includes Louisiana and Texas. In 1995, that panel became the first such body in the U.S. to authorize the use of dispersants in a spill without having to ask the panel for approval each time. The panel noted, however, that shrimp, crab and an economically important fish called menhaden were "at high risk of being directly affected by dispersant use."

The panel envisioned dispersants would be used only sparingly, Mr. Pollock said.

Within weeks of the Gulf spill, the EPA raised concerns about the amount of dispersants being sprayed. On May 26, the agency and the Coast Guard ordered BP in writing to slash its daily use of dispersants by 75%—and to cease spraying on the Gulf's surface altogether, except in "rare cases."

Federal officials told BP to get rid of oil by skimming and burning before resorting to dispersants.

But as dispersant use fell, people fighting the slick saw more oil on the surface and hitting the coast, said H. Trygve Enger, vice president of Seacor Environmental Services Inc., a company that helped apply dispersants.

In June and July, federal officials granted almost-daily waivers allowing dispersants to be sprayed.

A BP spokesman said federal officials approved all of the company's spraying of dispersants.

Charlie Henry, an NOAA scientist, said that on days when rough weather precluded skimming and burning, dispersants were "really the only tool we had left."

Write to Jeffrey Ball at jeffrey.ball@wsj.com

**EPA: Dispersant-oil mix no more toxic than oil alone (*CNN*)**

By the CNN Wire Staff
STORY HIGHLIGHTS
The testing included Corexit, a dispersant used in the Gulf
EPA says there is no data suggesting wildlife was harmed by dispersants
The chemicals put oil in a state where it can be degraded by microbes
(CNN) -- Testing has found that eight dispersants, including one used in combating the Gulf of Mexico oil disaster, are no more toxic when mixed with oil than the oil alone, the Environmental Protection Agency said Monday.

The tests prove that the oil itself, not the dispersants, is "enemy No. 1," Paul Anastas, EPA assistant administrator for research and development, told reporters on a conference call.

Use of the dispersants to break up oil after the April 20 Deepwater Horizon rig explosion sent millions of gallons of crude gushing into the Gulf has been a controversial topic.

Testing was done on sensitive marine species in their juvenile life stage, when they are at their most sensitive, Anastas said. During tests, researchers increased the concentration of the dispersant, mixed with Louisiana sweet crude oil, to concentrations even higher than that species are expected to encounter in the Gulf, Anastas said.

The EPA in May directed BP, the company responsible for the ruptured well, to analyze dispersants for toxicity and effectiveness. BP reported it was unable to find a dispersant that is less toxic than Corexit, the product currently in use. Afterward, EPA began its own research into the eight dispersants.

On June 30, the EPA released the results from its first round of testing, which showed that none of the eight dispersants appeared to have harmful effects on the endocrine systems of marine life.

"I have not seen any evidence, any data, that has shown wildlife sickened or killed because of dispersants," Anastas said Monday.

In addition, researchers have seen no data to suggest the dispersant has spread away from the well head, Anastas said.

Asked about the oil sinking to the sea floor because of the dispersant, Anastas said the purpose of dispersant is to put the oil in a form where it can be broken down by natural microbes -- where it is now. During that process, the microbes metabolize the oil, breaking it down until it turns into carbon dioxide and water.

"What we ultimately want is this hazard, the oil ... to of course go away," he said. "The way that it goes away in nature is to be metabolized by these microbes."

The ruptured well is currently capped. No new dispersants have been released into the Gulf since July 19, Anastas said, and the dispersant appears to be keeping the oil away from the shore. By law, dispersants cannot be used closer than three miles to shore.

Rep. Edward Markey, chairman of the House Energy and Environment Subcommittee, has said the Coast Guard and BP ignored a federal directive to allow dispersants only on rare occasions. Asked about Markey's comments, Anastas said the EPA worked closely with the Coast Guard after issuing that directive, and the amount of dispersants used did decrease.

It may be true that EPA did not agree on every decision or waiver of the amount of dispersant being used, the decision was that of retired Coast Guard Adm. Thad Allen, the federal on-scene coordinator. The EPA believes the use of dispersants was an important overall tool, Anastas he said, but said they were a "last result" and an "environmental trade-off not to be taken lightly."

Allen on Sunday defended the use of dispersants as a "very disciplined" procedure. Field commanders used dispersants when oil was spotted by surveillance aircraft and no other method of cleaning it up was available in the area, he said.

BP also dismissed Markey's allegations and said it has worked closely with the EPA and the Coast Guard from the start.

CNN's Vivian Kuo contributed to this report.

## CLIMATE CHANGE / GLOBAL WARMING

==========

### EPA left to pick up climate change where Congress dropped the debate (*Washington Post*)

By David A. Fahrenthold and Juliet Eilperin
Wednesday, August 4, 2010; A03
The Obama administration told Congress to find a way to regulate greenhouse gases -- or else.
Last month, Congress refused: Democratic leaders in the Senate declined to take up climate legislation before their August break, which means it looks effectively dead for this session.
Now the White House is stuck with "or else."
The Environmental Protection Agency will soon begin regulating greenhouse gases factory by factory, power plant by power plant. That could be unwieldy, expensive and unpopular -- even President Obama has said it's not his preferred solution.
But for now, it's his only option.

The next few months could bring a climax to the long-running debate over how to combat climate change, with the EPA trying to implement its rules and industry groups and opponents in Congress seeking to block it with lawsuits or legislation.
The administration will cite a mandate from the Supreme Court, which ruled in 2007 that greenhouse gases could be regulated like other air pollutants. But opponents will say it has chosen an approach that stretches the law and could impose serious economic costs.
The result of their fight could be the first limits on greenhouse gases from American smokestacks -- or a significant defeat for the White House and environmental groups.
The administration "wanted to be able to hold out the threat of clean-air regulation [by the EPA], as a way to . . . try to get people to the table," said Jeffrey R. Holmstead, an EPA official under the Bush administration, who now works for the law firm Bracewell & Giuliani. "They're now faced with the kind of unenviable task of trying to make it work."
Great hopes dashed
To environmentalists, Obama's election in 2008 brought the hope that legislation to cut greenhouse gases was finally at hand. They had a president who had campaigned on the issue, a Democratic Congress and a deadline to motivate them both. In December 2009, world leaders would gather in Copenhagen to hammer out a new climate treaty.
There was an early, encouraging sign: The administration worked out a deal with the car industry to set limits on auto emissions. But since then, little has worked out as environmental groups had hoped.
Last summer, the House of Representatives passed a "cap and trade" bill -- cutting emissions, and allowing businesses to buy and sell allowances to pollute. But the Copenhagen conference fizzled into a multilingual blame game. And the Senate refused to follow the House example: Senators said they worried that new pollution rules would cut jobs and raise energy prices.
Senators have focused on a more modest bill that aims to eliminate the $75 million cap on the liabilities of a company responsible for an oil spill and create incentives for the development of natural-gas vehicles. On Tuesday, Senate Majority Leader Harry M. Reid (D-Nev.) said even that bill wouldn't be voted on in the Senate until after the August recess."
"Congress, particularly the Senate, has dropped the ball and kicked it out of bounds," said Frank O'Donnell, of the District-based group Clean Air Watch. "If we're going to see any progress on climate, it's going to have to be the EPA" doing it at the national level.
Starting in January, under EPA rules new permits will require the largest factories and power plants to show they have installed the "best available" technology to curb emissions. Smaller sources of greenhouse gases like shops, apartment buildings and bakeries are exempt.
That might mean upgrades to make plants burn fuel more efficiently or perhaps to switch from coal to cleaner-burning natural gas.
These are "pretty modest steps, and it's not much compared to what legislation was set out to accomplish," said Joshua Freed, who directs the clean energy program at Third Way, a centrist think tank. "For the overwhelming majority of stationary sources [like power plants and factories] nothing's going to change for a while."
This is where the fight begins.

Some industry groups say that if the EPA requires aggressive cuts, the result could be crushing costs for businesses. So even before it begins, the EPA effort is the subject of lawsuits, from plaintiffs questioning both its science and legal underpinnings. At particular issue is the "tailoring rule" that limits regulation to the largest emitters: Opponents say it deviates from standards written into the 40-year-old Clean Air Act.
Joe Stanko, a lobbyist at Hunton and Williams who represents several greenhouse gas emitters, said the EPA's reasoning has "some basis in rationality if you had a blank piece of paper and you're designing a permitting program. But you don't, you have a statute."
Resistance in Senate
In Congress, some senators have worked to stop the EPA in its tracks. In June, a resolution from Sen. Lisa Murkowski (R-Alaska) narrowly failed. Another bill from Sen. John D. Rockefeller IV (D-W.Va.), which would suspend the effort for two years, awaits a vote.
A White House spokesman said that Obama would veto Rockefeller's measure if it passed. But more attempts could be made.
Carl Pope, the chairman of the Sierra Club, said that EPA administrator Lisa P. Jackson has overcome political pushback by persuading Obama: "She'd bring a regulatory proposal to the White House. The political folks at [the Office of Management and Budget] and Treasury would push back, saying, 'We don't think the science or the law compels you to go that far.' That's code for, 'It's going to cost too much politically.' She would respond, 'What don't you like about the science?' . . . The president would say, 'Well fine, it's the law or if the science requires it, then let's do it.' "
But critics wonder: If the administration couldn't force a climate bill through Congress, will it really take the heat of regulating greenhouse gases all by itself?
David Doniger, of the Natural Resources Defense Council, said his group intends to defend the EPA in the coming months. . The EPA "needs political support to sustain it. . . . We are going to come down very hard on any of the Democrats and moderate Republicans who flirt with these kinds of things," he said.

**Forget being nice. Environmentalists must get tough on climate change (*Los Angeles Times*)**

August 4, 2010 Wednesday
Home Edition
MAIN NEWS; bad desk code; Editorial Desk; Part A; Pg. 15
Turn up the heat;
Forget being nice. Environmentalists must get tough on climate change.
By Bill McKibben, Bill McKibben is the founder of 350.org and the author, most recently, of "Eaarth: Making a Life on a Tough New Planet." He's a scholar in residence at Middlebury College. A longer version of this piece appears at tomdispatch.com.
Try to fit these facts together:

* According to the National Oceanic and Atmospheric Administration, the planet has just come through the warmest decade, the warmest 12 months, the warmest six months

and the warmest April, May and June on record.

* A "staggering" new study from Canadian researchers has shown that warmer seawater has reduced phytoplankton, the base of the marine food chain, by 40% since 1950.

* Nine nations so far have set their all-time temperature records this year, including Russia (111 degrees), Niger (118), Sudan (121), Saudi Arabia and Iraq (126 apiece), and Pakistan, which also set the new all-time Asia record in May -- a hair under 130 degrees.

* And then, in late July, the U.S. Senate decided to do exactly nothing about **climate change.** It didn't do less than it could have; it did nothing, preserving a perfect two-decade bipartisan record of no action. Senate Majority Leader Harry Reid decided not to even schedule a vote on legislation that would have capped carbon emissions.

I'm a mild-mannered guy, a Methodist Sunday school teacher. I'm not quick to anger. But the time has come to get mad, and then to get busy.

For many years, the lobbying fight for climate legislation on Capitol Hill has been led by moderate environmental groups, outfits such as the Environmental Defense Fund. We owe them a great debt, and not just for their hard work. We owe them a debt because they did everything the way you're supposed to: They wore nice clothes, lobbied tirelessly and compromised at every turn.

By the time they were done, they had a bill that would have capped carbon emissions only from electric utilities (not factories or cars) and was so laden with gifts for industry that if you listened closely, you could actually hear the oinking. Sen. John Kerry, the legislator they worked most closely with, issued this rallying cry as the final negotiations began: "We believe we have compromised significantly, and we're prepared to compromise further."

And even that was not enough. They were left out to dry by everyone -- not just Reid, not just the Republicans. President Obama wouldn't lend a hand either.

The result: total defeat, no moral victories.

So now we know what we didn't before: Making nice doesn't work. It was worth a try, but it didn't work. So we'd better try something else.

Step 1 involves actually talking about **global warming**. For years, the accepted wisdom was: talk about anything else -- energy independence, oil security, beating the Chinese to renewable technology. But the task at hand is to keep the planet from melting. We need everyone, beginning with the president, to start explaining that basic fact at every turn.

It is the heat, and also the humidity. Because warm air holds more water than cold, the atmosphere is about 5% moister than it was 40 years ago, which explains the freak downpours that seem to happen someplace on this continent every few days.

It is the carbon. That's why the seas are turning acid, a point Obama could have made with ease while standing on the shores of the Gulf of Mexico. Energy independence is nice, but you need a planet to be energy independent on.

Step 2, we have to ask for what we actually need, not what we calculate we might be able to get. If we're going to slow **global warming** in the very short time available to us, we don't need an incredibly complicated legislative scheme that gives door prizes to every interested industry. We need a stiff price on carbon, set by the scientific understanding that we can't still be burning black rocks a couple of decades hence.

Asking for what you need doesn't mean you'll get all of it. Compromise still happens. But as David Brower, the greatest environmentalist of the late 20th century, explained amid the fight to save the Grand Canyon: "We are to hold fast to what we believe is right, fight for it, and find allies and adduce all possible arguments for our cause. If we cannot find enough vigor in us or them to win, then let someone else propose the compromise."

Which leads to the third step in this process. If we're going to get any of this done, we're going to need a movement. For 20 years, environmentalists have operated on the notion that we'd get action if we simply had scientists explain to politicians and chief executives that our current ways are unsustainable. That turns out, quite conclusively, not to work. We need to be able to explain to them that continuing in their current ways will end something they actually care about: their careers. And because we'll never have the cash to compete with Exxon, we better work in the currencies we can muster: bodies, spirit, passion.

We're not going to get the Senate to act next week, or maybe even next year. It took a decade after the Montgomery bus boycott to get the Voting Rights Act. But if there hadn't been a movement, then the Voting Rights Act would have passed in -- never. We may need to get arrested. We definitely will need disciplined, nonviolent but very real anger.

Mostly, we need to tell the truth, resolutely and constantly. Fossil fuel is wrecking the one Earth we've got. It's not going to go away because we ask politely. If we want a world that works, we're going to have to raise our voices.

**EPA rejects challenges to GHG 'endangerment' finding (*Today's Trucking*)**

WASHINGTON -- The U.S. Environmental Protection Agency has dismissed several challenges to the agency's "endangerment finding," which claims that greenhouse gases, including CO2, are pollutants that threaten public health.

The EPA rejected 10 petitions which challenged the underlying environmental science that the finding is based on.

"The petitions to reconsider EPA's "Endangerment Finding" claimed that climate science can't be trusted, and asserted a conspiracy that calls into question the findings of the Intergovernmental Panel on Climate Change (IPCC) , the U.S. National Academy of Sciences , and the U.S. Global Change Research Program," the EPA stated in a press release.

"The scientific evidence supporting EPA's finding is robust, voluminous, and compelling. Climate change is happening now, and humans are contributing to it."

"After months of serious consideration of the petitions," the EPA is refusing to entertain the claims. It says the complaints are based on "selectively edited, out-of-context data and a manufactured controversy."

Ironically, that's essentially what critics say about the science used by the EPA and the Intergovernmental Panel on Climate Change (IPCC) to advance an agenda to combat Anthropogenic Global Warming.

Skeptics in the climate science community have challenged AGW theory for over a decade, but last year it was revealed that leading scientists at the Climatic Research Unit in England – considered a clearinghouse for global climate research -- manipulated or "tricked" their data and ignored opposing evidence to better support their theories; allegedly deleted material under request of the UK's Freedom of Information Act; and pressured scientific journals to blacklist dissenting scientists.

Since then, several key aspects of the influential IPPC report have been called into question with accusations that some evidence on melting glaciers and rising sea levels have been overstated and, among other criticisms, based solely on "eye witness" accounts of environmentalists and naturists.

**Sierra Club, states file challenges to EPA 'tailoring' rule (*Greenwire*)**

(08/03/2010)
Robin Bravender, E&E reporter
The Sierra Club is challenging U.S. EPA's "tailoring" rule for greenhouse gases in a federal appeals court, asking judges to review the agency's determination about when greenhouse gases ought to be regulated under the Clean Air Act.
The group, along with a host of states and industry groups, wants the U.S. Circuit Court of Appeals for the District of Columbia to review the EPA rule, which would limit greenhouse gas permitting rules to only the largest emitters. The Sierra Club is supportive of the goals of the tailoring rule but filed a lawsuit asking the court to review

EPA's determination about when the agency must begin to limit industrial sources' emissions under the Clean Air Act -- a decision that was formalized in the final rule.

EPA has determined that greenhouse gas regulations for stationary sources will kick in starting in January, but the Sierra Club has argued that greenhouse gases have been subject to regulation under the Clean Air Act for many years and has warned that the decision could set a dangerous precedent.

"Through this petition, the Sierra Club seeks review only of the definition of 'subject to regulation' adopted by this rulemaking," said Joanne Spalding, a Sierra Club attorney.

EPA Administrator Lisa Jackson laid out the agency's timeline for starting regulation of heat-trapping emissions in March, when she formally announced her reconsideration of the George W. Bush administration's "Johnson memo."

Jackson said EPA would uphold former Administrator Stephen Johnson's determination that facilities are required to obtain New Source Review and operating permits only for pollutants that are subject to "actual control" under the Clean Air Act, as opposed to those that are subject to monitoring and reporting requirements, or other definitions (*E&ENews PM*, March 29).

Clean Air Act permitting requirements will be triggered in January, when automakers must begin to comply with EPA's first greenhouse gas standards for cars and light trucks, EPA determined.

**State, industry petitions**

A series of state and industry groups also filed petitions with the appeals court before the midnight deadline.

Alabama, North Dakota, South Dakota, Mississippi Gov. Haley Barbour (R), South Carolina and Nebraska filed a joint petition July 30 challenging the rule. The Louisiana Department of Environmental Quality filed a separate lawsuit yesterday.

Also among the challengers are the National Alliance of Forest Owners and the American Forest and Paper Association, which are demanding that EPA reconsider how the tailoring rule treats emissions generated by burning biomass.

EPA has said it is still evaluating how its climate regulations will treat biomass, but the tailoring rule as published treats biomass emissions the same as emissions from fossil fuels. But the groups want EPA to exempt biomass emissions from the regulation because they argue the energy source is "carbon neutral."

Unlike burning fossil fuels -- which releases carbon that had been trapped underground -- burning tree limbs, wood pellets and other organic materials are part of a natural cycle of growth and decomposition, the groups say.

Other groups that filed petitions yesterday: the Portland Cement Association, the National Federation of Independent Businesses, an industry coalition led by the National Association of Manufacturers, the Clean Air Implementation Project, the Missouri Joint Municipal Electric Utility Commission, the Utility Air Regulatory Group, the National Environmental Development Association's Clean Air Regulatory Project, Mark R. Levin and the Landmark Legal Foundation, the South Carolina Public Service Authority, and the Energy Intensive Manufacturers Working Group on Greenhouse Gas Regulation.

The Center for Biological Diversity also filed a petition yesterday, arguing that the tailoring rule exempts too many big polluters (*Greenwire*, Aug. 2).

Groups that filed lawsuits last week include Peabody Energy Corp., the American Farm Bureau Federation, the National Mining Association, the Georgia Coalition for Sound Environmental Policy and the U.S. Chamber of Commerce.

Two steel groups -- Gerdau Ameristeel US Inc. and the American Iron and Steel Institute -- and the industry-backed advocacy groups Coalition for Responsible Regulation and the Southeastern Legal Foundation filed additional challenges in June.

**Click here** to read Sierra Club's petition.

*Reporter Patrick Reis contributed.*

**FUEL**

==========

**Nalco supports EPA oil dispersant research (*Naperville Sun*)**

August 4, 2010
From Staff Reports
Nalco officials issued a release Tuesday stating their support of continued scientific review and analysis in the Gulf of Mexico relating to the oil spill.

This statement came in the wake of the U.S. Environmental Protection Agency second round of test results on dispersants.

An EPA peer reviewed report indicates that dispersed oil is generally no more toxic than oil and that dispersants appear to increase the efficiency of natural biodegradation by 50 percent. Also, the study found no evidence of harm to wildlife from the dispersants used in the Gulf.

Nalco, a water treatment and process improvement company in Naperville, manufactures Corexit, a dispersant used to break up oil in the Gulf.

Last week, U.S. Sen. Frank Lautenberg, D-N.J., introduced the "Safe Dispersants Act," which would require the U.S. Environmental Protection Agency to publicly disclose dispersant ingredients, test their long-term effects on human and marine health before approving the chemicals for use in future oil spills and set standards on allowable toxicity.

Since the leak started in BPs Deepwater Horizon rig in April, Nalco has released more than 1.8 million gallons of dispersant into the Gulf in the largest application of the chemicals at a U.S. oil spill.

On May 20, the EPA directed BP to find a less toxic and more effective alternative to Nalco's Corexit 9500 currently used in the Gulf. After BP reported it was unable to do so, the EPA began its own testing of dispersant products and continues to monitor the air and water daily.

For more information on the EPA's dispersant testing program, visit www.epa.gov/bpspill.

**EPA holds public meeting on Michigan oil spill (*World Socialist Web Site*)**

By a WSWS reporting team
4 August 2010
A panel of representatives from state and federal government agencies addressed a public hearing Monday evening at Marshall High School in Marshall, Michigan about the response to the Enbridge pipeline oil leak last week.
Audience at the public hearing

Hundreds of local residents turned out, clearly demonstrating the widespread concern, but the presentations were brief and largely perfunctory, and the meeting lasted only half an hour.

There was no way for members of the audience to make their concerns and complaints known to the speakers on stage or to their fellow residents. There were no microphones on the floor or any opportunity to ask questions. Instead, the audience was instructed to move to a room across the hall if they wanted to speak one-on-one with low-level representatives of the agencies involved.

This was a clear attempt to divert the anger of Marshall residents and to shield Enbridge Energy from any negative coverage in the media. There was a heavy police presence at entry and exit points to the event.

As the meeting began, EPA Region 5 Director Susan Hedman delivered a PowerPoint presentation showing pictures of the breached pipeline, initial boom installations, and the trucks used to take the oil away.

The pictures of Tallmadge Creek turned completely black were striking. “It’s basically running oil,” said Hedman, adding, “the oil-water mixture is mostly oil.” She noted that the upper reaches of the Kalamazoo River were “very heavily oiled.”

EPA Deputy Incident Commander Mark Durno said that 78,000 feet of boom had been put in place to prevent the oil from flowing down the river and to deflect it into 37 containment locations. He warned that the booms were “only as strong as what they’re trying to hold back,” and that heavy rains could swell water levels. He indicated that there were no plans to increase the number of booms, and said the goal was to “collect oil strategically” by deflecting it to collection points.

Durno also showed photographs of sheen that remained in areas of the river where the bulk of black oil had been removed. “We’re dealing with a lot of sheen,” he told the audience, “the shoreline is going to continue to sheen for a long period of time.”

Durno reported that 45,000 barrels, about 1.8 million gallons of water and oil mixture, had been collected from the river so far, including 15,000 barrels, or 550,000 gallons, just that day. He said that the numbers sounded impressive, but added, “We are not going to sugar coat it—that marshy area still looks bad.”

A representative from the US Fish and Wildlife Service spoke next. Much of his presentation consisted in thanking the audience and the people of Marshall. He discussed the difficulties in catching wildlife contaminated by oil. “It’s super hard to catch geese,” said the speaker, “the term ‘wild goose chase’ didn’t come out of nowhere.” He added that in many cases, chasing oiled birds can distress the animals and reduce their chances of survival.

Becky Humphries from the Michigan Department of Natural Resources and Environment said that the department was sending out crews to collect affected animals every day, and that water quality will be tested for the next several years. Humphries said that “so far we have not seen a large fish kill,” but a lot of dead frogs and insects had been spotted. Many species of fish rely on frogs and insects for food.

Jim Rutherford from the Calhoun County Public Health Department said that 61 homes nearest to the spill site had been visited and advised to evacuate. Department representatives spoke with residents of the homes or left information at their doorsteps if no one was home. So far, 27 households declined to evacuate and 12 evacuated voluntarily.

Rutherford said that additional volatile organics could be stirred up in affected areas as a result of cleanup efforts, leading to additional evacuation recommendations. He noted

that “There are still spikes of benzene at boom collection areas and other clean-up areas.”

Of public health concerns, Rutherford said emergency rooms had seen 26 people experiencing symptoms directly or indirectly related to the spill. A hotline set up to receive “odor complaints” from citizens had received “well over 5,000 calls.”

The final reports were given by representatives from the US Department of Transportation, which is responsible for regulation and inspection of pipelines throughout the country, and the National Transportation Safety Board (NTSB), which is responsible for the investigation into the causes of the spill.

According to the NTSB speaker, on Sunday, July 25, at 5:56 p.m., there was a planned shutdown of the pipeline for 10 hours. Two minutes later, at 5:58 p.m., a low suction letdown alarm went off. Controllers in Edmonton, Alberta, believed this was a normal condition, he said.

At 4:04 a.m., the flow of oil was switched back on in accordance with the scheduled line start-up. At 7:52 a.m., the pipeline was shut down again, though no shutdown was scheduled. The NTSB official did not say as much, but this indicates that the company was aware that something was abnormal. At 9:25 a.m., the 911 call center received the first call reporting an odd smell.

Enbridge had no representatives on stage. CEO Patrick Daniel was present at the event but made no remarks. However, World Socialist Web Site reporters spoke with D’arcy Levesque, an official spokesman for the energy company. Asked about the warning the company received from the Pipeline Hazardous Materials Safety Administration in January that the now-ruptured pipeline had not been properly monitored for corrosion, Levesque downplayed the danger. “The regulatory agencies have a number of levels of warnings,” he said; this warning was “the lowest level.”

Levesque reiterated the latest calculations of the amount of oil spilled, saying 19,500 barrels of oil had been released and that so far approximately 10,000 had been collected. “That’s our number,” he said, “Nobody’s been able to provide evidence of different numbers.” When a resident stepped forward to challenge the company’s calculations, Levesque would only say “We’re not at liberty to speculate.”

The EPA’s initial estimate for oil spilled was over a million gallons, but has since been lowered to match Enbridge’s estimate. No explanation has been given for the change.
Jay Wesley

Jay Wesley of the Department of Natural Resources and Environment told the WSWS that dozens of oiled animals had been recovered. “The recovery is going to continue for another week or two,” he said. “So those numbers are going to continue to go up.” He expressed concern over the long-term effects of oil contamination for the fish in the affected areas. “As oil deteriorates, it can take oxygen out of the water.”

World Socialist Web Site reporters also spoke with local residents in attendance at the public meeting.

Michelle Waters, whose home is very close to the spill site, said she had voluntarily evacuated her home and was now staying in a hotel with her family. “We just left,” she said. “We have three children.”

She said she had suffered from headaches and sore throats as a result of the spill. “They haven’t done any air quality testing and they haven’t sucked any oil out of our neighborhood.”

Asked what she thought of the meeting, Waters said, “I didn’t hear too much I didn’t already know.”
Greg

Greg, a resident of Calhoun County, said, “[The spill has] limited our ability to use the waterway, you can’t fish, or tube. I’m curious how long it will affect me.” When asked about the health effects he replied, “We only got some of the smell. I don’t think it will affect my well water.”

“The oil was leaking Saturday at noon, I could smell it with the wind blowing from the north.” said Cameron York. “I live three quarters of a mile south of the spill. It’s in my hunting ground.”

York did not receive a recommendation to evacuate because he lives south of the spill. “I get well water, but they say it’s safe because the well water goes south. My well is only 37 feet deep.”

“I live 10 miles south of the spill,” said a local resident who declined to give his name. “I’m an outdoors man and a farmer. I think this will affect my whole way of life. I don’t trust what they say here. I’m surprised there aren’t more protesters and cops.

“The government is in with the corporations. They don’t monitor the equipment. They have another four months, then they’re all out of business.”

Mark Tierney said he lives two miles north of the break. “It made us pretty nauseated, especially on Saturday,” he said. “I think Battle Creek got the worst of it. Where’s the regulation been for this pipe? No one knew about the oil line, not even the fire department.”

John Hodge, another resident who was unimpressed by the presentation, told WSWS reporters, “It sucked; they didn’t give us any information we needed.” Of the numbers reported by Enbridge and the EPA, he said, “No, I don’t trust all that.”

**Company offers to buy homes near Mich. oil spill (*Associated Press*)**

By JEFF KAROUB (AP)
DETROIT — The company whose pipeline ruptured and dumped hundreds of thousands of gallons of oil into a southern Michigan waterway said Tuesday it has offered to buy up to 200 homes in the affected area.

Enbridge Inc. Chief Executive Patrick Daniel said the Canadian company will buy homes put up for sale before last month's spill in Calhoun County at their full list prices. It also will buy other homes in the 30-mile-long zone at their appraised values before the spill.

Daniel said the idea came from residents' concerns that their homes were losing value, particularly people he spoke with at a public meeting Monday night. The company said it believes the homes have retained their value and the offer, which stands for at least one year, should help keep speculators out.

He said he doesn't know how much the offers would cost Enbridge if all homeowners were to accept, but doesn't expect many will sell or the company would lose money. Enbridge would hold the homes it buys and resell them later, he said.

"We're comfortable in being able to handle it, even if they're all taken up," he said. "We're prepared to provide a guarantee to ensure nobody takes advantage of them."

Daniel said the company will consider requests from homeowners outside the spill zone individually.

The oil flow, reported on July 26, has been stopped and government officials say it's been contained in the stretch of the Kalamazoo river from Marshall westward past Battle Creek.

Nearly 2 million gallons of oil and water mixture had been recovered as of Tuesday morning, according to Environmental Protection Agency officials. About 700,000 gallons had been shipped to an Enbridge facility in Indiana.

Enbridge estimates the spill at about 820,000 gallons, while the EPA previously estimated it was more than 1 million gallons. EPA officials would not provide an estimate on Tuesday.

EPA regional administrator Susan Hedman said that Enbridge met a Monday deadline to resubmit its long-range cleanup plan. The agency last week rejected the Calgary, Alberta-based company's plan because of "deficiencies in content and technical details."

Hedman said the agency is reviewing the revised plan but could not say when it would be done.

U.S. Fish and Wildlife officials say more than 100 oil-covered animals have been recovered from the spill area, including geese, ducks, muskrats and turtles. Several were cleaned and released to wetland areas outside the spill area.

The rupture was to a 30-inch pipeline built in 1969 that carries about 8 million gallons of oil daily from Griffith, Ind., to Sarnia, Ontario.

## PESTICIDES

==========

### Miss. order follows same ban issued by EPA (*Businessweek*)

JACKSON, Miss.
Mississippi Agriculture Commissioner Lester Spell Jr. has placed a stop-sale order on the herbicide Warthog 2EC after a batch was tainted with a different herbicide.

Spell says in a statement that the samples were contaminated with Dicamba, a product potentially damaging to soybeans.

Spell's order was issued last week at the same time the Environmental Protection Agency told a St. Joseph, Mo., company to stop selling or distributing the Warthog 2EC.

The EPA issued similar orders to the herbicide's registrant, J. Oliver Products of Hernando, Miss.

Warthog 2EC is used for weed control on soybeans. The EPA says it damaged 8,000 acres of soybeans near Beattie, Kan.

### Feinstein objects to methyl iodide fumigant (*San Francisco Chronicle*)

California
August 4, 2010 Wednesday
FINAL Edition
SECTION: Main News; Pg. A8
Feinstein objects to methyl iodide fumigant;
AGRICULTURE
By Carolyn Lochhead, Chronicle Washington Bureau
DATELINE: Washington
Sen. Dianne Feinstein weighed in Tuesday against the use of methyl iodide as a crop fumigant in California, saying she has asked the Environmental Protection Agency to

"reconsider" its approval of the chemical.

Federal intervention could override a proposal by state pesticide regulators to register the chemical for use on strawberry and other fruit crops to replace methyl bromide, which is being phased out because it damages the ozone layer. California grows 90 percent of the nation's strawberries.

Feinstein is a reliable and powerful ally of California farmers in immigration and water fights. But she has taken them by surprise with her efforts against a chemical they consider the only alternative to grow some of the state's biggest fruit crops.

Feinstein has developed a keen interest in the use of chemicals in food production, blocking a major food safety bill because it does not include a ban on bisphenol A, used to line food cans.

"I think we ought to be very careful what we do, and I've asked EPA to take a look" at methyl iodide, Feinstein said, adding that she is concerned that it could pose a hazard to field workers, especially pregnant women.

"This is very powerful stuff and I am increasingly of the view that chemicals do play a role in increasing disease in this country, whether it's asthma, whether it's cancer."

State farmers are pushing hard for approval of methyl iodide, saying they have no substitute to protect fruit crops from pests, other than using costly organic methods that many say are unworkable for large-scale commercial production.

Fruit crops are particularly prone to insects and disease and notoriously difficult to grow organically, at least in the flawless form consumers now expect.

"Nothing else is developed and ready to go, and gone through years of testing," said Wendy Fink-Weber, director of communications for Western Growers, which represents produce farmers in California and Arizona.

Under the proposed applications, Fink-Weber said farmers would be required to follow strict safeguards.

Feinstein acknowledged that "the farmers need a substitute. I understand that and I want to be helpful. I just want to know that it is a prudent standard and that it protects public health."

The EPA approved methyl iodide in 2007, during George W. Bush's administration. Feinstein wrote to EPA administrator Lisa Jackson on July 15 saying that decision was made "despite opposition by hundreds of leading scientists."

She cited a recent study by the state's Medical Toxicology Branch that found the exposure limits to methyl iodide under the EPA standard are much higher than required

to protect farm worker health. The chemical is an endocrine disruptor and at various exposures has been linked to thyroid cancer and neurotoxicity.

Provisional approval of methyl iodide by the state Department of Pesticide Regulation provoked strong criticism from members of its scientific review panel.

## RECYCLING

==========

### D.C. High on EPA's Green List (*NBC Washington*)

DC Named in Top 50 Green Power Organizations
By EUN YANG
Updated 12:16 PM EDT, Tue, Aug 3, 2010

Recycling plastics and turning off the lights don't really cut it anymore when it comes to the cutting edge of being green. But it looks like the District knows what it takes.

The city ranked high on the Environmental Protection Agency's latest list of top 50 green power organizations. It ranks 14th overall and an impressive third among local governments. Not bad.

The EPA cites the District's use of wind power provided by Washington Gas Energy Services.

When the EPA compiled the list, it looked for organizations, companies, jurisdictions and institutions that use the most renewable electricity. And that green power helps to reduce harmful emissions. The top 10 on the list are Intel Corporation, Kohl's Department Store, Whole Foods Market, City of Houston, Dell Inc., Johnson & Johnson, Cisco Systems, Commonwealth of Pennsylvania, U.S. Air Force and the city of Dallas.

American University was ranked No. 6 among the top colleges and universities for its wind power use.

These green power purchasers help reduce the environmental impacts of electricity use, and support development of new renewable generation capacity nationwide. Green power is generated from renewable resources such as solar, wind, geothermal, biomass, biogas, and low-impact hydropower. And those resources create energy that produces no net increase to greenhouse gas emissions.

The EPA's Green Power Partnership works with more than 1,200 organizations to purchase green power to reduce the environmental impacts of conventional electricity use, and to inspire the rest of the nation to go greener.
First Published: Aug 3, 2010 10:44 AM EDT

**SUPERFUND**
**==========**

**Where Brooklyn And Queens Meet, A Quiet Parallel To the Gulf Spill (*New York Times*)**

August 4, 2010 Wednesday
Late Edition - Final
Section A; Column 0; Metropolitan Desk; Pg. 15
By MIREYA NAVARRO
The salt marshes are long gone from Newtown Creek, and so are most of the birds and fish. Now, this waterway straddling Brooklyn and Queens is dotted by bulkheads and containment booms meant to keep oil away from the shoreline while underground pumps work around the clock removing petroleum from adjacent land.

Decades in the making and confined to a corner of industrial New York, the oil spills in and along Newtown Creek do not have the drama of disasters like the current one in the Gulf of Mexico and the 1989 Exxon Valdez spill in Alaska.

But long before the gulf crisis riveted the nation, more than a century of unchecked operations and storage by refineries that lined the four-mile-long creek fouled its waters and seeped through 55 acres of land in the vicinity.

Estimated at 17 million to 30 million gallons -- smaller than the ballpark estimate of up to 200 million gallons released by the Deepwater Horizon well but outstripping the 11 million that poured from the Exxon Valdez -- the combined spills along Newtown Creek have obliterated wildlife, polluted an aquifer, hindered economic development and set off health scares among those who live and work nearby.

"The impact is more subtle than in the gulf," said Phillip Musegaas, a lawyer with Riverkeeper, an environmental group that sued Exxon Mobil in 2004 for its role in the contamination. "The spill is unseen, and it's in an area that was industrialized and already polluted. But the waterway is severely stressed, and it's not a functioning ecosystem anymore."

Now, after a history of neglect and lawsuits against oil companies like BP and Exxon Mobil over the extent and pace of cleanup efforts, local residents say they have cause for hope: The federal government is proposing to designate the creek a toxic Superfund site, mandating a rigorous cleanup of the water and sediment.

Some residents say the gulf spill is helping to sensitize New Yorkers as never before to the responsibilities borne by oil companies and the risks that people run in living cheek

by jowl with toxic contaminants.

"We all joke that we're going to end up with big lumps in our throat so we can afford our rents," said Nate Zubal, 29, an interior designer in Greenpoint, Brooklyn, where many residences and businesses sit atop a layer of spilled fuel oils. "A cleanup is pretty important with so many people living so close."

The Bloomberg administration supports the Superfund designation for the creek, although it lobbied hard against one for the Gowanus Canal, in Brooklyn, out of fear that it could derail lucrative development projects. (The Environmental Protection Agency prevailed and gave the Gowanus Superfund status in March.)

While the E.P.A. calls Newtown Creek one of the nation's most heavily polluted waterways, oil is hardly the only problem. In samples of the sediment and surface water, the agency has also found sewage from system overflows, as well as pesticides, metals and PCBs from decades of industrial activity.

Officials say that Superfund designation for the creek could come as early as September, opening the way for a thorough federal assessment of the extent of the contamination and the cost and duration of a cleanup.

"The Superfund designation means that this water body will be evaluated in its entirety, which has never happened to date," said Angela Carpenter, a branch chief in New York with the E.P.A., which runs the Superfund program.

State officials say the Superfund cleanup could last more than a decade.

Under the program, the E.P.A. requires the parties responsible for contaminating the site to pay to reverse the damage. BP, Exxon Mobil and Chevron are expected to be among the parties enlisted.

The cleanup would deal only with the water and sediment in Newtown Creek, not the contamination underneath the adjacent land in Greenpoint (the Superfund program excludes strictly petroleum cleanups). But environmental and community groups say the designation will help prevent oil from leaching into the water from the land as it has in the past.

"Everyone is excited about getting the job done," said Katie Schmid, director of the Newtown Creek Alliance, an advocacy group. "You need federal oversight of the whole project to ensure effective remediation."

While the creek itself awaits a cleanup, oil companies are continuing to recover oil from their property in Greenpoint, an effort that began over two decades ago after the Coast Guard first spotted evidence of oil seepage into the creek in 1978. Since 1990, Exxon Mobil, BP and Chevron have removed about 11.1 million gallons of spilled oil, state officials say.

The pace has been too slow for Greenpoint residents, environmental groups and the New York state attorney general's office, which all have lawsuits pending against some or all of the companies for the pollution. (Negotiations are under way to settle suits filed by the state and Riverkeeper against Exxon Mobil.)

BP's role was mostly inherited: Its petroleum storage terminal in Greenpoint was once home to a Mobil refinery whose operations released about five million gallons into the ground, state environmental officials say. In 1969, BP's predecessor, the Amoco Oil Company, bought the 10-acre property. It began a cleanup in 1981 under an agreement with the city, and state officials say about two million gallons now remain to be recovered under the BP property.

The state says that BP is not meeting its schedule for collecting oil from the ground and asked that the company increase its current lineup of nine extraction wells.

Marti D. Powers, a spokeswoman for BP, said the company is adding four wells to meet state requirements, but it is fighting a lawsuit by residents. "The plaintiffs have to date not identified any spills by BP that have impacted them," she said.

The bulk of the overall cleanup work, from the collection of oil to the treatment of contaminated groundwater before it is released into Newtown Creek, has rather fallen to Exxon Mobil.

As the main inheritor of Standard Oil, which had dozens of refineries along the creek by the end of the 19th century, Exxon Mobil owns most of the contaminated land and is responsible for an oil plume that extends under about 300 homes in a residential area of Greenpoint.

Carolina Asirifi, a spokeswoman for Exxon Mobil, said the company's 20 operating recovery wells were pumping as fast as was safely possible -- currently at a rate of about 2,000 gallons of oil and a million gallons of groundwater a day.

"Exxon Mobil has been working extremely hard," she said. "We've made significant progress."

Residents fear that toxic gases will penetrate their homes from below. A state Department of Environmental Conservation study in 2006 found no oil-related vapors in samples of indoor air, although a comprehensive study of the health consequences of the spills has yet to be carried out.

As the community awaits the Superfund decision and more detailed analysis, the proposed designation has spawned a kind of creek boosterism.

"We're turning the corner," said Ted Gruber, chairman of the Long Island City

Community Boathouse, whose members often venture into Newtown Creek in canoes. "People like us are paddling in greater numbers. People are beginning to care."

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

**Groups seek ban on lead ammunition, fishing tackle (*Associated Press*)**

By FREDERIC J. FROMMER (AP)
WASHINGTON — Five environmental groups want the EPA to ban lead in ammunition and fishing tackle, arguing that millions of animals are dying from eating lead-shot pellets or carcasses contaminated by lead.

The American Bird Conservancy and the other groups filed a 100-page petition with the Environmental Protection Agency Tuesday seeking the ban under the Toxic Substances Control Act.

The petition includes hundreds of scientific studies which the groups say demonstrate the harm lead does to wildlife.

The National Shooting Sports Foundation, a trade group, called the petition an "anti-hunting attack on traditional ammunition." It said there is no evidence lead ammunition is having an adverse impact on wildlife populations.

**Inside the Beltway (*Washington Times*)**

August 4, 2010 Wednesday
SECTION: A, NATION; Pg. 2
Inside the Beltway
By Jennifer Harper THE WASHINGTON TIMES
MEAN AND MEANER

She's got breast implants. Her eye color was altered. She's airbrushed. Look at that tacky flag pin. Her political endorsement is the kiss of death, she's illiterate - and so on, and so forth. The bashing just gets more petty, as evidenced by the shrill outpouring after publisher Harper/Collins offered a sneak peek at the cover of Sarah Palin's upcoming book, "America By Heart: Reflections on Family, Faith and Flag."

Wait a minute. Mrs. Palin's portrait is not provocative. She wears a gray sweater, and is tastefully made up. She's friendly, and yes, there's evidence of - OMG - shocking patriotic jewelry. The book won't be out until Nov. 23. Still, she remains a target for churlish criticism. Why?

"Oh, that's easy enough. We basically like people who are similar to us. And to her critics, Sarah Palin is not similar. She is not Ivy League, she is not an intellectual, she is not a product of Northeastern establishment schools, she is everything that her critics are not, and as a result, they attack," says Manhattan marketing analyst John Tantillo.

"And Palin's critics don't understand that her appeal is to the general public. Not to them, not to the elite. And they are not trustful of that, they are not comfortable with that. They want someone who can write 10,000 weighty words on **global warming,** rather than give five terse and pithy talking points on why we should drill in ANWR," Mr. Tantillo adds.

STICKY-LEAKS

Note to White House: 67 percent of American voters say that the release of classified military documents at the Wikileaks website will harm national security, according to a Rasmussen Reports survey of 1,000 likely voters conducted July 30 and 31. Only 19 percent say that news organizations that publish this content are doing a "public service." Advice to White House: Act accordingly.

NOT SO FAST

The era of good feeling has not quite descended upon Manhattan, now that the $100 million "ground zero mosque" has gotten the unanimous blessing of the New York City Landmarks Preservations Commission, which essentially cleared the way for its construction. Republican gubernatorial hopeful Rick Lazio is calling for an investigation into the project's funding, asking New Yorkers to defend "our sacred ground." The Anti-Defamation League suggests an "alternative" site be found. Legal minds are also at work.

"The actions taken by the city of New York represent a blatant disregard for the city's own procedures, while ignoring the fact that this is a historic and hallowed site that should not be destroyed to build an Islamic mosque," says Jay Sekulow, chief counsel of the American Center for Law and Justice, which will file an Article 78 petition in state court on Wednesday to challenge the action, alleging an "abuse of discretion" in the commission's decision.

"The city has engaged in a rush to push this project through - ignoring proper procedure and ignoring a growing number of New Yorkers and Americans who don't believe this site is the place to build a mosque," Mr. Sekulow adds.

INSIDE SALES

"There's something entirely believable about the Newsweek sale. A left-winger pretending to be centrist sold it to another left-winger pretending to be centrist. Newsweek is a dying magazine because no one wants to read their left-wing propaganda masquerading as 'news.' The $1 price tag, then, is probably just about right."

- Media Research Center director Brent Bozell, regarding The Washington Post Co. sale of Newsweek magazine to philanthropist Sidney Harman.

AIM AT AMMO

They definitely did not Tweet it. The American Bird Conservancy, Center for Biological Diversity, Association of Avian Veterinarians and other groups have petitioned the **Environmental Protection Agency** to ban lead in hunting ammunition and fishing tackle, claiming that 20 million birds and animals die of lead poisoning each year - justifying their demands through the 1976 **Toxic Substances** Control Act.

Nonsense, counters the National Shooting Sports Foundation (NSSF), a trade association.

"There is simply no scientific evidence that the use of traditional ammunition is having an adverse impact on wildlife populations that would require restricting or banning the use of traditional ammunition beyond current limitations," says NSSF President Steve Sanetti, who points out U.S. Fish and Wildlife Service data shows that breeding pairs of bald eagles have increased 724 percent in recent years.

Mr. Sanetti also draws attention to the federal excise tax ammunition manufacturers - 11 percent - is a primary source of wildlife conservation funding.

"Hunters and their ammunition have done more for wildlife than the Center for Biological Diversity ever will," observes NSSF General Counsel Lawrence G. Keane.

POLL JU JOUR

* 62 percent of Americans say things are going "very/moderately badly" for the U.S. in Afghanistan.

* 55 percent of Democrats and 24 percent of Republicans approve of the way President Obama is handling the situation in Afghanistan.

* 36 percent of Americans overall approve of Mr. Obama's handling of Afghanistan.

* 52 percent say the U.S. was right to send troops to Afghanistan.

* 43 percent say it was a mistake.

Source: A USA Today/Gallup Poll of 1,208 adults conducted July 27 to Aug. 1.

* Tip line always open at jharper@washingtontimes.com

**EPA petitioned to ban lead sport hunting ammo (*Greenwire*)**

(08/03/2010)
Environmental groups are asking U.S. EPA to ban all lead-based fishing tackle and sporting ammunition, arguing lead bullet fragments in shot animals expose scavengers and humans to unhealthy levels of lead.

The Center for Biological Diversity and the American Bird Conservancy said today in a petition that chronic lead poisoning in birds leads to "appetite loss, anemia, anorexia, reproductive or neurological impairment, immune suppression, weakness, and susceptibility to predation and starvation."

"There is compelling evidence of harm to many species, and there are alternatives," said Jeff Miller, a conservation advocate at the Center for Biological Diversity. "It doesn't make sense to continue with it."

Lead is dense and malleable, making bullets travel farther and making them more lethal because the lead expands on impact. However, ammunition manufacturers have been experimenting with copper, bismuth and various alloys for more than 20 years, and the Army is using lead-free cartridges in Afghanistan.

Several sport shooting associations dismissed the petition as scientifically flawed, and Richard Patterson, the managing director of the Sporting Arms and Ammunition Manufacturers' Institute said it was "inflammatory, throw-it-against-the-wall material."

The Department of Interior banned lead shot to hunt waterfowl in wetlands in 1991. And California banned lead ammunition in endangered California condor territory (Felicity Barringer, *New York Times*, Aug. 3). **-- LP**

**Agencies Seek EPA Meeting To Air Concerns Over Risk Studies, Methods (*Inside EPA*)**

Posted: August 3, 2010
Representatives of several federal agencies are calling on EPA to hold a series of meetings to discuss their concerns that EPA is ignoring their recommendations for revising draft risk assessments and failing to follow its own scientific methods when crafting assessments, concerns that may result in stricter safety limits than what the agencies favor.

Federal sources say they hope to use the upcoming meetings to make suggestions to the agency for revising the processes the agency uses for crafting and reviewing draft risks assessments, including calling for EPA to respond in writing to comments supplied by the agencies.

While federal agency officials have long raised these concerns, they reiterated them and called for the series of meetings during a July 22 conference call with Becki Clark, the acting head of EPA's National Center for Environmental Assessment (NCEA), say sources familiar with the call.

"The agencies are concerned EPA science isn't always well-founded," one federal source says. "There is a push to have a discussion about cross-cutting science issues, separate from" agencies' concerns with EPA's process for reviewing the draft assessments.

Meanwhile, sources say that EPA research chief Paul Anastas is also holding one-on-one meetings with individual representatives of other agencies to discuss the agency's key risk assessment program, the Integrated Risk Information System (IRIS) program. An EPA spokeswoman did not respond to a request for comment by press time.

Discussion of the agencies' concerns comes as EPA is facing a slew of hurdles as it seeks to complete several major draft assessments, including those for methanol, formaldehyde, dioxin, arsenic and others. The agency has stalled four pending draft assessments, including methanol, the fuel additives methyl tertiary butyl ether and ethyl tert-butyl ether, and the plastic ingredient acrylonitrile, due to concerns that they relied on studies from an Italian laboratory, the Ramazzini Institute, whose study results are in doubt.

And the agency is facing strong criticism from its science advisers that it has failed to adequately respond to earlier peer review comments on its draft assessments, including those for dioxin and arsenic.

The meetings and conference call followed the recent announcement that Anastas reassigned NCEA's long-time director, Peter Preuss, to form a new, internal "think-tank." At the time, some observers suggested Anastas intended the move to make changes in the way IRIS is performing.

During the recent conference call, federal agency representatives raised concerns both about EPA's process of creating the draft risk assessments, which Administrator Lisa

Jackson altered in May 2009, and about the science in the documents. The latest version of the process limited other agencies' role in the creation of the documents, which the Bush administration had greatly expanded

**Violation Of Assessment Guidelines**

The federal source indicated that one of the science questions at issue revolves around NCEA's frequent use of conservative linear models for calculating cancer risks at low doses, which the source says NCEA uses in violation of the agency's cancer risk assessment guidelines.

EPA's most recent cancer risk assessment guidelines indicate that agency risk assessors should use the linear extrapolation if the chemical's mechanism of action, or the biological process by which it causes cancer, is unknown or mutagenic. At a recent meeting of a panel of experts reviewing EPA's draft dioxin assessment, panelists suggested that if the agency wanted to adopt such an approach, it should do so as a policy matter because the science does not justify such a strict approach.

"EPA's NCEA office often does not follow EPA's own guidance for risk assessments, for example, its cancer guidance," says a source at a second federal agency. "When this is pointed out, they ignore it."

The source says that "the federal agencies have a number of suggestions to improve the IRIS process," adding that EPA's failure to follow its risk assessment guidance was among "a few issues discussed" on the conference call. The source also described a concern that industry has frequently voiced about IRIS assessments: that NCEA staff seem "to ignore peer-reviewed studies that show low or negative risks" from the chemical under assessment.

Additionally, "EPA often chooses to ignore the National Academy of Sciences (NAS) peer review conclusions even though many consider NAS as the 'Supreme Court' for science," the source says.

NAS peer-reviewed earlier versions of both EPA's draft dioxin assessment and its draft assessment of arsenic. In both cases, NAS suggested that EPA consider non-linear modeling of the contaminants' risks. While EPA performed additional non-linear analyses in both assessments, the agency indicated that the risk estimates it is ultimately proposing are based on the linear extrapolation. Former members of both NAS panels have charged that the agency did not sufficiently consider the panels' recommendations.

These concerns as well as those about the process for interagency review and comment -- which transpires in the last months before a draft assessment is released to the public -- "appear to be a continuing concern," says the first source.

Much of the agencies' concern about the interagency review process revolves around "how responsive EPA is being to questions posed" by other agencies, a concern shared by representatives of several agencies, the first source says, adding that the source "did not think EPA acknowledged" the issue.

The second source agreed, saying that "EPA needs to respond to agency comments so the public can see both the agency comment and EPA's handling of the comment." -- *Maria Hegstad*

**WATER**

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

**EPA Faces New Hurdles In Bid To Craft Landmark Florida Nutrient Criteria (*Inside EPA*)**

Posted: August 3, 2010
EPA is facing new hurdles as it seeks to craft its landmark numeric water quality criteria for Florida, delaying several planned criteria so they can be reviewed by agency science advisors while also facing new calls to submit criteria for rivers and lakes, which are due later this year, for scientific review.

At the same time, the agency is seeking comment on several options intended to provide flexibility to its proposed criteria for rivers and lakes in a move that is drawing surprise from both industry and environmentalist sources who say it is being issued so close to the scheduled deadline for the final rule's promulgation.

But those sources say the agency's decision to move forward with publishing additional data less than three months before they are required to have finalized the highly controversial numeric nutrient criteria is very unusual, since the agency will be required to receive comment on the notice and then make any necessary revisions before publishing the final numeric criteria before Oct. 15. The comment period for the NODA ends on September 2.

"It's not common to be sending a NODA at this late stage," one industry source says. "You have to consider that if you have a 30-day comment period, you're talking about the end of August to get the comments back at the earliest."

EPA is crafting the first-time numeric nutrient criteria for Florida under the terms of settlement with environmentalists who charged the agency with shirking its duty to protect Florida's waters by accepting the state's narrative water quality criteria for nitrogen and phosphorus.

Under the Clean Water Act (CWA), states draft and EPA approves water quality criteria -- risk-based limits that regulators use, along with waterbodies' designated uses and antidegradation policy -- to set enforceable water quality standards and permit limits. But most states have long opted for a "narrative standard," which allows discharges to continue so long as there is no discernible effect on the waterbody, rather than a stricter numeric standard.

In the suit, the plaintiffs sought a revocation of Florida's delegated authority and for EPA to issue its own numeric nutrient criteria for the state, which EPA ultimately agreed to do in their consent decree. EPA subsequently reached a settlement in 2009 with Florida and environmentalists setting a deadline for issuing criteria.

The move alarmed the water utility and agriculture industries, because the circumstances that allowed the activists to prevail in their suit can be emulated in most states that have excessive nutrient pollution. Since then, activists have sued EPA over the failure of several additional states, including Kansas and Wisconsin, to craft numeric criteria while regulators in others states, including Wisconsin, Minnesota and Michigan, are taking their own steps to craft numeric criteria (*see related story*).

**Further Delays**

But the agency's precedent-setting effort in Florida has faced hurdles. Earlier this year, the agency opted to delay until 2011 plans to promulgate criteria to protect downstream estuarine and coastal waters from nutrients that come from upstream rivers so that it could submit them for peer review.

Now the agency has opted to delay that even further, agreeing in a joint June 7 court filing with environmentalists to propose the criteria by November 2011 and promulgate them by August 2012.

In the filing, which was approved by the U.S. District Court for the Northern District of Florida, the agency and environmentalists also agreed to extend until Aug. 15, 2012 a court-ordered deadline for the agency issuing the criteria for lakes and flowing waters in the South Florida region -- a unique area where all flowing waters are either canals or wetlands, many of which are classified as “Class III,” meaning they are reserved for recreational uses -- a major industry in South Florida, which includes the Florida Everglades and Miami.

But the existing Oct. 15 consent decree deadline continues to apply for EPA issuing final criteria for flowing waters and lakes in the remaining Florida regions, though a bipartisan group of 21 Florida lawmakers sent an Aug, 2 letter to EPA Administrator Lisa Jackson asking her to subject all of their numeric nutrient criteria to SAB review, not just those for estuaries, coastal waters and south Florida's canals.

In the letter, lawmakers do not ask for a specific date for EPA to have completed the review, but argue that if SAB review if necessary for those waters and it is necessary to

take extra time to get those criteria right, then the same should be true of those criteria the agency is slated to publish later this year. The letter also urges EPA to make adjustments to its proposed criteria to account for suggestions SAB may ultimately make.

“We believe that the SAB peer review process is important, and it should apply to all of the criteria to be imposed in Florida, not just criteria for canals, coastal waters, and estuaries,” the letter reads. “We strongly urge that EPA delay requirements to implement its proposed streams and lakes criteria until the peer review concludes, and EPA should adjust its rulemaking in accordance with the peer review analysis and recommendations.”

The letter also urges EPA to conduct an economic analysis of the impacts of the numeric criteria on the state and neighboring states, with consideration given to information provided by relevant state agencies and the public and the costs associated with making necessary retrofits to existing infrastructure to meet the demands of the new numeric criteria.

EPA acknowledges scientific and other concerns in its June 7 court filing, noting that it received public comments on its proposed version of the numeric nutrient criteria that raised issues with the "underlying methodologies, analyses and data" behind the proposed criteria for flowing waters with so-called Class III designated uses in the South Florida region.

The filing says EPA and activists agree on the need for SAB to peer review the data to ensure the "best available science" is used in setting criteria for South Florida's flowing waters, many of which are designed for Class III uses.

**NODA Seeks More Comment**

Meanwhile, EPA is seeking additional comment on options for its criteria for lakes and streams in a supplemental notice of data availability (NODA) published in Aug. 3 in the *Federal Register*. According to the NODA, EPA is proposing to redraw some of the boundaries in the state's remaining watersheds in order to better reflect hydrology and soil composition data. The NODA also is taking comment on whether it should consider alternative modeling procedures for certain downstream lakes and under which circumstances alternative models should be used.

The Aug. 3 NODA proposes to split the Panhandle Region into two separate regions, the West Panhandle and East Panhandle, based on suggestions from the Florida Department of Environmental Protection (FDEP). The western panhandle has relatively normal baseline levels of phosphorous in its soil, whereas there are naturally-occurring phosphorus-rich geological formations in the eastern portion of the panhandle that could skew the levels of phosphorus in the region's waters.

The NODA also proposes to shift the Sarasota Bay and Charlotte Harbor watersheds from the West Central (or Bone valley) region to the Peninsula Region as a result of closer analysis of watershed delineations suggested by FDEP and others, the NODA says.

And EPA says in the NODA that it is taking additional comment on using alternative water quality models -- specifically the BATHTUB model -- for downstream lakes rather than the Vollenweider model, which the agency had previously applied throughout the state.

Environmentalists and other stakeholders tracking the development of the criteria expressed surprise that EPA was issuing a NODA so close to the date of final publication. Both environmentalist and industry sources, speaking prior to the NODA's publication, say they were not contacted by EPA about the NODA and the agency has not briefed them on what data may be made available through it.

One industry source welcomes the delays but says that all of EPA's proposed criteria for flowing streams and lakes should undergo SAB peer review -- not solely the criteria for south Florida's waters and for the state's estuaries and coastal waters. EPA's decision to issue the criteria for the three other regions by Oct. 15 "raises some real issues," the source says. "I couldn't see any logic to that. If SAB is good for the [South Florida and estuarine and coastal] criteria, why is it not for the [others]?"-- *John Heltman*

**********

**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.**

**********