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ADMINISTRATOR JACKSON
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Alexander calls for delay on EPA's lead paint rule to allow for flooding repairs in Tenn. (*Associated Press*)

Story also appeared: *WHNT News, Chatanoogan*

11:47 AM CDT, May 25, 2010

NASHVILLE, Tenn. (AP) — U.S. Sen. Lamar Alexander is seeking a delay on a new rule restricting work done on buildings that have lead paint because he's concerned that it would slow down flood repairs.

Alexander said in a conference call with reporters on Tuesday that he's asked Environmental Protection Agency Administrator Lisa Jackson to stop issuing fines and increase accessibility to the training required for contractors.

The rule, which went into effect in April before flooding in Tennessee started on May 2, requires contractors to take courses on "lead-safe practices" before working on homes, day-care centers and schools built before 1978.

Alexander said he was concerned there weren't enough certified contractors to help get people back in their homes.

Lamar Alexander asks EPA to delay implementing contractor certification (*Commercial Appeal*)

By Bartholomew Sullivan
Originally published 11:05 a.m., May 25, 2010
Updated 12:18 p.m., May 25, 2010
WASHINGTON – Sen. Lamar Alexander, R-Tenn., is asking the EPA to delay implementing a rule requiring contractors to be certified before disturbing lead paint in older structures, including paint in homes damaged by recent flooding.

In a conference call with Tennessee reporters, Alexander said a rule that took effect in April requires certification for contractors making major repairs or renovations to the 750,000 Tennessee structures built before 1978.

In addition to the request that the rule’s implementation be delayed, Alexander is asking the Environmental Protection Agency to increase the availability of training sessions for contractors. Right now, the EPA has only three full-time trainers for the required 8-hour class, and thousands of contractors have not yet enrolled in them.

He also asked EPA administrator Lisa Jackson to permit homeowners to opt out of having a certified contractor if there are no children under six or pregnant women living in the structure.

If caught, a contractor could be liable for a $37,500 fine for working on a house with lead-based paint, Alexander noted.

Alexander said the idea behind the law is sound and that the removal of lead-based paint is a good idea, but that EPA has a “poorly thought out” implementation plan and has done “a lousy job” of informing Tennessee contractors of the requirement. So far, only 2,700 contractors in Tennessee have been trained and only 370 companies certified, Alexander said.

Along with Sen. Susan Collins, R-Maine, Alexander plans to introduce an amendment to an appropriations bill that would allow contractors signed up for the EPA certification classes before September 30 to be considered in compliance with the law and not subject to its fines.

At the start of his conference call this morning, Alexander said he was joined by U.S. Reps. John Tanner, D-Tenn., and Marsha Blackburn, R-Tenn., and Sen. Bob Corker, R-Tenn., in asking Agriculture Secretary Tom Vilsack to make farmers in 13 Middle and West Tennessee counties eligible for disaster assistance.

EDITORIAL/OP-ED/ COMMENTARY/LETTERS
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An Executive Without Much Privilege (*New York Times*)

May 26, 2010 Wednesday
Late Edition - Final
Section A; Column 0; Editorial Desk; OP-ED CONTRIBUTOR; Pg. 27
An Executive Without Much Privilege
By JOHN YOO.
John Yoo, a law professor at the University of California at Berkeley and a scholar at the American Enterprise Institute, is the author of "Crisis and Command: A History of Executive Power From George Washington to , George W. Bush."
Berkeley, Calif.

PRESIDENTIAL power has emerged as a potential topic of controversy in the nomination of Solicitor General Elena Kagan to the Supreme Court. Her supporters from both parties argue that she is a defender of executive power, citing her work as the Obama administration's advocate in the federal courts. This very claim has made critics

nervous about her commitment to civil liberties and her views on using the criminal justice system in the war with Al Qaeda.

True, Ms. Kagan has defended some of the Bush administration's counterterrorism policies on wiretapping and the detention of terrorists without criminal trial (policies on which I worked as a deputy assistant attorney general under President George W. Bush). But these positions provide little hint about what a Justice Kagan would think about executive authority sitting on the bench in time of war.

When defending its national security policies in court, this administration prefers to rely on Congress's Sept. 18, 2001, authorization to use military force against those responsible for the 9/11 attacks rather than the president's inherent powers as commander in chief and chief executive. President Obama may agree with George W. Bush on the usefulness of military commissions to try some terrorists, but he has different ideas about what gives a president the power to create them.

Though Ms. Kagan's thin record makes it difficult to draw many conclusions on her personal views, her academic work still provides hints into her thinking on this issue. In 2001, she published a 140-page article in The Harvard Law Review, "Presidential Administration," written when she held no brief for the administration. Some have suggested that because her article looks favorably on President Bill Clinton's energetic use of executive orders and regulatory efforts, Ms. Kagan must agree with the Bush administration's theories of the unitary executive.

This is a mistake that could only be based on reading just the first page of her article. Choosing not to study a treatise on presidential administrative policies containing 527 footnotes is an understandable act of self-preservation. Nonetheless, those who persevere will find that her article clearly and directly rejected the theories supporting the executive branch's broad constitutional powers. Rather, it is in line with the views of a majority of the Supreme Court justices and many liberal scholars who feel the executive branch's powers are quite limited.

Here is what created the misimpression: In the paper, Ms. Kagan defended President Clinton's insistence that he alone commanded his cabinet officers and agency heads, even when they exercised authorities specifically delegated to them by Congress. "Presidential control of administration," she wrote, "expanded dramatically during the Clinton years, making the regulatory activity of the executive branch agencies more and more an extension of the president's own policy and political agenda."

Thus even if Congress, for example, gave the Environmental Protection Agency the job of setting clean air standards, President Clinton assumed the authority -- without any direct permission in law -- to set the standards on his own.

And while Ms. Kagan criticized the Ronald Reagan and George H. W. Bush administrations for using their presidential powers to deregulate the economy, she praised Bill Clinton for using those same powers to advance "a distinctly activist and

pro-regulatory governing agenda." To her, Clintonian unilateralism served up just the antidote to bureaucratic "vices (even pathologies), foremost among which are inertia or torpor." Lighting a fire under the agencies allowed "active if incremental government" through "the development of regulatory solutions to national problems."

But for Ms. Kagan, finding this authority in the Constitution was a bridge too far, a view that put her firmly in the camp of those who see the president's powers as circumscribed.

She assiduously rejected any claim that presidents may manage the many functions of the vast administrative state because of their constitutional position as chief executive, a view she attributed to "unitarians." (These are not your mother's non-Trinitarian Christians.) Instead, she concluded, the framers did not see the Constitution's vesting of the nation's "executive power" solely in the president as a grant of any substantive power.

She based her rejection of the unitary executive view on Supreme Court precedent. She invoked Youngstown Sheet and Tube v. Sawyer of 1952, in which the Supreme Court blocked President Harry Truman's seizure of the nation's steel mills during the Korean War, and supported Congress's power to effectively render whole agencies independent of presidential control.

Incidentally, Justice Robert H. Jackson, who as attorney general in the early 1940s had laid claim to broad executive powers for President Franklin Roosevelt and had even written in support of his seizure of an aircraft factory, turned 180 degrees in Youngstown, insisting that Truman had no such right. He wrote a concurring opinion stating that, as a judge, he could not accept "self-serving press statements of the attorneys for one of the parties," even when "the advocate was himself." Should we expect anything more consistent of a Justice Kagan?

In her law review article, Ms. Kagan also lauded Supreme Court holdings that Congress can prohibit presidents from firing subordinate officers, which effectively prevents the president from giving orders. This would place the executive agencies under the political thumb of the legislative branch. "I acknowledge that Congress generally may grant discretion to agency officials alone," Ms. Kagan wrote, and "the president must respect the limits of this delegation."

Under this approach, Congress could free the Justice Department, the Defense Department and any other agency created by Congress from presidential control. To be fair, Ms. Kagan thinks this would be a bad idea (she praised President Clinton's centralization of authority in the White House because it fostered "accountability" and "effectiveness"). But she argued that the Constitution gives the president no power to prevent Congress from doing so.

This is simply wrong. Article II of the Constitution vests in the president alone "the executive power" of the United States. As Justice Antonin Scalia wrote in his dissent

from the court's 1988 decision upholding the constitutionality of the Office of the Independent Counsel, "this does not mean some of the executive power, but all of the executive power." (His argument was proved prescient in 1999 when Congress let the law authorizing the independent counsel lapse.)

From the time of George Washington, presidents have understood Article II to grant them the authority to hire and fire all subordinate officers of the United States, and hence command their activities, even though the Constitution mentions only the power to appoint, not to remove. If Elena Kagan will not even permit presidents this small constitutional right, who can doubt that she will reject executive powers of greater consequence?

Alexander Hamilton first made clear that the president's right to fire his officers and his substantive powers over foreign affairs and national security all flow from the same constitutional source. "The general doctrine then of our Constitution is, that the executive power of the nation is vested in the president," Hamilton wrote in defending George Washington's 1793 Neutrality Proclamation, "subject only to the exceptions and qualifications" in the text itself.

But if presidents cannot constitutionally command their secretaries of defense, as Ms. Kagan would allow, they certainly do not have the power to detain or interrogate enemy terrorists without criminal trial, monitor their communications or fire missiles at their leaders.

The framers designed the presidency to play a modest role at home, using the veto to check Congress's excesses. In foreign affairs, however, the chief executive should enjoy flexible powers to grapple with challenges abroad for which Congress is ill suited. Ms. Kagan seems to harbor a reverse image of the original presidency -- vigorous domestically, constrained internationally.

The Senate hearings next month on her nomination will be our last chance to find out what Elena Kagan really believes. With the nation fighting wars in Iraq and Afghanistan and locked in a struggle with Al Qaeda, her views on executive power may be the most important ones to learn more about.

Letter to the Editor (*Philadelphia Inquirer*)

May 26, 2010 Wednesday
CITY-C Edition
EDITORIAL; Inq Opinion & Editorial; Pg. A18
Letters to the Editor

Which protections would Paul forgo? The focus on Rand Paul's view of the 1964 Civil Rights Act misses the larger point: that none of the proponents of "smaller government"

are asked for specific areas in which they feel the federal government has overreached ("Race issue snares Ky. tea party's Paul," Friday).

Paul should be given a list of government activities and asked as a libertarian which of these activities he feels are improper. For example, does he support the Clean Water Act? The EPA? As a surgeon, does he feel the government should have the power to approve the introduction of a legal drug? How about the ban on partial-birth abortions? How about Medicare? Once we know how Paul would reorient government, we will be able to have informed opinions about the movement for smaller government.

Jack Belkin

Philadelphia

j_belkin@hotmail.com

AIR

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EPA strips Texas of control over one of its biggest air pollution permits (*Dallas Morning News*)

12:28 AM CDT on Wednesday, May 26, 2010
By RANDY LEE LOFTIS / The Dallas Morning News
rloftis@dallasnews.com
The EPA, saying Texas' system of regulating industrial air pollution violates federal law, stripped the state of jurisdiction over one of its biggest permits Tuesday.
The Environmental Protection Agency's takeover of a key permit governing Flint Hills Resources' East Corpus Christi refinery marks a widening gulf between federal regulators and the Texas Commission on Environmental Quality.

The EPA, for now, has stopped short of seizing control of the state's entire air-pollution permitting system. But the agency's top regional official said he is preparing to take over more Texas permits and is insisting the state make basic changes.

"The EPA is serious about requiring that air-quality permits held by companies in Texas are federally sufficient," EPA regional administrator Al Armendariz said in a telephone interview. "If the state agency is unwilling or unable to issue those permits, the EPA must and will do so."

Armendariz was in Louisiana monitoring the environmental response to the BP oil spill.

The TCEQ has insisted that its permit system is legal and effective. In a letter to the EPA dated Monday, TCEQ Executive Director Mark Vickery said the state understood that legal deadlines might force the EPA to take over some Texas permits while the agencies try to resolve "significant differences in opinion."

"A collaborative effort will continue to be beneficial to both agencies' limited resources and to continued protection of the environment and public health," Vickery wrote.

Flint Hills Resources spokeswoman Katie Stavinoha in Houston said the company was evaluating the EPA's letter. Flint Hills is owned by Koch Industries, based in Wichita, Kan.

The company's Corpus Christi complex, which includes two refineries, can process 288,486 barrels of crude oil a day. It ranks as the fifth-largest refinery in Texas and the 11th-largest nationwide, according to the U.S. Energy Information Administration.

Armendariz said the EPA's choice of Flint Hills Resources to begin its permit takeover did not reflect a particular problem with that facility. Rather, he said, the agency believed objections to its state permit were on especially strong legal grounds.

The TCEQ issued a draft operating permit for the Flint Hills Resources refinery last October. The EPA formally objected to the state permit in December, saying it omitted required information about emissions and environmental requirements.

Without that information, the agency said, neither the public nor regulators could adequately monitor the refinery's pollution.

Missed deadline

The state had 90 days to correct the problems but did not do so, Armendariz said. With that deadline long past, he said, the EPA had to step in.

Now the company must apply directly to the EPA for a new permit that the agency itself will issue, bypassing the state, Armendariz said.

The EPA-issued permit will include the detailed information that the state permit left out, he said.

That process also will occur at other facilities with disputed permits, Armendariz said. In the past six months, the EPA has filed formal objections to major Texas permits at 40 facilities, an apparently unprecedented number in any state.

Most of the facilities are oil, gas or related chemical plants on the Texas coast. Two, however, are in North Texas: city-owned Garland Power & Light's Ray Olinger power plant in Collin County and Koral Industries' bathtub factory in Ellis County.

Neil Carman, clean-air program director with the Sierra Club's Texas chapter, said the EPA action was important for people in communities facing industrial pollution, starting with East Corpus Christi, which has several large refineries.

"We've been very concerned about the folks in that area," Carman said. "I think [EPA officials] are really sending a message to the TCEQ that this baloney has got to stop."

Luke Bellsnyder, executive director of the Texas Association of Manufacturers, said the EPA should "ease off the pedal a little bit" and work out a deal with the state as soon as possible.

"Give us some predictability," he said.

Differences continue

Talks over more than a year have failed to resolve the differences between the EPA and the state over the complex system of state permits that limit industrial air pollution.

Big facilities must obtain operating permits under Title V of the federal Clean Air Act. In nearly all cases, states issue the permits on the EPA's behalf through cooperative agreements.

The EPA remains responsible for reviewing state-issued permits and the states' permit systems for compliance with the Clean Air Act.

Armendariz said Texas permits have taken improper shortcuts, omitted key information and made it difficult to tell if facilities have skirted mandatory reviews.

The TCEQ says its system cuts red tape without violating the law or sacrificing public health. In his letter Monday, commission chief Vickery recounted what he said were ongoing efforts to find common ground.

He added, however, that "as a matter of principle, the TCEQ strongly disagrees that there has been a wholesale circumvention" of key federal requirements.
KEY POINTS: EPA'S CASE

The EPA said Flint Hills Resources' draft operating permit, written by the Texas Commission on Environmental Quality, violates the Clean Air Act because it:

• Improperly relies on the refinery's separate "flexible" permit, which itself does not comply with the Clean Air Act.

• Obscures key requirements by directing the reader to other documents instead of stating the requirements plainly. The Clean Air Act mandates a "clear and meaningful" statement of permit provisions so the public can monitor a facility's operations.

• Requires just three years of environmental record-keeping. The Clean Air Act requires five years.

• Fails to identify the specific equipment covered by some requirements.

• Omits information needed to determine if the refinery should have been subject to enhanced scrutiny.

Wednesday, May 26, 2010

U.S. EPA Awards America's Greenest Campus 2010 Clean Air Excellence Award (*FOX Business*)

, May 26, 2010 /PRNewswire via COMTEX/ ----Russell Simmons, Obama Girl Helped Mobilize 20,000 Students at 460 Schools in 2009;
On-Campus Energy Efficiency Campaign Re-Launches in Fall 2010

The U.S. Environmental Protection Agency today awarded its prized Clean Air Excellence Award to America's Greenest Campus, the nation's largest and most successful on-campus energy efficiency campaign.

America's Greenest Campus is a partnership between SmartPower, the nation's leading non-profit marketers of clean, renewable energy and energy efficiency, and Efficiency 2.0, the premier online energy efficiency software company for utilities and governments, with support from the U.S. Department of Energy. Launched in April 2009, America's Greenest Campus quickly became the largest campus initiative of its kind. Over 20,000 students, faculty, and alumni at over 460 schools participated, cutting their collective carbon output by 19 million pounds.

The nationwide contest engaged college students through social media and on-campus organizing, encouraging participants to track their energy use and reduce their carbon footprints. Efficiency 2.0's Climate Culture, an innovative online platform, provided personalized energy saving recommendations, while SmartPower's targeted outreach - using Facebook, Twitter, viral videos, and celebrity endorsements (hip-hop mogul Russell Simmons and Internet phenomenon Obama Girl were on board in 2009) - spread the message that saving energy

is hip, smart, and vital.

The winners - the college with the greatest number of participants, and the college with the greatest per-person carbon reduction - were each awarded $5,000 for sustainability projects of their choosing. University of Maryland, College Park (with 2,257 participants) and Arizona's Rio Salado College (with 4.4% carbon reduced per person) were the victors in 2009.

Carbon output wasn't all that college students reduced during America's Greenest Campus. The results reflected $4.25 million in savings and significant energy/resource reductions across the board:

186,705 therms of gas
156,743 gallons of gasoline
154,838 tons of paper
28.41 million gallons of water
5,984 megawatt hours of electricity
America's Greenest Campus will re-launch in fall 2010.

The Clean Air Excellence Awards Program, established in 2000 at the recommendation of the Clean Air Act Advisory Committee, annually recognizes and honors outstanding innovative efforts to help achieve cleaner air. Award-winning entries must directly or indirectly reduce pollutant emissions, demonstrate innovation, offer sustainable outcomes, and provide a model for others to follow.

May 26, 2010

Jay proposes two-year halt to EPA rules on emissions (*Register Herald*)

By Mannix Porterfield Register-Herald Reporter

BECKLEY — Talk is mushrooming on Capitol Hill of an impending vote on the so-called Murkowski resolution to reflect disapproval of the Environmental Protection Agency's handling of greenhouse emission sources.

And that is moving Sen. Jay Rockefeller, D-W.Va., to accelerate his push for more definite action — a proposed two-year hiatus for the EPA to regulate emissions at stationary sources as a safeguard for West Virginia's coal industry.

Which means a hands-off attitude to coal mining installations and power plants, provided the Rockefeller bill clears Congress.

Rockefeller introduced his bill March 4, but so far, it hasn't reached the floor of the Senate. Instead, it remains lodged in the Senate Committee on Environment and Public Works.

The resolution, offered by Sen. Lisa Murkowski, R-Minn., is aimed at gutting EPA's "endangerment finding" that permits the agency to regulate greenhouse emissions under the Clean Air Act.

A showdown is planned June 10.

“I think my approach is more effective and has a better chance of becoming law,” Rockefeller said Tuesday in a statement issued by his office.

An aide said the senator spoke out, given the timing of the Murkowski resolution vote after the Senate returns from the Memorial Day weekend holiday break.

“The bottom line is, we cannot wait any longer to send the message that relying on EPA is the wrong way to go,” the senator said.

“The fate of our entire economy, our manufacturing industries and our workers should not be in the hands of the EPA.”

An aide to Rockefeller said the proposed legislation isn’t tied to coal mining permits still in limbo. Those remain under scrutiny with regard to potential conflicts with the Clean Water Act.

Rockefeller had gained a pledge from EPA Administrator Lisa Jackson back in February that she would hold off on greenhouse emissions until the end of the year. But the senator protested this isn’t sufficient time.

“We must set this in stone and give Congress enough time to consider a comprehensive energy bill to develop the clean coal technologies we need,” he said.

“At a time when so many people are hurting, we need to put decisions about clean coal and our energy future into the hands of the people and their elected representatives, not a federal environmental agency.”

— *E-mail: mannix@register-herald.com*

EPA bars Texas' operating permit to refinery (*Associated Press*)

By RAMIT PLUSHNICK-MASTI (AP)

HOUSTON — The federal government has removed Texas' authority to issue an operating permit to a southeast Texas refinery, saying the state is violating the federal Clean Air Act in dozens of cases.

Al Armendariz, the regional head of the U.S. Environmental Protection Agency, says the EPA objected to 40 permits late last year largely because they allowed flexible rules for emitting pollutants. He says months of talks failed, so the EPA blocked Texas from issuing its permit. Instead, the EPA will issue a stricter one for the independently owned Flint Hills Corpus Christi East Refinery.

Armendariz says the EPA will also block Texas from issuing permits in 39 other cases, including those for facilities owned by Exxon Mobil, Chevron, ConocoPhillips and Dow Chemical.

State environmental regulators said they would respond.

Air quality permit objected by EPA (*Power-Gen Worldwide*)

25 May 2010-- The U.S. Environmental Protection Agency has objected to how state regulators addressed particle pollution in the air quality permit for East Kentucky Power Co-op's proposed Smith power plant, according to an article in the Louisville Courier-Journal.

In a letter to state environmental regulators, EPA officials said the state didn't require an adequate assessment of soot and other dangerous particles that the plant was expected to emit into the air.

A spokesperson for the Kentucky Energy and Environment Cabinet said state officials based the permit on actual regulations, according to the article. The EPA is asking the commission to follow more stringent requirements that have not been formalized yet, the spokesperson said.

East Kentucky Power had planned to start construction later this year, but withdrew its request for approval in April for up to $900 million in private financing.

Coke plant in Erie, Pa., told to shut; has local tie (*Buffalo News*)

By David Robinson and Mark Sommer
NEWS STAFF REPORTERS
Updated: May 25, 2010, 6:57 am /
Published: May 25, 2010, 12:30 am
The owner of the embattled Tonawanda Coke plant was ordered Monday to shut down a similar plant in Erie, Pa., by Pennsylvania regulators, who charged the company with violating the state's air quality laws.

The order, issued by the Pennsylvania Department of Environmental Protection, gives Erie Coke three days to shut down after revoking the foundry's air quality permit in a move that state officials described as a "last resort."

Later Monday, the Pennsylvania Environmental Hearing Board granted Erie Coke's request for a stay of the order until next Tuesday, according to Freda Tarbell of the

Department of Environmental Protection. A hearing is scheduled Wednesday in Pittsburgh.

Pennsylvania and federal environmental officials have repeatedly cited concerns about emissions from the Erie Coke plant, which is owned by J. D. Crane. His Tonawanda Coke plant also has been reprimanded and fined for a wide range of environmental violations cited by state and federal agencies over the past nine months.

Kelly Burch, northwest regional director for the Pennsylvania agency, said that for the past several years, “Inspections have revealed a pattern of defiant behavior and complete disregard for the health of our citizens and the quality of our natural resources. Our inspections indicate that the coke ovens at the facility are cracked and emitting pollutants.

“Under the direction of Mr. Crane, the company has demonstrated a lack of intent or desire to take the corrective actions needed to bring his operations into compliance and protect our environment. Their failure to act made our order unavoidable.”

Burch said he hopes the order will prompt Erie Coke to make the needed repairs so it can reopen without violating air quality laws.

A Crane representative declined to comment to The Buffalo News.

Pennsylvania officials fined Erie Coke $6.1 million in 2008 for environmental violations that the company is appealing.

In March, the plant’s 58 coke ovens, which date back to the 1940s and 1950s, released a plume of noxious black smoke that spread over downtown Erie and prompted further air quality monitoring by the state environmental agency.

The facility has consistently operated out of compliance with its state permit and environmental regulations since early February 2007, the agency said.

At Tonawanda Coke on River Road, the company was ordered by the federal Environmental Protection Agency in April to correct deficient operating procedures and explain two releases of coke oven gas in the past two years. Earlier this year, the EPA and state Department of Environmental Conservation issued several enforcement actions for environmental violations.

Tonawanda Coke also faces $48,500 in fines announced earlier this month by the federal Occupational Safety and Health Administration for violations related to worker safety at its plant.

e-mail: drobinson@buffnews.com and msommer@buffnews.com

May 25, 2010

Sen. Murkowski's EPA Resolution on Greenhouse Gases Slated for June 10 Vote (*New York Times*)

By ROBIN BRAVENDER of ClimateWire
Mark your calendars.
The Senate will vote June 10 on a resolution that would undo U.S. EPA's authority to regulate greenhouse gases under the Clean Air Act, Sen. Lisa Murkowski (R-Alaska) said yesterday.

Murkowski, the measure's lead sponsor, said she has reached a unanimous consent agreement with Majority Leader Harry Reid (D-Nev.) to call for a floor vote on her resolution after the weeklong Memorial Day recess.

"Reid and I have agreed on the time," Murkowski said yesterday. "Until it's typed down in language, nothing is locked in solid, but the agreement that we have that was reached this afternoon was to go for the 10th."

Reid spokesman Jim Manley declined to comment.

Murkowski's disapproval resolution seeks to veto EPA's "endangerment finding," a formal determination that allows the agency to regulate greenhouse gases under the Clean Air Act. Murkowski's office said previously that the senator had until June 7 to call for a guaranteed floor vote under the Congressional Review Act, which allows Congress to veto agency rules. But Murkowski said the agreement with Reid would push the vote back.

"We're going to be working through the supplemental all week, and I think we just recognize that we're going to have a pretty full schedule," Murkowski said. "So to find 10 hours, the other side agreed that let's just agree to a unanimous consent."

The Senate would debate the measure for 10 hours; no filibusters or amendments would be possible.

Murkowski's resolution would need 51 votes to clear the chamber. She already has 41 co-sponsors, including three Democrats: Sens. Mary Landrieu of Louisiana, Blanche Lincoln of Arkansas and Ben Nelson of Nebraska.

Even if the resolution passes the Senate, it faces an uphill climb in the House, which does not have the same expedited procedures, and it faces a likely veto from President Obama. EPA Administrator Lisa Jackson has warned that nullifying the endangerment finding would upend the administration's joint EPA and Transportation Department fuel economy standards and greenhouse gas emission limits for cars and light-duty trucks.

Asked yesterday whether she had the votes to clear the chamber, Murkowski said her vote count was "top secret."

"It is always a challenge when you have other variables that are at play," she said. Murkowski pointed to separate efforts in the Senate to block or limit EPA climate rules, including a bill from Sen. Jay Rockefeller (D-W.Va.) that would block EPA from regulating stationary sources for two years and a climate and energy bill from Sens. John Kerry (D-Mass.) and Joe Lieberman (I-Conn.) that would also limit EPA.

"So there's a lot of variables," she said. "My job is just to work hard, make sure people understand the implications of this measure and what it will mean for our nation's economy, and we'll go forward with the vote after the recess."

Rockefeller yesterday said he has not yet made up his mind about whether to support Murkowski's resolution. Several of Rockefeller's co-sponsors -- Sens. Claire McCaskill (D-Mo.), Byron Dorgan (D-N.D.) and Kent Conrad (D-N.D.) -- have said that they favor the two-year timeout to Murkowski's resolution.

But Murkowski said she plans to call for the vote whether or not she has the votes. "We wouldn't move forward with a unanimous consent if we weren't intending to move forward," she said.

Former EPA chief warns against resolution

Former EPA Administrator Russell Train yesterday urged Senate leaders to oppose Murkowski's bid to handcuff the agency.

"S.J.Res. 26 would rollback Clean Air Act protections and prevent the EPA from regulating greenhouse gas emissions, notwithstanding the agency's scientific determination that these pollutants endanger human health and welfare," Train wrote in a **letter** (pdf) to Reid and Senate Minority Leader Mitch McConnell (R-Ky.). Train served as EPA chief under former Presidents Nixon and Ford.

"If passed, this resolution would fundamentally undermine the Clean Air Act, overturning science in favor of political considerations," he wrote.

Supporters of the resolution argue that Congress did not mean to regulate greenhouse gases under the Clean Air Act, but Train called that argument "inconsistent with the history of the law as it has been applied for the past 40 years."

Train also defended the Obama EPA's efforts to gradually phase in climate rules for industrial emitters. "In executing her responsibilities, the current Administrator appears to have taken a measured approach and demonstrated a sensitivity to economic concerns," he said.

EPA has said that permitting rules for stationary sources will not kick in until January 2011 and that the agency will begin by tackling the biggest polluters.

EPA: Texas refinery permit violates Clean Air Act (*Associated Press*)

By RAMIT PLUSHNICK-MASTI (AP)
HOUSTON — The Environmental Protection Agency moved Tuesday to end a long-running dispute with Texas over how the state regulates emissions, including cancer-causing toxins such as benzene and butadiene, from dozens of refineries that produce a third of the nation's gasoline and billions of dollars of petrochemicals.

In a step it called unprecedented, the agency barred Texas from issuing an operating permit to a refinery in Corpus Christi — a power it has traditionally delegated to state regulators. The EPA said it would do the same in dozens of other cases in which it believes the state's permits violate the Clean Air Act, and could potentially do so statewide by June 30.

"For me, July 1 is a very important day," Al Armendariz, an EPA regional director, told The Associated Press. "The state of Texas has to let me know if they can issue permits that are consistent with federal requirements, and if they can't, then we will."

The decision comes after months of unsuccessful talks between the EPA and the state over how Texas issues permits that stipulate how companies should measure pollution from refineries and other petrochemical plants. It is also the latest dispute between the EPA and a state that leads the nation in the emissions of greenhouse gases and industrial pollutants.

"It is deeply troubling that unelected federal bureaucrats are willing to kill Texas jobs and derail one of the strongest economies in the country because they are more focused on process than achieving clean air," said a statement issued by the office of Texas Gov. Rick Perry.

At issue are the emissions from the refining of crude oil into gasoline, kerosene, polymers and other plastic-related chemicals. The Clean Air Act requires limits on pollution from each of the dozens of individual production units inside a plant or refinery. But since 1994, Texas has instead issued plants a "flexible permit" that provide a general ceiling on emissions from an entire facility.

Whether the use of flexible permits leads to more pollution is unknown, and environmentalists and the EPA say that's the problem.

Kelly Haragan, director of the environmental clinic at the University of Texas School of Law in Austin, said the flexible permits mean a production unit near a plant's perimeter could be emitting far more toxins than allowed by law, but the violation would be hidden by the plant-wide cap. In some refinery towns, homes, schools and playgrounds sit just yards away from such fence lines.

"There's no way for you to contest that they're not reporting their emissions correctly," Haragan said. "If it didn't have a flexible permit, there would be real emission limits and we would be able to bring enforcement action if they weren't complying with the permits."

Among the plants operating with a flexible permit is the nation's largest oil refinery, a massive Exxon Mobil plant in Baytown outside Houston, and facilities run by oil companies Chevron Corp. in Port Arthur, Citgo Petroleum Corp. in Corpus Christi and BP PLC in Pasadena.

The agency has for years failed to stop Texas from issuing flexible permits, even though it warned the state such permits might violate the law. Perry on Tuesday called the EPA's decision to pick a fight with the state after 16 years of inaction "baffling."

"The Clean Air Act authorizes the delegation of permitting authority to the states," Perry's statement said. "Texas has had our flexible permitting program in place ... for nearly two decades. However, under the Obama Administration there has been a concerted effort to transfer power away from the states to the federal government."

The Texas Commission on Environmental Quality declined to comment on EPA's decision. Instead, it referred to a letter dated May 24 and signed by the commission's executive director, Mark Vickery. In the letter, he indicated the agency was frustrated by the dialogue with the EPA and said his agency "recognizes that certain companies' business needs ... may necessitate issuance of ... permits by EPA."

Armendariz said Tuesday the EPA will issue its own permit for the independently owned Flint Hills Corpus Christi East Refinery, and in the coming days begin to do the same for 39 other plants, including facilities owned by Exxon Mobil, Chevron, ConocoPhillips and Dow Chemical Co.

"The time for delay and for partnership and for compromise is very quickly coming to an end and we have to get the Clean Air Act implemented in the state of Texas," Armendariz said.

Feds taking over permits for Texas plants (*Houston Chronicle*)

By PEGGY FIKAC
AUSTIN BUREAU

May 25, 2010, 9:28PM
AUSTIN — Objecting to how Texas regulates air pollution, the U.S. Environmental Protection Agency said Tuesday it is taking over the issuance of an operating permit for a Corpus Christi refinery and could step in at some 39 other major facilities across the state.

“I think the writing will be on the wall — unless we start seeing better permits that address our objections, we are very likely to begin federalizing others,” EPA Regional Administrator Al Armendariz said in a telephone interview. “The state is not following federal Clean Air Act requirements.”

Tuesday's unprecedented action affected a Flint Hills Resources refinery in Corpus Christi. The EPA's action means the facility must submit an application with detailed information to the federal agency, which could approve or deny a permit.

The company said it was evaluating a letter from the EPA notifying plant officials of the move.

The list of facilities that could come next the include chemical plants, refineries and other facilities, such as the Goodyear Tire & Rubber plants in Bayport and Houston, the Motiva Enterprises Houston terminal, Rhodia Inc.'s Houston plant, the Chevron Phillips Cedar Bayou facility and Valero's Texas City facility. Other company permits that have drawn scrutiny from the EPA include Exxon Mobil, Dow Chemical Co. and Formosa Plastics.

“We've never objected to 40 permits issued by a state permitting authority, and we've not federalized a permit in a state in this manner before unless we were requested to do so by a state or a particular facility,” Armendariz said. “The action we're taking today, together with the 40 objections, is unprecedented.”

The Texas Commission on Environmental Quality, which issues permits, released a letter from Executive Director Mark R. Vickery to the EPA that lays out the state agency's efforts and communication with the EPA and said it “remains committed to reaching resolution of Title V (operating permit) objections.”

“We still have significant differences in opinion on a number (of) issues, but processes for moving forward have been developed,” Vickery wrote. “A collaborative effort will continue to be beneficial for both agencies' limited resources and the continued protection of the environment and public health.”
Flexible permit at issue

Under the Clean Air Act, states must develop plans to meet federal requirements aimed at protecting public health. The EPA has been meeting with the TCEQ and representatives of industry and environmental groups to discuss what the federal agency calls deficiencies with air emission permits.

A major point of contention is the state's use of a so-called flexible permit, which sets an air emissions cap for an entire facility, but allows leeway for various units within that plant. Regulators and environmental groups say that hinders enforcement of clean-air rules, and Armendariz said that type of permit never has been federally approved.

The EPA also objects to a process that allows a facility to make changes without going through a formal permitting process, Armendariz said.

“I think it's another step in requiring some of the biggest air pollution sources in Texas to get permits that comply with the Clean Air Act,” said Kelly Haragan, director of the University of Texas' environmental law clinic, which has been representing “environmental justice” groups in Houston and Corpus Christi on air permitting issues. “Hopefully, those permits will include clear emission limits and better monitoring so that the public and the agencies can track compliance and take enforcement action if facilities aren't complying.”

Strong objections

Business and industry groups called the EPA action wrongheaded.

“EPA has either been told or been convinced by environmental groups that the permitting program that Texas operates is somehow deficient or not completely consistent with federal law. Our position, and the position of both the chemical manufacturers and refineries that are covered by these state permits, is that those allegations are completely false and without any foundation,” said Stephen Minick, of the Texas Association of Business.

Minick called it “a complete waste” and “very expensive” for companies to have to submit applications to the EPA, predicting that at the end of the process, the federal agency would find they met all applicable requirements.

Hector L. Rivero, Texas Chemical Council president and chief executive officer, said, “This is the first time we are aware of EPA demanding a Texas facility apply directly to the federal government for a Title V (operating) permit. . . . We are incredulous that EPA would encroach on a state regulatory program that has a proven track record of success.”

Armendariz said if TCEQ wants to retain authority over the rest of the permits at issue, state officials must “demonstrate to me in very short order ... that these permits they are going to issue are going to be consistent with the Clean Air Act.”

“Some agency has to be issuing permits that are complying with the Clean Air Act,” he said. “If the state of Texas won't do it, then I have the legal obligation to assume that role.”

pfikac@express-news.net

BP SPILL

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White House admits BP disaster worst spill in US history (*Axis of Logic*)

By Andre Damon and Tom Eley
WSWS
Wednesday, May 26, 2010
After downplaying for weeks the significance of the Gulf Coast oil spill, the White House admitted on Monday that the Deepwater Horizon disaster constitutes the worst oil spill in US history. The admission from the White House comes as the Obama administration continues to insist that the response to the oil spill remain in the hands of BP.

"I don't think there is any doubt, unfortunately," Carol Browner, director of the White House Office of Energy and Climate Change Policy, said Monday on CBS' "The Early Show." Some scientists estimate that the spill has already released 2.5 million barrels of oil into the Gulf of Mexico, ten times more than that released by the Exxon Valdez in 1989.

The admission from the Obama administration came after Louisiana Governor Bobby Jindal announced on Monday that 70 miles of coastline had been contaminated by heavy crude oil. "That is more than the seashore line of Maryland and Delaware combined," he said.

Popular anger has grown against both BP and the Obama administration as the enormous dimensions of the spill have become clear. A CBS poll released Tuesday showed that only 16 percent of the American people approve of the job that BP is doing, while 70 percent disapprove. Meanwhile, only 45 percent of those surveyed said they approve the Obama administration's handling of the spill.

Local officials and residents continued to sharply denounce the response to the spill carried out by BP with Obama's backing. Craig Taffaro, President of St. Bernard Parish, Louisiana, told a local radio station that "the plan is to let us die, then come back and do $75 million worth of cleanup and close the book."

Christopher Herndon, a charter boat captain in Venice, Louisiana, said in a phone interview with the World Socialist Web Site that the spill was becoming "ten times worse than Katrina."

"Every day there's more oil," he said. "There are just dead animals everywhere. Every time you go out you see fish, birds, nutria, everything. It's a crying shame."

Herndon said that he and his fellow captains had been trying to find work on cleanup crews, but BP was not hiring. “There are thousands of boats, and thousands of people who could drive the boats,” he said. “BP is doing some things here and there, hiring some privately owned contract companies. But I say the government should have everybody who can move out there doing something to help.”

“Not even a quarter of the boats are engaged in the cleanup,” Herdon said. “They’re just trying to squeak by to make it look like they’re doing something.”

On Wednesday, BP will likely initiate a “top kill,” in which large quantities of heavy cement will be pumped directly into the rig’s failed blowout preventer, which sits on the ocean floor a mile beneath the water’s surface.

It may take two days to know if the top kill has succeeded—or whether it has made the spill worse. According to some industry experts, it is possible the blowout preventer could be torn apart by the added pressure, or that new ruptures could emerge in the piping.

Robert Bea, a professor of engineering at the University of California at Berkeley told the Associated Press that the attempt “carries a high risk of failure because of the velocity at which the oil may be spewing.” If oil is spilling at anything more than 1.6 million gallons per day “it’s going to spit everything back in your face,” Bea told the AP.

BP has indicated that during the top kill it will stop a live video feed of the oil spill, which it made available only last week after refusing to do so for weeks. Footage of the top kill, should it fail, would likely heighten public anger, as did a video released last week that showed that a pipe inserted in the rig’s ruptured riser was clearly not working as BP had claimed.

The repeated failures of BP to cap the oil head, which is spewing millions of gallons of oil into the gulf every day, have increasingly raised the question of why it has been left in charge.

Yet in press conferences this week Obama administration officials have continued to defend BP’s handling of the spill, saying that “there is no reason to make a change” to the present relationship between the government and the company.

Occasional critical statements against BP put forth by figures in the Obama administration have been for public consumption—and just as often retracted. This was again the case this week when Secretary of the Interior Ken Salazar backtracked from earlier suggestions that the government might play a more assertive role in the disaster.

After being publicly contradicted by Coast Guard commandant Thad Allen, Salzar retreated from earlier suggestions that the government might “push BP out of the way.” “The administration has done everything we can possibly do to make sure that we push BP to stop the spill and to contain the impact,” said Salazar, himself a close ally of the

oil industry. “We have also been very clear that there are areas where BP and the private sector are the ones who must continue to lead the efforts with government oversight, such as the deployment of private sector technology 5,000 feet below the ocean’s surface to kill the well.”

On Tuesday, it was once again Obama’s turn to appear to be “angry and frustrated,” with the administration leaking to the press the president’s demand that BP “plug the damn hole.”

But “tough talk” from Obama and Salazar has not been joined to any appreciable policy change. Even largely symbolic gestures from the White House have simply been dismissed by the London-based oil giant. Last Wednesday the Environmental Protection Agency (EPA) gave BP 72 hours to stop spraying Corexit 9500, a highly toxic dispersant used to break up oil in the sea, until more data comparisons could be run against other—and by the EPA’s own data— less toxic and more effective dispersants.

BP simply flouted the injunction, and EPA head Lisa Jackson found herself on Tuesday again defending the response to the spill, accusing critics of “Monday-morning quarterbacking” in an interview with National Public Radio.

While the failures to stop the oil spill have created a political crisis for the Obama administration, its main concern is that any move to challenge BP’s control will raise the broader question of corporate control over the economy as a whole.

At a White House press conference on Monday, Commandant Allen responded to a reporter’s question as to why the government is not taking a greater part of the spill by saying that BP owns “the means of production.” A reporter in the audience picked up the question, asking “You just said they own the means of production. But that could change…the President could simply decide that we now own…” before breaking off.

The reporter appeared to be on the verge of suggesting that the government should take over the “means of production,” because BP is not handling them properly—a position that is all but censored in US political discourse.

The Obama administration’s decision to leave BP in charge of the oil spill is entirely predictable. This is the same government that has turned over trillions in public money to the very Wall Street finance houses that in 2008 triggered the greatest economic crisis since the Great Depression, destroying hundreds of millions of jobs the world over.

Just as Wall Street seized on the financial crisis to secure new riches, BP’s “cleanup” is guided by its determination to defend corporate revenue and limit its liability for the destruction of the Gulf Coast’s environment—and with it tens of thousands of jobs.

The same motivation lies behind the Obama administration’s insistence that only BP has the “expertise” to handle the disaster. A similar argument—that only the oil industry

has the know-how to monitor its own activities—has been advanced by Republican and Democratic politicians for decades in order to advance deregulation. Deregulation, it is now clear, created the conditions for the April 20 explosion on the Deepwater Horizon, which took the lives of 11 workers.

The Obama administration, along with the entire media and political establishment, unconditionally defends the principle that the economy must be controlled by corporations, operating in the pursuit of private profit and the accumulation of individual wealth. It is this premise that explains the utterly feckless character of the government's response.

BP Prepares for 'Top Kill' Procedure to Contain Spill (*New York Times*)

By CLIFFORD KRAUSS and ELISABETH ROSENTHAL
With frustration growing in the Gulf region over BP's inability to contain the oil spill, the company on Tuesday morning outlined its next plan for stopping the underwater leak.

BP said equipment was in place for what is known as a "top kill" procedure, in which heavy drilling fluids twice the density of water are pumped through two narrow lines into the blowout preventer to essentially plug the runaway well. Depending on pressure readings taken Tuesday, officials said they might start the procedure as early as Wednesday morning — but they left open the possibility of more delays.

Officials also said that it could take 12 hours to 48 hours once the procedure begins to determine whether it is effective. If top kill does not work, they will move toward placing another containment dome over the leak, possibly to be installed after several days. If the top kill works, BP officials said the well would be sealed with cement and they would also consider installing a new blowout preventer on the wellhead, as a safeguard. They said they had no intention of ever producing oil from the well.

The effort to stanch the vast oil spill in the Gulf of Mexico has been mired by setbacks as state and federal officials feuded with BP over its failure to meet deadlines and its refusal to stop spraying a chemical dispersant.

BP was locked in a tense standoff with the Environmental Protection Agency, which had ordered the company last week to find a "less toxic" chemical dispersant than the one it was using and to make the switch by Sunday evening. But BP continued spraying the chemical on Monday after informing the agency why it believed that the dispersant it has been using, called Corexit, was the safest available.

At a news conference Monday in Louisiana, state and federal officials continued to hammer BP over its response to the spill.

"BP in my mind no longer stands for British Petroleum — it stands for Beyond Patience," said Sen. Richard J. Durbin of Illinois, the No. 2 Democrat in the Senate. "People have

been waiting 34 days for British Petroleum to cap this well and stop the damage that's happening across the Gulf of Mexico."

"What we need to tell BP," he added, "is excuses don't count anymore. You caused this mess, now stop the damage and clean up the mess. It's your responsibility."

At a news conference on Monday afternoon, the E.P.A.'s administrator, Lisa P. Jackson, said that she was "dissatisfied with BP's response" to her agency's order to switch to a "less toxic" dispersant. She said she had responded by ordering BP to take "immediate steps to scale back the use of dispersants," saying that the amount being used could probably be reduced by 50 to 75 percent.

Since the Deepwater Horizon rig exploded a month ago and began spewing oil a mile under surface, BP has applied about 700,000 gallons of the dispersants on the gulf's surface and in experimental undersea applications directly on the leaking well head. That is the largest quantity of dispersant deployed to date to break up an oil spill in United States waters.

Ms. Jackson said that in theory, BP's deployment of dispersant directly onto the leaking well head — a novel and experimental use of the chemicals — would reduce the amount of oil on the surface and lessen the need for application there.

Calling BP's safety data on dispersants "insufficient," she said that government scientists would conduct their own scientific tests to decide which type was best to use. Ms. Jackson said the amount of dispersant applied to control the oil was "approaching a world record."

Rear Adm. Mary Landry of the Coast Guard said that while the government had pre-approved the use of dispersant, "no one anticipated that is would ever be used at this scale and this scope."

She said the preferred method of treating oil on the ocean was to burn it or to soak it up with devices like absorbent booms and that dispersant applications should be a second line defense for when the weather was too severe to rely on those other techniques.

Rep. Edward J. Markey, Democrat of Massachusetts, praised the E.P.A.'s action, saying, "Just like many aspects of their spill response, BP gets an 'F' on its analysis of dispersants, and E.P.A. has rightly told it to redo its assignment and this time, show all its work."

He added, "Despite the assertions made by BP that dispersants can be safely used, we know almost nothing about the potential harm from the long-term use of any of these chemicals on the marine environment in the Gulf of Mexico, and even less about their potential to enter the food chain and ultimately harm humans."

At the morning news conference, Mr. Durbin was joined by Interior Secretary Ken Salazar and Homeland Security Secretary Janet Napolitano, who were sent to the region Monday by President Obama in response to increasing criticism that the White House was not acting aggressively enough on the spill.

“BP is the responsible party, but we need the federal government to make sure they’re held accountable,” Gov. Bobby Jindal of Louisiana, a Republican, said Monday.

Mr. Salazar insisted that the federal government was not “sitting on the sidelines and letting BP do what BP wants to do.” He pointed out that the government had deployed more than 1,000 vessels to the region and more than 20,000 workers, burned oil off the surface of the Gulf and deployed miles of protective boom to protect and clean up the shorelines.

“The federal government has mounted the largest response to fight this oil in all of the history of this country,” Mr. Salazar said. Speaking of BP, he reiterated the phrase that the government would “keep our boot on their neck until the job gets done.”

Ms. Napolitano said the government had formed a group of “the best scientists available within the federal government” to calculate new estimates of how much oil has been released into the gulf, suggesting that the government was not satisfied with BP’s estimates, which have attracted widespread criticism as too low. The group is expected to have its assessment ready by early next week.

Seeking to reassure all those whose livelihoods had been threatened by the spill, Sen. Mary Landrieu, Democrat of Louisiana, repeated that BP would be held responsible for damages. She also said the state would do a better job of processing claims in the future. “If you made $50,000 last year, and you can’t work this year,” she said, “BP is going to write you a check for $50,000.”

The top-kill method that BP had said it would try on Tuesday is one of several proposed methods of stanching the flow of at least 210,000 gallons of oil a day that has been threatening marine life and sensitive coastal areas in Louisiana, Mississippi, Alabama and Florida. BP officials have emphasized that none of the methods have been tried before at the depth of this leak, and the company’s chief operating officer, Doug Suttles, noted the difficulties of working at such depths in explaining why the attempt was being delayed until Wednesday.

Meanwhile, in a letter over the weekend, the oil company defended its use of Corexit and took issue with the methods that the E.P.A. had used to estimate its toxicity.

Last Wednesday, the federal agency ordered BP to propose one or more alternative dispersants to regulators within 24 hours. Then it gave the company 72 hours after that deadline to stop using Corexit and make a switch. Officials and scientists from the

E.P.A. and the oil company met Sunday night and were apparently unable to reach a compromise before the deadline passed.

“We are continuing to use Corexit while we’re still working with E.P.A. on alternatives,” said Mark Salt, a spokesman for the oil company, said by telephone from Texas on Monday.

While the Corexit products, made by Nalco of Naperville, Ill., are the time-tested old faithfuls of oil spill treatment, developed in the 1980s and 1990s, critics say that less toxic and more effective products are now available.

The purpose of the chemicals is to break up the oil into tiny droplets that drop under the water and can be more readily dispersed by ocean currents so that the oil does not have so great an effect on sea life.

Complicating the standoff between the company and regulators, there are many methods for estimating the toxicity of chemical oil dispersants and no single standard prevails.

The original E.P.A. order instructed BP “to identify a less toxic alternative” but also said that if BP were “unable to identify available alternative dispersant products,” it could instead provide the Coast Guard and the E.P.A. with a detailed description of the dispersants it had investigated and the reason it did not believe they met the required standards.

On Thursday night BP invoked that latter option. In a letter, it ticked off some of the alternative dispersants it had considered and outlined why it felt each was problematic, often because of other toxicity issues.

Last week, after receiving the initial E.P.A. order, BP contacted a number of dispersant manufacturers, including the U.S. Polychemical Corporation — which makes a product called Dispersit SPC 1000 — asking about product composition and how quickly the mix could be produced. In the end, BP did not place an order, an official at U.S. Polychemical said.

The Corexit dispersants were removed from a list of approved dispersants in Britain a decade ago because one type of test used in that country found them to be dangerous to animals like limpets near rocky shores.

Corexit dispersants are still approved for use in the United States and Canada, which rely on different types of testing.

Fishermen hired by BP to mop up the spill say they weren't given protective equipment (*Los Angeles Times*)

May 26, 2010 Wednesday
Home Edition
LATEXTRA; National Desk; Part AA; Pg. 1
Oil cleanup workers cite illness;
Fishermen hired by BP to mop up the spill say they weren't given protective equipment.
By Nicole Santa Cruz, Julie Cart
VENICE, LA., AND LOS ANGELES
Some fishermen hired by BP to clean up the gulf oil spill say they have become ill after working long hours near waters fouled with oil and dispersant, prompting a Louisiana lawmaker to ask the federal government to open mobile clinics in rural areas to treat them.

The fishermen report severe headaches, dizziness, nausea and difficulty breathing. Concerned by the reports, Rep. Charlie Melancon (D-La.) wrote to Health and Human Services Secretary Kathleen Sebelius asking the agency's help providing medical treatment, especially in Plaquemines Parish, a southern region where many fishermen live.

Melancon said he expected BP to fund the clinics, but his spokeswoman said Tuesday that the company had not responded to last week's request for financial assistance.

George Jackson, 53, has been fishing since he was 12 and took a BP cleanup job after the oil spill forced the closure of fisheries and left him unemployed. As he was laying containment booms Sunday, he said, a dark substance floating on the water made his eyes burn.

"I ain't never run on anything like this," Jackson said. Within seconds, he said, his head started hurting and he became nauseated.

Like other cleanup workers, Jackson had attended a training class where he was told not to pick up oil-related waste. But he said he wasn't provided with protective equipment and wore leather boots and regular clothes on his boat.

"They [BP officials] told us if we ran into oil, it wasn't supposed to bother us," Jackson said. "As far as gloves, no, we haven't been wearing any gloves."

David Michaels, U.S. assistant secretary of labor for occupational safety and health, reviewed the conditions for cleanup workers, pledging this month that the federal government would ensure workplace safety in a **toxic** environment.

The Louisiana Department of Environmental Quality and Department of Health and Hospitals warned that oil cleanup workers "should avoid skin contact, and oral cavity or nasal passage exposure to oil spill products [by] using appropriate clothing, respiratory

protection, gloves and boots."

Meanwhile the U.S. **Environmental Protection Agency** has been cautioning since the April 20 offshore leak began in the Gulf of Mexico that the oil spewing from the undersea well is harmful to human and animal health.

Even the **EPA's** monitoring of air quality on the gulf shoreline, 50 miles from the oil leak, has detected petroleum odors strong enough to cause sickness. The agency's website warns coastal residents: "Some of these chemicals may cause short-lived effects like headache, eye, nose and throat irritation, or nausea."

BP spokesman Graham McEwen said Tuesday that he was unaware of any health complaints among cleanup workers, noting that the company had taken hundreds of samples of so-called volatile organic carbons, such as benzene, and all the levels were well within federal safety standards.

McEwen said the fishermen the company is training are not being deployed into areas that require respirators or breathing apparatus. Those who are working for BP laying booms or skimming oil are issued protective coveralls and gloves, he said.

To Riki Ott, a marine toxicologist who studied the 1989 Exxon Valdez spill off Alaska, it's "deja vu."

"What we saw with Exxon Valdez was a parallel track -- sick animals and sick people. Harbor seals were looking like they were drunk and dying ... and autopsies showed brain lesions.... What are we exposing these poor fishermen to?" Ott said.

Some fishermen suspect that health problems are going unreported because, with so much of the gulf closed to commercial fishing, unemployed shrimpers and oystermen are grateful for the cleanup jobs.

"It an unwritten rule, you don't bite the hand that feeds you," said George Barisich, president of the United Commercial Fishermen's Assn. in St. Bernard Parish, who said many fishermen have told him about feeling ill.

Barisich says he won't risk going out, especially after a crew told him of working around the Chandeleur Islands, a barrier chain hit by the slick. "All the birds were walking around like a bunch of zombies," he said.

At a recent meeting fishermen complained to a BP representative about illness, Barisich said, but got little response. "BP has the opinion that they are not getting sick," he said. Barisich said the company is not providing respirators because "if they give us that type of equipment then they admit there are health hazards."

He acknowledged that it was difficult for fishermen to prove their ailments since they seemed to recover after leaving the water. "It becomes a matter of honor," Barisich said.

"You left in the morning, you were OK. Out on the water, you've got a pounding headache, throwing up."

George Arnesen, 42, was congested and coughing the day after he went shrimping off California Point. At the doctor's, he was given a shot of antibiotics, an anti-inflammatory and a prescription for three medications.

"My husband's never had a breathing problem in his life," said his wife, Kindra.

nicole.santacruz@latimes.com

julie.cart@latimes.com

May 25, 2010

EPA Considering Banning BP from Gov't Contracts (*CBS News*)

Investigation into Cause of Deepwater Horizon Explosion Causing Gulf Disaster Might Push Federal Agency to Punish Company

(CBS/ProPublica) The federal government's investigation into the cause of the explosion on the Deepwater Horizon oil rig in the Gulf of Mexico that led to the massive oil spill could have serious financial consequences for BP beyond how consumers will react to its handling of the cleanup effort.

Special Section: Disaster in the Gulf

The investigation's findings will help the Environmental Protection Agency decide whether to ban the oil company from federal government contracts, sources told the ProPublica news agency. Such a move would ultimately cost the company billions in revenue and could end its drilling in federally controlled fields.

Days ago, in an unannounced move, the EPA suspended negotiations with the petroleum giant over whether it would be barred from federal contracts because of the environmental crimes it committed before the spill in the Gulf of Mexico. Officials said they are putting the talks on hold until they learn more about the British company's responsibility for the plume of oil that is spreading across the Gulf.

The EPA said in a statement that, according to its regulations, it can consider banning BP from future contracts after weighing "the frequency and pattern of the incidents, corporate attitude both before and after the incidents, changes in policies, procedures, and practices."

Several former senior EPA debarment attorneys and people close to the BP investigation told ProPublica that means the agency will re-evaluate BP and examine whether the latest incident in the Gulf is evidence of an institutional problem inside BP, a precursor to the action called debarment.

Over the past 10 years, BP has paid tens of millions of dollars in fines and been implicated in four separate instances of criminal misconduct that could have prompted this far more serious action. Until now, the company's executives and their lawyers have fended off such a penalty by promising that BP would change its ways.

That strategy may no longer work.

Federal law allows agencies to suspend or bar from government contracts companies that engage in fraudulent, reckless or criminal conduct. The sanctions can be applied to a single facility or an entire corporation. Government agencies have the power to forbid a company to collect any benefit from the federal government in the forms of contracts, land leases, drilling rights, or loans.

The most serious, sweeping kind of suspension is called "discretionary debarment" and it is applied to an entire company. If this were imposed on BP, it would cancel not only the company's contracts to sell fuel to the military but prohibit BP from leasing or renewing drilling leases on federal land. In the worst cast, it could also lead to the cancellation of BP's existing federal leases, worth billions of dollars.

Present and former officials said the crucial question in deciding whether to impose such a sanction is assessing the offending company's culture and approach: Do its executives display an attitude of non-compliance? The law is not intended to punish actions by rogue employees and is focused on making contractor relationships work to the benefit of the government. In its negotiations with EPA officials before the Gulf spill, BP had been insisting that it had made far-reaching changes in its approach to safety and maintenance, and that environmental officials could trust its promises that it would commit no further violations of the law.

EPA officials declined to speculate on the likelihood that BP will ultimately be suspended or barred from government contracts. Such a step will be weighed against the effect on BP's thousands of employees and on the government's costs of replacing it as a contractor.

Even a temporary expulsion from the U.S. could be devastating for BP's business. BP is the largest oil and gas producer in the Gulf of Mexico and operates some 22,000 oil and gas wells across United States, many of them on federal lands or waters. According to the company, those wells produce 39 percent of the company's global revenue from oil and gas production each year -- $16 billion.

Discretionary debarment is a step that government investigators have long sought to avoid, and which many experts had considered highly unlikely because BP is a major

supplier of fuel to the U.S. military. The company could petition U.S. courts for an exception, arguing that ending that contract is a national security risk. That segment of BP's business alone was worth roughly $4.6 billion over the last decade, according to the government contracts website USAspending.

Because debarment is supposed to protect American interests, the government also must weigh such an action's effect on the economy against punishing BP for its transgressions. The government would, for instance, be wary of interrupting oil and gas production that could affect energy prices, or taking action that could threaten the jobs of thousands of BP employees.

A BP spokesman said the company would not comment on pending legal matters.

The EPA did not make its debarment officials available for comment or explain its intentions, but in an e-mailed response to questions submitted by ProPublica the agency confirmed that its Suspension and Debarment Office has "temporarily suspended" any further discussion with BP regarding its unresolved debarment cases in Alaska and Texas until an investigation into the unfolding Gulf disaster can be included.

The fact that the government is looking at BP's pattern of incidents gets at one of the key factors in deciding a discretionary debarment, said Robert Meunier, the EPA's debarment official under President Bush and an author of the EPA's debarment regulations. It means officials will try to determine whether BP has had a string of isolated or perhaps unlucky mistakes, or whether it has consistently displayed contempt for the regulatory process and carelessness in its operations.

In the past decade environmental accidents at BP facilities have killed at least 26 workers, led to the largest oil spill on Alaska's North Slope and now sullied some of the country's best coastal habitat, along with fishing and tourism economies along the Gulf.

May 25, 2010 1:11 PM PDT

Less toxic oil dispersants sought for Gulf spill (*CNET News*)

by Martin LaMonica
There are less toxic alternatives to the oil dispersants being used by BP in the Gulf oil spill but there is not enough product available, according to a White House official.

In morning talk shows on Tuesday, Carol Browner, the president's adviser on energy, said the EPA is seeking to determine the quantities available of less toxic materials than Corexit, which is being used by BP to break up the oil flowing into the Gulf.

The Environmental Protection Agency last week issued a directive telling BP to use an alternative dispersant. It also said last week that the EPA and Coast Guard will gather data to verify information provided by BP on which dispersant is the least toxic, most effective, and readily available.

But even though there are less harmful dispersants, Browner said they are only available in limited quantities.

"There aren't as many dispersants...on the shelf available for use," Browner said. "We do think that dispersants are a part of how we move forward in this difficult situation and so we're going to be evaluating, determining if others can be manufactured quickly, if others can be brought to the scene. We need to understand what is available," she said on CNN's American Morning program.

Dispersants are designed to break down oil in the water so that they can be absorbed by microbes in the water. But the long-term effects on microbial life and the effectiveness of the method is not clear, according to David Valentine of the University of California at Santa Barbara, who was awarded a National Science Foundation grant to study the effect of the projected 1 million gallons of dispersants in the Gulf spill.

Chemicals, such as dispersants, are ranked based on a number of environmental safety factors, such as flammability and toxicity. One company that has developed a less toxic dispersant based on EPA criteria is Green Earth Technologies, which makes a line of engine oil made from vegetable oils and released an oil spill cleanup product in April.

Company co-founder Jeff Loch on Monday said that Green Earth Technologies' oil clean-up product does effectively the same thing as Corexit--"attack" oil molecules and break them up--but is far more benign to the environment. It also works in a variety of areas, such as marsh areas, so it is not limited to use in deep waters.

But since it's such a new product, the product is not yet approved by the EPA. "If there was ever a good reason to break with protocol and staff up folks and look for alternative reasons," he said, "this would be the scenario to expedite things to do it."

As high-stakes debate rages over dispersants, EPA ramps up testing (*Greenwire*)

(05/25/2010)
Paul Quinlan, E&E reporter
Behind the Obama administration's order that BP PLC dramatically reduce its use of oil-dispersing chemicals on the Deepwater Horizon spill is a growing scientific debate over whether dispersants are exacerbating the environmental disaster in the Gulf of Mexico. BP's application of 830,000 gallons of dispersant to the spill thus far, both in deep-sea injection and surface spraying, amounts to a near world-record application of the little-understood chemicals, according to U.S. EPA Administrator Lisa Jackson.

Acknowledging the many long-term unknowns, Jackson said yesterday that day-to-day tests for toxicity, oxygen and other measurements of ocean water quality around the spill site indicate that a limited, continued use of the chemicals represented a useful tool to the ongoing containment effort.

"I can honestly say I don't think I've made a tougher decision," Jackson said of allowing the chemicals' continued use.

But images this week of oil lapping ashore in Louisiana, blackening beaches and fouling wetlands, have fueled criticism of the dispersant strategy, showing that the chemicals have failed to deliver on their promise of protecting shorelines.

"Two weeks ago, I was in favor of the dispersants' use, strictly because I thought keeping it out of the Louisiana marshes was the critical factor," said Joe Griffitt, an aquatic toxicologist at the University of Southern Mississippi's Gulf Coast Research Laboratory. "Unfortunately, it seems like they're using the dispersants and it's gotten into the marshes, so we've gotten the worst of both worlds."

There is little doubt that coastal effects would be worse without dispersant use, and shoreline oil cleanups are notoriously difficult. The shoreline of Prince William Sound, Alaska, for example, still shows stains from the 1989 *Exxon Valdez* spill. Some scientists say dispersing the oil remains the only viable tool for combating an ongoing spill.

"If they're not going to be able to contain it, confine it, and they haven't yet been able to stop the flow, then maybe continuing to disperse it is the best thing," said Eric Adams, a senior research engineer at the Massachusetts Institute of Technology and the co-author of a 2005 study of dispersants for the National Academy of Sciences. "It's the pollution on the interior of the ocean versus the pollution on the surface, at the perimeter. The longer this goes on, the worse it's going to be for both environments."

Dispersants break up oil on the water surface that would otherwise turn into microscopic droplets that sink and spread out underwater, forming plumes that can ride currents and be consumed by fish and other marine organisms.

But that comes at an uncertain long-term cost to the vast oceanic food chain. The aromatic hydrocarbons of the oil that the dispersants break up can be consumed by fish and have been shown to harm reproductive systems of marine organisms and hinder or disrupt development of larvae, said Griffitt. Scientists continue to debate whether those natural processes are to blame for the collapse of the herring population in Alaska following the *Exxon Valdez* spill.

"This isn't going to be good," Griffitt said. "It's just a question of how bad it's going to be."

Lawmaker requests FDA work on seafood

Two scientists testifying on Capitol Hill on Friday called on BP to halt the use of dispersants altogether until their long-term effects on the environment are better understood and their chemical makeup -- closely guarded proprietary secrets -- is revealed and studied.

Their views were not lost on EPA, which ordered BP to switch to an alternative dispersant formula last week, given EPA-approved alternatives that have been shown in some tests to be less toxic. BP responded, claiming that Corexit remained the best choice and citing concerns about chemicals in alternative products.

The company's response drew a reprimand from Jackson, who ordered her agency to run its own test on dispersant alternatives.

"We are not satisfied that BP has done an extensive enough analysis of other dispersant options," Jackson said yesterday.

"Given our concerns over the environmental unknowns, we think it's prudent at this time to ramp down overall use of dispersants," she said. "We believe we can reduce the amount of dispersant applied by as much as half and, I think, by 75 percent, maybe more."

Meanwhile, Rep. Ed Markey (D-Mass.) today asked the Food and Drug Administration for information on how Gulf seafood will be monitored for potential hazards to human consumers.

"I am concerned that because these toxic chemicals were not intended to be used for such long durations and were not intended to be used at such depths, there could be serious and unknown long-term consequences for the marine ecosystem, the food chain and human health," Markey wrote in a letter to FDA Commissioner Margaret Hamburg.

BP spokesman Mark Salt said today that the company will continue to deploy Corexit for now.

"We are continuing to use Corexit," Salt said, "but continuing to work very closely with EPA and to look at alternative options."

EPA girds for a fight with BP over dispersants in Gulf oil spill (*Christian Science Monitor*)

BP has not met the EPA's mandate that it switch to a new dispersant, saying there aren't any other viable options for the Gulf oil spill. But the EPA says it's 'not satisfied,' and the manufacturer of a different dispersant insists it can meet BP's needs.

BP Chief Executive Officer Tony Hayward looks on as crew members try to clean oil from a beach in Port Fourchon, La., on Monday. The EPA said Monday it was launching an investigation into alternatives to Corexit, a controversial oil dispersant being used by BP in the Gulf oil spill.
By Mark Guarino, Staff writer
posted May 25, 2010 at 9:20 am EDT

The US Environmental Protection Agency (EPA) is launching an investigation into BP's assertion that there aren't any chemical dispersants better or less toxic than the product it has been using to combat the Gulf oil spill during the past month.

The Obama administration's frustration with BP over the dispersant issue has been mounting since this weekend. By Sunday, it had become clear that BP would not heed an EPA directive to find an alternative to Corexit, the dispersant that the EPA rates as less effective and more toxic than as many as 12 other products.

BP has said no such alternatives exist, either because companies cannot produce the volume BP needs on such short notice or because companies don't disclose the chemicals in their products – casting their potential environmental benefits into doubt.

Early Tuesday, the White House's energy adviser backed up that assertion about dispersants' availability. "There are not as many being manufactured as people thought in the quantities" needed, said Carol Browner, in a round of television appearances on morning news shows. "We need to determine whether or not those alternatives are available, and the EPA is doing that, but in the meantime, EPA has directed BP to use less of the dispersants and they're required to follow that."

The Obama administration has come under increasing pressure as frustrations build over the time it is taking to cap the well. Millions of gallons of oil stretch across a 150-mile swath from Dauphin Island, Ala., to Grand Isle, La., endangering wildlife and the livelihood of fishermen.

But the makers of Dispersit – a product rated by the EPA as twice as effective as Corexit and one-third less toxic – refute these claims. They said Monday that they could meet BP's demand and that the ingredients of their dispersant are public.

BP officials were not available for comment, though BP Chief Operating Officer Doug Suttles said in a press conference Monday: “We did considerable work … and found there weren’t any alternatives that were less toxic and available.”

“If we can find an alternative that is less toxic and available, we will switch to that product,” Mr. Suttles added.

EPA Administrator Lisa Jackson said Monday she “is not satisfied that BP has done enough” to explore other options. She said the EPA would launch its own investigation of how alternatives to Corexit fare in fighting oil in the Gulf.

“The science of dispersants has not in any way kept up with the science and technological ability to extract fossil fuels, and that is a huge disconnect and is one that I recommend that we remedy,” Administrator Jackson said.

In a nod to the uncertainty over the safety of Corexit, she said the federal government has told BP to scale back its use of the disperant on the surface by as much as 75 percent.

To date, BP has released 785,000 gallons of dispersant into the Gulf, with 100,000 gallons of that amount below the surface – a controversial method that some scientists have questioned. More than 340,000 gallons of Corexit remain available.

The manufacturer of Dispersit says it can readily increase production to meet the unprecedented demand. Moreover, Dispersit is a patented product so its chemical makeup is public record, which would clear up any questions regarding its effect on marine life, says Bruce Gebhardt, president of US Polychemical Corp. in Chestnut Ridge, N.Y. “Everyone has access to our information,” he adds.

Mr. Gebhardt says BP contacted him last Thursday to inquire about the product. Gebhardt says he told BP he could get supplies to the Gulf in five to seven days, but an order was never placed.

BP could not be reached to respond to Gebhardt's comments, given that all media calls are being directed to the website.

Oil is now at the Louisiana coast and is creeping to the western mouth of the Mississippi River. After a day of touring the affected region, Jackson said she is “never more convinced than now … that BP, Transocean, and Halliburton have a big job in front of them.”

WH adviser: Less-toxic dispersant not available (*Associated Press*)

WASHINGTON — BP is complying with the government's request to use less of a toxic dispersant in fighting the Gulf oil spill, but alternative dispersants aren't so readily available, the White House's energy adviser said Tuesday.

In a letter to BP last week, the Environmental Protection Agency gave the oil giant three days to find a less toxic alternative to the dispersant, Corexit 9500, that it is using to break up the oil. But in a series of meetings that followed, White House energy adviser Carol Browner said, it became clear the alternatives were not as widely available as needed.

"There are not as many being manufactured as people thought in the quantities" needed, Browner said in a round of television appearances on morning news shows.

"We need to determine whether or not those alternatives are available, and the EPA is doing that, but in the meantime, EPA has directed BP to use less of the dispersants and they're required to follow that," Browner said.

The Obama administration has come under increasing pressure as frustrations build with the failure to cap the well. Millions of gallons of oil stretch across a 150-mile swath from Dauphin Island, Ala. to Grand Isle, La., endangering wildlife and the livelihood of generations fishermen.

Heat on White House to do more about Gulf spill (*Associated Press*)

By GREG BLUESTEIN and MATT BROWN (AP
COVINGTON, La. — The Obama administration's environmental chief dipped a small cup into the oily mess at the mouth of the Mississippi and was surprised by what came out.

"Oh my God — it's so thick!" exclaimed Environmental Protection Agency Administrator Lisa Jackson who toured delicate coastal wetlands that have been invaded by the black and orange crude.

She was one of several top administration officials in the Gulf Coast this week as the White House is facing increasing questions about why the government can't assert more control over the handling a massive oil spill in the Gulf of Mexico, which unfolded after a BP offshore drilling rig blew up April 20.

The administration's point man on the spill rejected the notion of removing BP and taking over the crisis Monday, saying the government has neither the company's expertise nor its deep-sea equipment.

"To push BP out of the way would raise a question, to replace them with what?" Coast Guard Commandant Thad Allen, who is heading the federal response to the spill, said at a White House briefing.

A memorial service was scheduled for Tuesday afternoon in Jackson, Miss., for the 11 workers who were killed when the oil rig exploded. The event was being held by Transocean, which owned the rig.

All of BP's attempts to stop the leak have failed, despite the oil giant's use of joystick-operated submarine robots that can operate at depths no human could withstand. Millions of gallons of brown crude are now coating birds and other wildlife and fouling the Louisiana marshes.

Those that Jackson surveyed by boat have been battered for centuries by hurricanes and man-made canals that led to drastic erosion.

A crew used a machine to separate oil from water and slowly filled a four-foot high storage tank with crude. For oil deeper in the marsh, little could be done and the vegetation there was expected to die.

"At a minimum what we can say is dispersants didn't work here," Jackson said. "When you see stuff like this, it's clear it isn't a panacea."

Jackson said she worried further erosion from oil-damaged marshes would leave her nearby hometown of New Orleans even more exposed to future storms.

BP is pinning its hopes of stopping the gusher on yet another technique never tested 5,000 feet underwater: a "top kill," in which heavy mud and cement would be shot into the blown-out well to plug it up. The process could begin as early as Wednesday, with BP CEO Tony Hayward giving it a 60 to 70 percent chance of success.

Allen said federal law dictated that BP had to operate the cleanup, with the government overseeing its efforts.

"They're exhausting every technical means possible to deal with that leak," he said. "I am satisfied with the coordination that's going on."

Interior Secretary Ken Salazar suggested over the weekend that the government could intervene aggressively if BP wasn't delivering. "If we find that they're not doing what they're supposed to be doing, we'll push them out of the way appropriately," he said.

But asked about that comment Monday, Allen said: "That's more of a metaphor."

Allen said BP and the government are working together, with the government holding veto power and adopting an "inquisitorial" stand toward the company's ideas.

BP said it is doing all it can to stop the leak. Its chief operating officer, Doug Suttles, made the rounds of network morning news shows to say that the company understands people are frustrated.

"Clearly Secretary Salazar is telling us that we need to do this as expediently as we can," Suttles said. "And of course we are."

Hayward, BP's chief executive, walked along oil-soaked Fourchon Beach and said he had underestimated the possible environmental effects.

"I'm as devastated as you are by what I've seen here today," Hayward told reporters after he spoke with cleanup workers in white overalls and yellow boots, some shoveling oily sand into garbage cans. "We are going to do everything in our power to prevent any more oil from coming ashore, and we will clean every last drop up and we will remediate all of the environmental damage."

Mark Kellstrom, an analyst with Summit, N.J.-based Strategic Energy Research, said time might be running out for BP to continue calling the shots. "The rhetoric is growing up in Washington for the politicians to kick out BP and let the government take over," Kellstrom said, though he added that it would be a mistake.

BP had hoped to try a top kill earlier but needed more time to get equipment into place and test it. A top kill has worked on aboveground oil wells in Kuwait and Iraq but has never before been attempted so far underwater.

Suttles said the biggest technical challenge is that the fluid must be pumped in very quickly, and engineers need to make sure it goes into the well, not out through the leaking pipe, which could make the leak worse.

A containment device is on the seafloor, ready to be put in place if the top kill fails or makes the leak worse.

Engineers are working on several other backup plans in case the top kill doesn't work, including injecting assorted junk into the well to clog it up, and lowering a new blowout preventer on top of the one that failed.

The only certain permanent solution is a pair of relief wells crews have already started drilling, but the task could take at least two months.

In another source of tension between BP and the government, the company was still using a certain chemical dispersant Monday to fight the oil despite orders from the Environmental Protection Agency to employ something less toxic.

"If we can find an alternative that is less toxic and available, we will switch to that product," said Suttles.

Others have blamed the administration for not doing enough, including former Alaska Gov. Sarah Palin, who said Sunday on Fox News that Obama was being lax in his response to the spill.

White House spokesman Robert Gibbs called the criticism ill-informed and suggested Palin needed a blowout preventer, the technical term for the device intended to prevent an oil spill from becoming a full-scale catastrophe. The phrase has entered the political vernacular since the one on the Gulf well failed.

"You've got to have a license to drive a car in this country, but regrettably you can get on a TV show and say virtually anything," Gibbs said.

Associated Press Writers Erica Werner and Matthew Daly in Washington and Kevin McGill and Alan Sayre in Louisiana contributed to this report.

Alabama Power's coal ash safety plan in response to EPA (*Examiner.com*)

May 25, 5:17 AM · Paul Hamaker - Birmingham Science News Examiner

On May 24, 2010, the Environmental Protection Agency (EPA) released action plans developed by Alabama Power to improve coal ash safety in response to the EPA's final assessment reports on the structural integrity of these impoundments that the EPA made public in February 2010.

The final reports included Barry Power Station, Gadsden Power Station, Gorgas Power Station, Greene County Power Station, and James H. Miller Jr Power Station. Earnest C. Gaston Electric Generating Plant is still in process.

Six comments were received from Alabama Power Company to the original investigation and no comments were received from State Agencies including the Alabama Department of Environmental Management (ADEM) even though ADEM was present at the investigation.

The reports concluded (according to Alabama Power (APC) that the units were in "satisfactory" condition -- a most favored category. APC also interprets the hazard rating as based solely on the consequences of structural failure not the likelihood of such an event.

http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/surveys2/gorgas-com.pdf

The EPA version of the analysis is "Significant hazard potential structures are classified as structures where failure is not likely to result in loss of life, but may cause significant economic loss, environmental damage, disruption of lifeline facilities, or can impact other concerns. The predominant risk of failure for Rattlesnake Dam and the Gypsum Ponds is
environmental damage."

SIGNIFICANT HAZARD POTENTIAL: Dams assigned the significant

hazard potential classification are those dams where failure or misoperation results in no probable loss of human life but can cause economic loss, environmental damage, disruption of lifeline facilities, or can impact other concerns. Significant hazard potential classification dams are often located in predominantly rural or agricultural areas but could be located in areas with population and significant infrastructure.
http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/surveys2/gorgas-final.pdf

EPAs recommendations for the Gorgas plant were:
1 Institute formal monthly visual inspection program beginning in the Summer of 2009,
2 Improve condition of seepage monitoring weir at toe of Rattlesnake Dam
3 Monitor developing cracks in RCC at Rattlesnake Dam. Concurrent with annual inspections.
4 Maintain vegetation on slopes of Gypsum Ponds According to owners existing plan.
5 Continued vegetation control on slopes and toe of Rattlesnake Dam.
http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/surveys2/gorgas-draft.pdf

A definite difference of interpretation is apparent in APC and EPA versions of the inspection.
APC has complied with the EPA recommendations.

http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/surveys2/gorgas-response.pdf
William Crawford Gorgas Electric Generating Plant
William Crawford Gorgas Electric Generating Plant
http://commons.wikimedia.org/wiki/Library_of_Congress William Crawford Gorgas Electric Generating Plant
http://en.wikipedia.org/wiki/File:Gorgas_Electric_Generating_Plant_LOC_HABS_180273.jpg

U.S. NEWS
MAY 25, 2010, 10:08 A.M. ET

Regulators Accepted Gifts From Oil Industry, Report Says (*Wall Street Journal*)

By STEPHEN POWER
WASHINGTON—Employees of a federal agency that regulates offshore drilling—including some whose duties included inspecting offshore oil rigs—accepted sporting-event tickets, lunches and other gifts from oil- and natural-gas companies and used government computers to view pornography, according to a new report by the Interior Department's inspector general.
The report—which hasn't been made public by the inspector general but was described Tuesday in an email from Interior Secretary Ken Salazar—notes "a number of violations" of federal regulations and agency ethics rules by staffers assigned to the

Lake Charles, La., office of the Minerals Management Service, a unit of Interior that manages the nation's offshore oil and gas resources, Mr. Salazar said in his statement.

Mr. Salazar disclosed some of the inspector general's findings ahead of congressional hearings later this week that are to focus on his plan to restructure the agency following the April 20 explosion of the Deepwater Horizon oil rig. The accident led to the deaths of 11 workers and to the spillage of thousands of barrels of oil into the Gulf of Mexico each day.

The New York Times also reported on findings of the inspector general's report Tuesday morning.

It wasn't immediately clear how many MMS staffers were implicated in the inspector general's report, which covers actions that occurred between 2000 and 2008. Mr. Salazar said in his statement Tuesday that some have resigned, been terminated, or referred for prosecution. He added that any remaining staffers accused in the IG report of questionable behavior will be placed on administrative leave pending the outcome of a personnel review.

The inspector general's report is the latest in a series of reports by the IG that have raised questions about the MMS. In 2008, a report by the inspector general concluded that MMS employees assigned to a royalty-collection office in Colorado broke government rules and created a "culture of ethical failure" by accepting gifts from, and in some cases having sex with, industry representatives. Following the inspector general's report, the Interior Department took disciplinary action against more than a half dozen MMS workers, with punishments that ranged from a warning letter to termination.

In 2009, Donald C. Howard, the former regional supervisor of the Gulf of Mexico region for MMS, pled guilty and was sentenced to a year's probation in federal court in New Orleans for lying about receiving gifts from an offshore drilling contractor.

"This deeply disturbing report is further evidence of the cozy relationship between some elements of MMS and the oil and gas industry," Mr. Salazar said Tuesday. "I appreciate and fully support the inspector general's strong work to root out the bad apples in MMS and we will follow through on her recommendations, including taking any and all appropriate personnel actions including termination, discipline, and referrals of any wrongdoing for criminal prosecution."

Journal Community

" Business runs amok and regulators are asleep at the switch. Lovely. "

—John Delaney

Mr. Salazar said he has asked the inspector general to expand her investigation to determine whether any of "this reprehensible behavior" persisted after the Department implemented new ethics rules in 2009.

Mr. Salazar said he has also asked the inspector general to investigate whether there was a failure of MMS personnel to adequately enforce standards or inspect the Deepwater Horizon rig and to examine whether there are deficiencies in MMS policies or practices that need to be addressed to ensure that operations on the Outer Continental Shelf are conducted in a safe and environmentally sensitive manner.

Earlier this month, Mr. Salazar formally ordered the breakup of the MMS, which in addition to regulating offshore oil and gas operations also decides where drilling is permitted and collects royalties from companies that produce petroleum in federal waters. Those three functions will be split up and assigned to different Interior Department branches.

Mr. Salazar said the reorganization was aimed at ending the "conflicting missions" of the MMS. His announcement followed a Wall Street Journal article that explored how the MMS has over the years gradually shifted much of the responsibility for crafting safety regulations to the oil and gas industry.

Write to Stephen Power at stephen.power@wsj.com

Gulf widens over dispersants (*Keene Sentinel*)

Pressure mounts for federal takeover of oil spill response
By Steven Thomma and JOSEPH GOODMAN
McClatchy News Service
Published:
Tuesday, May 25, 2010 12:32 PM EDT
WASHINGTON — BP chief executive Tony Hayward defended his company's use of a chemical agent to disperse the oil leaking from a well deep under the Gulf of Mexico, despite an Environmental Protection Agency order for BP to stop using it.

The company has applied more than 600,000 gallons of the chemical, called Corexit, since the oil spill began more than a month ago, and Hayward said its use would continue. The EPA last week ordered the company to switch to a less toxic dispersant by Sunday.

"We have used dispersants from the beginning that are on the EPA approved list," he said. "Everything we do with dispersants is with the explicit approval with the EPA."

The unprecedented scope of the Gulf of Mexico oil spill and the widening criticism of BP's response to it is forcing federal officials to rethink the government's role in such a wide scale disaster, the commandant of the Coast Guard said Monday.

"I'd say we're actually defining that as we go, because I've never dealt with a scenario like this," Adm. Thad Allen said. "I've been dealing with oil spills, you know, for over 30 years. This is an unprecedented anomalous event."

As Louisiana Republican Gov. Bobby Jindal on Monday again pressed the federal government to do more, Allen and other Obama administration officials faced growing questions about whether the federal government could or should take over the job of stopping the spill and leading the cleanup from BP.

"We need to make the federal government accountable," Jindal said Monday in Louisiana, with a top member of the Obama administration, Homeland Security Secretary Janet Napolitano, at his side.

Rep. Jerrold Nadler, D-N.Y., a senior member of the House Transportation and Infrastructure Committee, Monday called on the EPA to enforce its dispersants order.

"EPA must stop the use of toxic chemical dispersants and force BP to the most responsible resolution to this environmental and economic disaster," Nadler said.

Allen insisted at the White House that the federal government is doing all it can do, given its equipment and expertise.

He brushed aside a weekend comment from Interior Secretary Ken Salazar suggesting that the government might "push" BP out of the way. That was just a metaphor, Allen said.

"To push BP out of the way would raise a question, to replace them with what?" Allen said.

After constant talks with BP as well as experts from other oil businesses and the private sector, Allen said he remains convinced that BP is doing all that can be done to deal with the catastrophe.

Sometime today or Wednesday, BP plans an exercise called "top kill" that will shoot heavy mud and cement into the well to try to plug it. BP officials estimated the chance of success at 60 percent to 70 percent.

"They are pressing ahead. We are overseeing them. They're exhausting every technical means possible to deal with that leak," Allen said.

Allen dismissed suggestions the federal government take over, noting the government doesn't own the kind of equipment needed to operate at underwater depths of 5,000

feet. “BP or the private sector are the only ones that have the means to deal with that problem down there. It’s not government equipment that’s going to be used to do that,” he said.

EPA Weighs Sanctions Against BP (Truthdig)

Posted on May 25, 2010
Officials at the Environmental Protection Agency are considering whether to bar BP from receiving government contracts, a move that would ultimately cost the company billions in revenue and could end its drilling in federally controlled oil fields.

Over the past 10 years, BP has paid tens of millions of dollars in fines and been implicated in four separate instances of criminal misconduct that could have prompted this far more serious action. Until now, the company’s executives and their lawyers have fended off such a penalty by promising that BP would change its ways.

That strategy may no longer work.

Days ago, in an unannounced move, the EPA suspended negotiations with the petroleum giant over whether it would be barred from federal contracts because of the environmental crimes it committed before the spill in the Gulf of Mexico. Officials said they are putting the talks on hold until they learn more about the British company’s responsibility for the plume of oil that is spreading across the Gulf.

The EPA said in a statement that, according to its regulations, it can consider banning BP from future contracts after weighing “the frequency and pattern of the incidents, corporate attitude both before and after the incidents, changes in policies, procedures, and practices.”

Several former senior EPA debarment attorneys and people close to the BP investigation told ProPublica that means the agency will re-evaluate BP and examine whether the latest incident in the Gulf is evidence of an institutional problem inside BP, a precursor to the action called debarment.

Federal law allows agencies to suspend or bar from government contracts companies that engage in fraudulent, reckless or criminal conduct. The sanctions can be applied to a single facility or an entire corporation. Government agencies have the power to forbid a company to collect any benefit from the federal government in the forms of contracts, land leases, drilling rights, or loans.

The most serious, sweeping kind of suspension is called “discretionary debarment” and it is applied to an entire company. If this were imposed on BP, it would cancel not only the company’s contracts to sell fuel to the military but prohibit BP from leasing or

renewing drilling leases on federal land. In the worst cast, it could also lead to the cancellation of BP's existing federal leases, worth billions of dollars.

Present and former officials said the crucial question in deciding whether to impose such a sanction is assessing the offending company's culture and approach: Do its executives display an attitude of non-compliance? The law is not intended to punish actions by rogue employees and is focused on making contractor relationships work to the benefit of the government. In its negotiations with EPA officials before the Gulf spill, BP had been insisting that it had made far-reaching changes in its approach to safety and maintenance, and that environmental officials could trust its promises that it would commit no further violations of the law.

EPA officials declined to speculate on the likelihood that BP will ultimately be suspended or barred from government contracts. Such a step will be weighed against the effect on BP's thousands of employees and on the government's costs of replacing it as a contractor.

Even a temporary expulsion from the U.S. could be devastating for BP's business. BP is the largest oil and gas producer in the Gulf of Mexico and operates some 22,000 oil and gas wells across United States, many of them on federal lands or waters. According to the company, those wells produce 39 percent of the company's global revenue from oil and gas production each year—$16 billion.

Discretionary debarment is a step that government investigators have long sought to avoid, and which many experts had considered highly unlikely because BP is a major supplier of fuel to the U.S. military. The company could petition U.S. courts for an exception, arguing that ending that contract is a national security risk. That segment of BP's business alone was worth roughly $4.6 billion over the last decade, according to the government contracts website USAspending.

Because debarment is supposed to protect American interests, the government also must weigh such an action's effect on the economy against punishing BP for its transgressions. The government would, for instance, be wary of interrupting oil and gas production that could affect energy prices, or taking action that could threaten the jobs of thousands of BP employees.

A BP spokesman said the company would not comment on pending legal matters.

The EPA did not make its debarment officials available for comment or explain its intentions, but in an e-mailed response to questions submitted by ProPublica the agency confirmed that its Suspension and Debarment Office has "temporarily suspended" any further discussion with BP regarding its unresolved debarment cases in Alaska and Texas until an investigation into the unfolding Gulf disaster can be included.

The fact that the government is looking at BP's pattern of incidents gets at one of the key factors in deciding a discretionary debarment, said Robert Meunier, the EPA's

debarment official under President Bush and an author of the EPA's debarment regulations. It means officials will try to determine whether BP has had a string of isolated or perhaps unlucky mistakes, or whether it has consistently displayed contempt for the regulatory process and carelessness in its operations.

In the past decade environmental accidents at BP facilities have killed at least 26 workers, led to the largest oil spill on Alaska's North Slope and now sullied some of the country's best coastal habitat, along with fishing and tourism economies along the Gulf.

Meunier said that when a business with a record of problems like BP's has to justify its actions and corporate management decisions to the EPA "it's going to get very dicey for the company."

"How many times can a debarring official grant a resolution to an agreement if it looks like no matter how many times they agree to fix something it keeps manifesting itself as a problem?" he said.

Documents obtained by ProPublica show that the EPA's debarment negotiations with BP were strained even before the April 20 explosion on the Deepwater Horizon rig. The fact that Doug Suttles, the BP executive responsible for offshore drilling in the Gulf, used to head BP Alaska and was the point person for negotiations with debarment officials there, only complicates matters. Now, the ongoing accident in the Gulf may push those relations to a break.

Discretionary debarment for BP has been considered at several points over the years, said Jeanne Pascal, a former EPA debarment attorney who headed the agency's BP negotiations for six years until she retired last year.

"In 10 years we've got four convictions," Pascal said, referring to BP's three environmental crimes and a 2009 deferred prosecution for manipulating the gas market, which counts as a conviction under debarment law. "At some point if a contractor's behavior is so egregious and so bad, debarment would have to be an option."

In the three instances where BP has had a felony or misdemeanor conviction under the Clean Air or Clean Water Acts, the facilities where the accidents happened automatically faced a statutory debarment, a lesser form of debarment that affects only the specific facility where the accident happened.

One of those cases has been settled. In October 2000, after a felony conviction for illegally dumping hazardous waste down a well hole to cut costs, BP's Alaska subsidiary, BP Exploration Alaska, agreed to a five-year probation period and settlement. That agreement expired at the end of 2005.

The other two debarment actions are still open, and those are the cases that EPA officials and the company have been negotiating for several years.

In the first incident, on March 23, 2005, an explosion at BP's Texas City refinery killed 15 workers. An investigation found the company had restarted a fuel tower without warning systems in place, and BP was eventually fined more than $62 million and convicted of a felony violation of the Clean Air Act. BP Products North America, the responsible subsidiary, was listed as debarred and the Texas City refinery was deemed ineligible for any federally funded contracts. But the company as a whole proceeded unhindered.

A year later, in March 2006, a hole in a pipeline in Prudhoe Bay led to the largest ever oil spill on Alaska's North Slope – 200,000 gallons—and the temporary disruption of oil supplies to the continental U.S. An investigation found that BP had ignored warnings about corrosion in its pipelines and had cut back on precautionary measures to save money. The company's Alaska subsidiary was convicted of a misdemeanor violation of the Clean Water Act and, again, debarred and listed as ineligible for government income at its Prudhoe Bay pipeline facilities. That debarment is still in effect.

That accident alone—which led to congressional investigations and revelations that BP executives harassed employees who warned of safety problems and ignored corrosion problems for years—was thought by some inside the EPA to be grounds for the more serious discretionary debarment.

"EPA routinely discretionarily debars companies that have Clean Air Act or Clean Water Act convictions," said Pascal, the former EPA debarment attorney who ran the BP case. "The reason this case is different is because of the Defense Department's extreme need for BP."

Instead of a discretionary debarment, the EPA worked to negotiate a compromise that would bring BP into compliance but keep its services available. The goal was to reach an agreement that would guarantee that BP improve its safety operations, inspections, and treatment of employees not only at the Prudhoe Bay pipeline facility, but at its other facilities across the country.

According to e-mails obtained by ProPublica and several people close to the government's investigation, the company rejected some of the basic settlement conditions proposed by the EPA—including who would police the progress—and took a confrontational approach with debarment officials.

One person close to the negotiations said he was confounded by what he characterized as the company's stubborn approach to the debarment discussions. Given the history of BP's problems, he said, any settlement would have been a second chance, a gift. Still, the e-mails show, BP resisted.

As more evidence is gathered about what went wrong in the Gulf, BP may soon wish it hadn't.

It's doubtful that the EPA will make any decisions about BP's future in the United States until the Gulf investigation is completed, a process that could last a year. But as more information emerges about the causes of the accident there—about faulty blowout preventers and hasty orders to skip key steps and tests that could have prevented a blowout—the more the emerging story begins to echo the narrative of BP's other disasters. That, Meunier said, could leave the EPA with little choice as it considers how "a corporate attitude of non-compliance" should affect the prospect of the company's debarment going forward.

ProPublica reporters Mosi Secret and Ryan Knutson and director of research Lisa Schwartz contributed to this report.

CLIMATE CHANGE / GLOBAL WARMING

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Wednesday May 26, 2010 03:39:16 PM GMT

US Senate to vote in June to stop EPA carbon rules (*Forexyard*)

CLIMATE-USA/CONGRESS* Republican-backed measure is unlikely to become law
* But could hurt prospects for another bill Obama favors
* Goal is to halt upcoming regulations on big polluters.
By Richard Cowan
WASHINGTON, May 25 (Reuters) - The Senate is set to vote next month on permanently stopping the Environmental Protection Agency from regulating pollution linked to global warming from factories, utilities and oil refineries, a spokesman for Senator Lisa Murkowski said on Tuesday.
The Republican effort, which enjoys the support of at least three Democrats, is unlikely to become law. But a strong vote for the measure could further undermine chances for separate legislation to control emissions of carbon dioxide and other greenhouse gases that President Barack Obama wants.

The vote on EPA regulation could come just as federal agencies wrap up their economic analysis of climate change legislation by Democratic Senator John Kerry and independent Senator Joseph Lieberman, which already faces an uphill fight.

Murkowski, a Republican from the oil-producing state of Alaska, is pushing the bill to stop the EPA regulations that could go into effect as early as next January on large polluters.

There is widespread industry opposition to EPA taking charge of carbon emissions, even though the U.S. Supreme Court has ruled that the agency has the authority to regulate the pollutants now that EPA has found it to be a health threat.

Murkowski and 41 other senators are lined up behind the bill, which needs 51 votes to pass the Senate.

Its prospects are tougher in the House of Representatives and Obama has indicated that he likely would veto the measure if it were to pass both chambers of the Democratic-controlled Congress.

Murkowski spokesman Robert Dillon said the senator reached an agreement with Senate Majority Leader Harry Reid to hold a vote on her measure on June 10.

Murkowski took another step on behalf of the oil industry this month when she helped block a bill that would have significantly increased its liability for oil spills, such as the one in the Gulf of Mexico.

Still unclear is whether Democratic senators will push for votes on alternatives to Murkowski's measure that relate to EPA regulation of carbon dioxide emitted from burning fossil fuels.

Senator John Rockefeller, who is from the coal-producing state of West Virginia, has offered legislation that would put a two-year pause on EPA regulations, giving Congress more time to enact legislation tackling global warming.

Rockefeller's proposal would not temporarily suspend EPA from regulating carbon pollution from vehicles.

The Obama administration's position is that it will go ahead with carbon pollution regulations if Congress fails to approve broad climate control legislation reducing those emissions over the next four decades. (Editing by Xavier Briand)

FUEL

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EPA's Renewable Fuel Standard in the Legal Crosshairs (*Environment News Service)*

WASHINGTON, DC, May 25, 2010 (ENS) - Friends of the Earth today filed a lawsuit in the U.S. Court of Appeals seeking review of the U.S. Environmental Protection Agency's Renewable Fuel Standard, RFS2.

Represented by the nonprofit Clean Air Task Force, Friends of the Earth filed a suit in U.S. District Court in Washington, DC that takes aim at EPA's use of "outdated data and rosy projections about pollution from corn ethanol in federal biofuels mandate."

Friends of the Earth Energy Policy Campaigner Kate McMahon said, "The EPA must look at the impact that the biofuels mandate is having on global warming today and not use rosy projections about what the state of biofuel production will be in 2022. Using these projections ensures that for the next several years greenhouse gas emissions will only get worse, rather than better."

The groups claim that the EPA's finalized regulations for the Renewable Fuel Standard released in March do not meet standards set in Congress in 2007 for expansion of the Renewable Fuel Standard biofuels mandate.

Under the Energy Independence and Security Act, passed by Congress in 2007, EPA is required to apply lifecycle greenhouse gas performance threshold standards to ensure that each category of renewable fuel emits fewer greenhouse gases than the petroleum fuel it replaces.
Pearson Fuels in San Diego offers multiple alternative fuel options. November 2009. (Photo courtesy Pearson Fuels)

Safeguards to protect natural ecosystems from biofuel crop production were also included, say the plaintiff groups.

In addition to filing the lawsuit, the groups petitioned the EPA to reconsider its assumption that no natural ecosystems will be destroyed to create biofuel plantations. The groups claim that due to this assumption, EPA regulations lack reliable measures to protect natural ecosystems in the United States from conversion to biofuel plantations.

"The EPA also needs to take into consideration current research about existing land conversion for biofuels crop production and provide the congressionally mandated safeguards for natural ecosystems," said McMahon.

The U.S. Renewable Fuel Standard program was created under the Energy Policy Act, EPAct, of 2005, which established the first renewable fuel volume mandate in the United States.

As required under EPAct, the original RFS program, RFS1, mandated that 7.5 billion gallons of renewable fuel be blended into gasoline by 2012.

Under the Energy Independence and Security Act, EISA, of 2007, the RFS program was expanded to include diesel in addition to gasoline.

EISA increased the volume of renewable fuel required to be blended into transportation fuel from nine billion gallons in 2008 to 36 billion gallons by 2022.

"The legal challenge results from the EPA using optimistic projections about emissions from biofuel production in 2022, rather than current data regarding emissions from biofuel production, to finalize lifecycle greenhouse emissions assessments," the groups said in a statement today.

Using this "flawed method," the EPA determined that all biofuels meet 2007 emissions standards, despite a growing body of research that indicate some biofuels result in worse emissions than conventional gasoline, the groups argued.

The national trade association for the U.S. ethanol industry, the Renewable Fuels Association, today took issue with the premise of this lawsuit.

"To blame American biofuels for increasing global oil use defies simple common sense," said RFA President and CEO Bob Dinneen. "By this tortured logic, any effort that environmental activists support to reduce America's reliance on oil would be responsible for lowering U.S. oil demand, reducing global oil prices, and inciting increased consumption somewhere else in the world."

"Increasing mileage standards, deploying electric vehicles, and any other measure designed to reduce U.S. oil demand would be penalized with carbon emissions from increased global oil consumption under this rubric," said Dinneen.

"As the leading energy consumer in the world, America was right to take proactive steps to reduce our reliance on petroleum and set an example for the world," said Dinneen.

"These environmental groups are implicitly making the case for keeping U.S. oil demand and prices high, rather than displacing imported oil with biofuels," he said. "Blocking the use of biofuels will not reduce global oil consumption, but rather increase it as America must look for more sources of oil, which too often comes from environmentally questionable practices like deep water drilling and tar sand conversation."

Dinneen says Friends of the Earth is incorrect in its claim that the EPA does not protect natural ecosystems by allowing lands to be placed in biofuels production.

"In essence, EPA capped the amount of land that can be used for agriculture at 2007 acreage level," Dinneen said. "If agricultural land exceeds the 2007 level, biofuel producers must prove that their feedstock did not come from newly converted land. If they can't prove that, their fuel will not qualify under the RFS2."

The EPA is facing another lawsuit in a different court over the RFS2 standard. The American Petroleum Institute, an industry association, filed a legal challenge to it with the U.S. Court of Appeals for the District of Columbia.

"While the U.S. oil and natural gas industry recognizes and appreciates the role of ethanol and other biofuels in the fuel marketplace, we are deeply concerned that the Environmental Protection Agency's final RFS2 rule could result in higher consumer costs," said API in a statement about the lawsuit dated March 29, three days after standard was issued.

"The U.S. oil and natural gas industry is the biggest consumer of ethanol and other biofuels," said API. "Almost 80 percent of all gasoline now produced in the United States contains ethanol. API supports a realistic and workable RFS."

However, said API, "We believe this rule unlawful and unfair."

"EPA made the rule effective on July 1, 2010," the industry association said, "while setting unreasonable mandates on refiners that reach back to 2009 for bio-based diesel and to January 1 for the other advanced biofuels."

TruckingInfo.com - We've got trucking covered (*Truckinginfo*)

5/26/2010
Industry Applauds Fuel Economy Policy
By Oliver B. Patton, Washington Editor

Trucking company and truck maker leaders are on board with the policy President Obama signed last week calling on two federal agencies to develop national standards for fuel economy and greenhouse gas emissions for medium and heavy trucks.

"This will bring down costs for transporting goods, serving businesses and consumers alike," Obama said. "We estimate that we can increase fuel economy by as much as 25 percent in tractor-trailers using technologies that already exist."

On the stage with the president at the May 21 Rose Garden ceremony were chief executives from major manufacturers, as well as the trucking industry, signaling broad industry support for the new policy.

On hand were Martin Daum, president and CEO of Daimler Trucks North America, Dennis Slagle, president and CEO of Volvo North American Trucks, Tim Solso, CEO of Cummins, Daniel Ustian, president and CEO of Navistar, G. Tommy Hodges, chairman of the American Trucking Associations, and Anthony Dunkley, a driver for Waste Management.

2014 Target Date

Under the agreement, the Environmental Protection Agency and the National Highway Traffic Safety Administration will work together to produce rules covering emissions and fuel standards, respectively, that will start to take effect in the 2014 model year.

Both the fuel economy standard and the emissions standard will come in the form of proposed rules that are open to comments from the public. The Presidential Memorandum Obama signed calls for the rule to be ready by July 30, 2011.

Truck and engine manufacturers have been working with EPA for a year and a half to craft a workable plan. Details of what the agencies will propose are yet to be revealed but the principles of the program were outlined in a May 18 letter to Transportation Secretary Ray LaHood and EPA Administrator Lisa Jackson from Martin Daum of Daimler Trucks.

The new standards will start in 2014 and be fully implemented by 2018, and the program will be designed to increase the use of existing technologies to reduce greenhouse gas emissions and improve fuel economy.

Low-Hanging Fruit

On this point, the industry's expectation is that the technologies that are familiar to participants in EPA's SmartWay program will be used in this program - improved aerodynamics and low rolling resistance tires, for instance, according to Allen Schaeffer, executive director of the Diesel Technology Forum.

Depending on the measurement metrics and baselines used in the standards, emissions could be cut by as much as 20 percent and fuel economy improved by as much as 25 percent. Daum noted that the agencies' preliminary analysis indicates the program could save up to 500 million barrels of oil over the lifetime of the vehicles built between 2014 and 2018, and achieve about $70 billion in fuel savings.

The program will establish standards that recognize trucking's needs and the demands of heavy-duty applications. This includes recognition of technology improvement opportunities for the entire vehicle and its operations, the need to be compatible with the complexities of the market and the need to avoid unintended consequences, Daum wrote.

Another principle calls for incentives for early introduction of advanced technologies, such as the tax incentives now used to promote the purchase of hybrid and electric trucks.

Working With Industry

"Our company is committed to working with EPA and NHTSA, the states, and other interested parties to help address three of the most pressing issues facing the U.S. today and into the future: greenhouse gas reductions, fuel efficiency improvements, and increased energy security," Daum wrote.

American Trucking Associations President and CEO Bill Graves said the association has been supporting development of fuel economy standards. "Reducing fuel consumption and CO2 production is good for the trucking industry and great for the environment," he said. ATA Chairman Tommy Hodges, who was chairman of the ATA Sustainability Committee that in 2008 offered truck fuel economy standards and other

recommendations to reduce fuel consumption by 86 billion gallons over a 10-year period, said he's excited to see the administration moving forward.

A sampling of manufacturer statements issued following the announcement:

Denny Slagle of Volvo and Mack Trucks: "We fully support the provisions that any such standards applicable to medium- and heavy-duty vehicles must be established in a way that recognizes the commercial needs of the trucking industry."

Solso of Cummins: "Cummins recognizes the need for a consistent and responsible set of standards to address the threat of greenhouse gas emissions and to reduce our nation's dependence on fossil fuels. We are committed to working with regulators, our customers and others in the industry to achieve these important environmental improvements."

Jed Mandel, President of the Engine Manufacturers Association: "The program and principles announced today clearly will advance the nation's efforts to reduce GHG emissions and improve fuel efficiency. We are delighted to be part of the solution."

Alan Schaeffer of the Diesel Technology Forum: "Today's announcement highlights the prominent role of clean diesel technology to improve fuel efficiency and reduce greenhouse gas emissions in commercial trucks. Diesel engines offer an unmatched combination of energy-efficiency, work capability, reliability and now near-zero emissions environmental performance making them the technology of choice for commercial trucks today and into the foreseeable future."

HAZARDOUS WASTE

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EPA cites Gardnerville man with illegal dumping (*Nevada Appeal*)

Nevada Appeal Staff Report,
A Gardnerville businessman was cited by the U.S. Environmental Protection Agency for allegedly violating federal law governing the safe handling and disposal of solid and hazardous waste.

According to the EPA, Reed Skenandore operates an auto dismantling business and an unpermitted illegal waste disposal site that has resulted in open dumping and illegal disposal of hazardous waste over an 80-acre site. The facility is located near Gardnerville.

Skenandore's auto dismantling and waste disposal site not only contained waste from the on-site dismantling of automobiles, but also contained large quantities of waste

accepted from off site, according to the EPA. Wastes included abandoned automobiles, trailers, tires, car batteries, construction waste, oil, appliances, televisions and computer monitors, paint and aerosol cans.

Additionally, the facility allegedly did not properly manage automobile fluids and oil which can result in environmental contamination. Used oil must be properly contained, labeled, and sent off site for proper recycling.

Under the Recovery Act, EPA can assess a civil penalty of up to $37,500 per day, per violation.

PESTICIDES

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Herbal Supplements Commonly Have Traces of Contaminants, a U.S. Study Finds (*New York Times*)

May 26, 2010 Wednesday
Late Edition - Final
Section A; Column 0; National Desk; Pg. 15
By GARDINER HARRIS
Nearly all of the herbal dietary supplements tested in a Congressional investigation contained trace amounts of lead and other contaminants, and some supplement sellers made illegal claims that their products can cure cancer and other diseases, investigators found.

The levels of heavy metals -- including mercury, cadmium and arsenic -- did not exceed thresholds considered dangerous, the investigators found. However, 16 of the 40 supplements tested contained pesticide residues that appeared to exceed legal limits, the investigators found. In some cases, the government has not set allowable levels of these pesticides because of a paucity of scientific research.

Investigators found at least nine products that made apparently illegal health claims, including a product containing ginkgo biloba that was labeled as a treatment for Alzheimer's disease and a product containing ginseng labeled as a treatment to prevent diabetes and cancer. They also described a salesperson at a supplement specialty store who claimed that a garlic supplement could be taken instead of blood pressure medication.

Any product that claims to treat, cure, prevent or mitigate a disease is considered a drug and must go through strict regulatory reviews.

The report, which was prepared by the Government Accountability Office, was provided to The New York Times and will be made public at a Senate hearing on Wednesday. Its release comes two weeks before the Senate is scheduled to begin debate on a landmark food safety bill that is expected to substantially increase the federal government's authority over food manufacturers.

But it is uncertain how tough the bill will be on supplement manufacturers, and it has been the subject of fierce lobbying. Capitol Hill staff members familiar with the process said the bill was unlikely to include provisions opposed by supplement manufacturers.

Dr. Joshua M. Sharfstein, principal deputy commissioner of the Food and Drug Administration, said in an interview that he was not concerned about the safety of the supplements tested by the G.A.O. investigators. But Dr. Sharfstein noted that the agency had recently announced a recall of Vita Breath, a dietary supplement that it said might contain hazardous levels of lead.

Steve Mister, president of the Council for Responsible Nutrition, a trade association representing the dietary supplement industry, said it was not surprising that herbal supplements contained trace amounts of heavy metals, because these are routinely found in soil and plants. "I don't think this should be of concern to consumers," Mr. Mister said.

Senator Herb Kohl, a Wisconsin Democrat who will preside over Wednesday's hearing of the Senate Special Committee on Aging, said that while improvements had been made in recent years in the oversight of supplements, "the F.D.A. needs the authority and tools to ensure that dietary supplements are as safe and effective as is widely perceived by the Americans who take them."

Among the witnesses at the hearing will be Dr. Tod Cooperman, president of ConsumerLab.com, a company that has tested over 2,000 dietary supplements made by more than 300 manufacturers and has found that one in four have quality problems. According to Dr. Cooperman's written testimony, the most common problems are supplements that lack adequate quantities of the indicated ingredients and those contaminated with heavy metals.

Travis T. Tygart, chief executive of the United States Anti-Doping Agency, wrote a letter to the committee saying that some athletes have been rendered ineligible for international competitions because they took supplements that contained steroids not listed on the products' labels. There are thousands of supplements available for sale that contain steroids or other harmful ingredients, he wrote.

"The F.D.A. is operating in a regulatory environment that is simply too burdensome to allow for effective post-market regulation of these products," Mr. Tygart wrote.

Half of the nation's adult population takes vitamin supplements regularly, and about a quarter take herbal supplements at least occasionally. Annual sales are about $25

billion a year, and the growing popularity has led to an increasing number of imported supplements spiked with illegal drugs.

In 1994, Congress passed legislation that allowed supplement makers to sell products without first getting approval from the F.D.A. for their ingredients or for basic health claims. But scientific organizations have warned repeatedly since then that the F.D.A. should do more to ensure that the supplements are safe and that their health claims are substantiated.

In recent years, a vast majority of supplement suppliers have located overseas -- principally in China. Nearly all of the vitamin C and many other supplements consumed in the United States are made from ingredients made in Chinese plants. Those plants are almost never inspected by the F.D.A. because the agency is not required to do so, has little money to do so and does not view the plants as particularly risky.

Mr. Mister said supplement sellers tested ingredients before using them, but he agreed that testing could not ensure quality. He called on Congress to provide the F.D.A. with more money to inspect foreign and domestic supplement plants. "I think you'll see more and more inspections," Mr. Mister said.

He said that a few companies made illegal health claims for their supplements, but that the industry was trying to police those. "I occasionally see these late-night commercials with health claims that make my blood boil," he said.

Dr. Sharfstein said the F.D.A. had increased enforcement actions against supplements spiked with prescription drugs like Viagra. And he said the agency had taken action against supplement makers that made broad health claims. "We don't want people to think they're treating a disease with something that hasn't been proven to do that," he said.

The food safety bill expected to be introduced next month in the Senate is likely to mandate that supplement makers register annually with the F.D.A. and allow the agency to recall supplements suspected of being dangerous.

But a House provision that would require manufacturers to create plans to safely manufacture their products and a proposal made in February by Senators John McCain, Republican of Arizona, and Byron L. Dorgan, Democrat of North Dakota, to restrict supplements to ingredients approved by the F.D.A. will not be included, staff members said.

TOXICS

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How far can your car go on a tank of gas? (*Bankrate.com*)

By Clark Palmer • Bankrate.com
It all depends -- primarily on how fast you drive, your car's fuel efficiency and the size of your tank.

The fuel cost for every mile you drive will depend on what kind of fuel you use -- regular or premium -- and how much it costs.

Here's a look at how far you can drive on a tank of gas for the three highest-mileage vehicles and the three lowest-mileage vehicles in various body styles -- and how much it will cost. Enter the amount you pay for gas and click "Submit."

The mileage figures stated are combined city and highway estimates on 2010 model cars as calculated by the federal Environmental Protection Agency, or EPA, under new formulas.

Step 1: Select a vehicle style and press "Submit."

Step 2: Enter the price you pay for a gallon of gas and press "Go."

EPA Questioned Over Whether Dioxin Risk Review Responds To NAS (*Inside EPA*)

EPA is facing questions from other federal agencies and the chemical industry over whether it responded to the National Academy of Sciences' (NAS) 2006 recommendations on how the agency assesses the risks of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), the most potent dioxin and the basis for estimating risks of mixtures of dioxins and related compounds at contaminated sites.
EPA released for public comment May 21 its long-delayed draft reassessment of TCDD. The reassessment stalled in 2003 after the agency released cancer risk estimates for the contaminant significantly tighter than those the agency calculated in 1985. Opposition from industry and other agencies led the agency to request the NAS review of its assessment.

Despite the NAS critique, EPA's new draft cancer risk estimate closely tracks those calculated in the 2003 analysis but will also include a first-time reference dose (RfD) -- the amount EPA considers safe to consume daily over a lifetime without experiencing non-cancer health effects. One of NAS' key recommendations was for EPA to calculate an RfD. EPA's 2003 assessment included an oral safety standard to protect against carcinogenic effects from ingestion but did not include a standard to protect against non-cancer effects.

EPA's Science Advisory Board earlier this year created a panel of experts who will review the latest draft version of the assessment July 13-15 in Washington, DC, according to a *Federal Register* notice published May 24. The first question they will consider is whether "EPA objectively and clearly presented the three key [NAS] recommendations," It is followed by several other questions regarding whether EPA took NAS' advice in drafting its latest version of the reassessment document.

Two weeks ago, representatives of EPA and other federal agencies held a three-hour conference to discuss the charge questions to the review panel and changes that the other agencies thought EPA should make to the questions, sources say. Some of the representatives argued that EPA should ask the panel whether it had "fully responded to the NAS" recommendations, says one federal agency source.

Their calls are echoed by the chemical industry. The American Chemistry Council (ACC), an organization representing chemical companies, released a statement from its general counsel May 21: "While it's taken over 3 years, EPA has responded to important recommendations made in 2006 by the NAS expert scientific panel, whose independent guidance EPA had specifically requested. We believe that EPA's response is a 'mixed bag.' While EPA's review of the expert panel's recommendations is a step in the right direction, it's unclear why EPA would ultimately reject critical parts of the review it sought from the NAS."

NAS urged EPA to reconsider parts of its analysis, indicating that it thought the agency had over-estimated the cancer risk that TCDD presents. NAS urged EPA to consider non-linear dose-response modeling, which assumes that there is some safe threshold level of exposure to an environmental contaminant. Other agencies and ACC argue that EPA ignored NAS advice regarding its cancer risk estimate because it calculates the risk number with a linear model, after considering non-linear models.

EPA again classifies TCDD as carcinogenic to humans in this draft assessment, based on both human and experimental animal studies. The agency calculates a draft oral cancer slope factor, or estimate of potency by ingestion, of $1x10^{-6}$ per milligrams per kilogram of body weight per day (mg/kg-day), based on a cancer mortality analysis of an epidemiologic study of occupationally-exposed workers published in 2006. The number is similar to those EPA released in 2003.

Calculating Cancer Slope Factor

Both the White House Office of Management & Budget (OMB) and the Defense Department (DOD), supported by the National Aeronautics and Space Administration (NASA), questioned EPA's decision to calculate the cancer slope factor using linear modeling, suggesting that doing so did not follow NAS' recommendations -- and that the reviewers should consider that.

"[A]s NAS recommended that EPA consider nonlinear models, EPA may want to specifically ask a charge question about their choice of relying on the linear model

rather than the nonlinear models," according to OMB's May 17 comments on EPA's charge questions. "Reviewers could also be asked to comment on EPA's conclusion that linear low dose extrapolation should be preferred."

The Pentagon notes in undated comments that EPA calculated several risk-specific slope factors, and suggests that EPA ask its peer reviewers "to comment on EPA's rationale for and presentation of these slope factors." DOD also provides an e-mail from one of its toxicologists, again arguing that EPA should have used a non-linear model to calculate the cancer slope factor.

"I would like to know further their logic for the log-linear extrapolation from the various [points of departure (PODs)]. To do so assumes that even one molecule has a risk associated with it (that one molecule can cause cancer)," writes Army scientist Mark Johnson in a May 18 e-mail. "The NAS asked the EPA to provide a different curve beyond the POD, and the EPA argued that because they do not have enough info, they will use the conservative approach. However, that is not what the science suggests."

ACC's general counsel, David Fischer, adds, "We're very troubled that EPA disregarded the NAS' recommendation by opting for a 'linear' dose-response model for cancer . . . This approach is not supported by what scientists now know about dioxin. In fact, it runs counter to other respected health and environment authorities, as well as to the specific guidance of the NAS, which recommended that EPA use the scientifically justified 'threshold' model of risk assessment."

EPA, however, responds that while it tried non-linear as well as linear approaches to estimating dioxin's cancer risks, a linear approach was most appropriate.

"While, based on the 2005 Cancer Guidelines, EPA deemed linear extrapolation to be most appropriate for TCDD, EPA carefully considered the NAS recommendation to provide risk estimates using both linear and nonlinear methods. In this document, EPA has evaluated the information available for identifying a threshold and for estimating the shape of the dose-response curve below the POD, according to the reassessment document. "EPA identifies a number of limitations that prevent making strong conclusions based on the nonlinear dose-response modeling exercises."

EPA also calculates an RfD, or safe non-cancer risk standard, of $7x10^{-10}$ mg/kg-day. The standard is based on two epidemiologic studies of men with decreased sperm concentration and infants with altered thyroid hormone after their exposure to high environmental amounts of TCDD following the industrial accident at a chemical plant in Seveso, Italy, in 1976. NAS urged EPA to calculate an RfD, noting that primary dioxin exposures occur through food. Because of fears that release of the risk assessment could lead to public concern about the safety of the American food supply, EPA and other agencies have been crafting a communications plan for the reassessment document's release.

Questioning Necessity Of RfD

The Agriculture Department (USDA) suggests in its comments on EPA's charge questions that EPA ask the reviewers whether an RfD is necessary -- even though it was recommended by NAS. USDA has for several years tested samples of various meats for dioxin content, with the most recent review showing falling levels of dioxin in several meat classes.

"While the [NAS] recommended the derivation of [an RfD], can the [reviewers] please comment on whether the establishment of such a value is the best approach (i.e., truly necessary) for reduction of risk given that many efforts from many U.S. government agencies have focused on reducing sources of dioxins in the food and environment?" writes USDA in its May 18 comments.

ACC also expresses concern about the RfD that EPA has calculated, though it acknowledges that NAS recommended EPA calculate the non-cancer risk estimate. "While EPA appeared to heed NAS' recommendation to develop a dioxin [RfD] using human data, the agency did not use the best available science, and based the RfD on questionable research," according to Fischer's statement. "As a result, the agency exaggerates health effects expected from normal dietary exposure." -- *Maria Hegstad*

EPA fines Okla. oil company $46K for 2 incidents(*Associated Press*)

Story also appeared: *BusinessWeek*

KANSAS CITY, Kan.
An Oklahoma oil company has been fined about $46,000 for an oil spill in Iowa and for failing to respond properly during a drill at its oil storage facility in south-central Kansas.

The Environmental Protection Agency's regional office in Kansas City, Kan., said Tuesday that Magellan Pipeline Co., of Tulsa, Okla., will pay a $46,200 civil penalty as part of a consent agreement.

The fine stems in part from a diesel oil spill in March from Magellan's pipeline in Milford, Iowa. The spill dumped about 5,000 gallons of oil into a tributary of the Little Sioux River.

The EPA also said the company did not respond as required during a facility response drill conducted during a surprise inspection in 2009 at Magellan's storage facility in Valley Center, Kan.

Alexander: EPA rule on lead paint hindering flood repairs (*Kingsport Times News*)

By Hank Hayes
Published May 25th, 2010
U.S. Sen. Lamar Alexander announced steps Tuesday to mitigate the Environmental Protection Agency's lead paint rule requiring certain buildings to be worked on by certified lead paint contractors.

The EPA rule mandates specific work practices when contractors disturb 6 square feet of lead paint surface in homes, child-care facilities and schools built before 1978.

In a conference call with reporters, the Tennessee Republican complained that the rule, which went into effect on April 22, is hindering flood recovery efforts in Middle and West Tennessee.

"Ten days before the Tennessee flood, the worst natural disaster in the U.S. since President Obama took office, a new EPA rule went into effect that will make it harder and more expensive for Tennesseans to repair their flood-damaged homes and get back on their feet," Alexander said. "For example, Nashville alone has $2 billion in flood damage and 11,000 buildings in need of major repair."

The rule is part of the federal government's overall strategy for eliminating childhood lead poisoning.

Alexander said he has asked the EPA to delay implementing the rule nationwide and has introduced an amendment to a supplemental appropriations bill that would allow any contractor who enrolls in a lead paint certification class by Sept. 30 to be considered in compliance with the rule.

He has also asked for an "opt out" provision for homeowners so they can hire uncertified contractors to repair their homes, as long as they verify there are no children under 6 years old or pregnant women in the home.

In a letter to EPA Administrator Lisa Jackson, Alexander said the rule could affect more than 750,000 buildings in Tennessee and 168,000 housing units in Davidson County alone.

EPA can fine uncertified contractors who violate the lead paint rule up to $37,500 per violation, Alexander said.

Alexander indicated the certification training costs about $100 to $200 and takes one business day to complete.

About 2,700 people have gone through the training in Tennessee, with about 370 firms certified, he said.

"But there are lots of people who have never heard of this," Alexander claimed.

He also pointed out the EPA has only three trainers assigned full time to Tennessee to offer such classes, “even though there are 50,000 contractors — 13,000 in Nashville alone — who may need to be certified before they can work on most homes built before 1978.”

In an April 20 memo, the EPA noted its outreach effort to notify contractors about the rule has gone on for about two years.

“This includes contacting over 250 property management firms and more than 6,500 trade associations, trade publications, union organizations, property management associations, paint and hardware stores, local building and construction permitting organizations, general news publications, and other interested parties...” EPA Assistant Administrator Steve Owens said in the memo. “EPA is also launching an outreach campaign using print and radio (public service announcements) targeted to homeowners.”

Owens added the EPA did not intend to take enforcement actions against firms applying for certification before April 22.

For more information on the rule go to www.epa.gov/lead.

WATER

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Industry girds as House Dems prepare fracking amendment (*Greenwire*)

(05/25/2010)
Katie Howell, E&E reporter
The House Energy and Commerce Committee's Democrats are likely to propose an amendment to a water-infrastructure bill tomorrow that would expand regulation of a controversial oil and gas production technique.

According to draft language obtained by *Greenwire*, the amendment would require drillers under the Safe Drinking Water Act to disclose the chemicals used during hydraulic fracturing to state regulators or U.S. EPA.

The amendment to **H.R. 5320** will likely be offered by Rep. Diana DeGette (D-Colo.), who has led House efforts to federally regulate hydraulic fracturing.

Hydraulic fracturing is a decades-old production technique that blasts water, sand and chemicals into a wellbore to break apart compact rock and release trapped hydrocarbons. As the technology's use has swelled in attempts to tap the prolific Marcellus Shale in Appalachia and other shale gas plays, environmentalists and

lawmakers, including DeGette, have raised concerns about the technology's potential to contaminate groundwater.

DeGette has introduced two previous measures that similarly regulate the controversial technique. The bill introduced this Congress, **H.R. 2766**, has not seen any action in committee.

And a Democratic aide for the committee said she was not aware of the amendment.

But Democratic leaders on the Energy and Commerce Committee have taken an increased interest in hydraulic fracturing.

Earlier this year, Energy and Commerce Chairman Henry Waxman (D-Calif.) and Energy and Environment Subcommittee Chairman Ed Markey (D-Mass.) sent letters to eight oil-field service companies asking for information about the chemicals used in fracturing fluids.

"This investigation will help us better understand the potential risks this technology poses to drinking water supplies and the environment, and whether Congress needs to act to minimize those risks," Waxman said when the inquiry was launched (*Greenwire*, Feb. 18).

The oil and gas industry maintains the technique is safe.

In a **letter** sent today to the Energy and Commerce panel's Democratic and Republican leaders, Lee Fuller, executive director of the industry-backed group Energy In Depth, wrote, "The fact is, hydraulic fracturing has been ably and aggressively regulated by the states almost since the moment of its invention, with regulators compiling an impressive record of enforcement and oversight during that time."

The letter goes on to say the draft language would force states to pay the costs of collecting and managing the data generated for each fractured well.

"States would have to sacrifice other functions to generate the information," Fuller wrote. "Of course, if they choose not to do that, states would have to give up their regulatory responsibilities under [the Safe Drinking Water Act] and turn those functions over to EPA. Not only would this burden EPA -- since it is not staffed with the capabilities to undertake daily regulatory responsibilities -- but it would also lead to duplicative regulations."

The reporting requirements would also undermine other efforts to develop alternative additives for the fracturing process, the letter says.

Fuller suggests DeGette and the committee should wait to take action on the measure until the results of an ongoing congressionally mandated EPA study on the effects of fracturing on water supplies is complete. Those results are not expected until 2012.

Posted on Tue, May. 25, 2010

EPA approves Independence plan to fix sanitary sewer system (*Kansas City Star*)

By BRIAN BURNES
The Kansas City Star
Federal authorities have approved Independence's plan to fix its sanitary sewers system.

In a document submitted to the Environmental Protection Agency, the city outlined the steps it will take to comply with a consent decree announced last year by the federal agency.

The EPA had documented numerous violations of the federal Clean Water Act. Those included about 430 sanitary sewer overflows since late 2000, resulting in the discharge of millions of gallons of untreated sewage.

The problem of untreated sewage spilling into the watershed occurred primarily during heavy rains, Independence officials said at the time.

The EPA last month approved the city's remedial measures master plan, which says one overall goal is "eliminating sanitary sewer overflows from the city's wastewater collection and transmission system." Another goal is to identify measures that will result in the "adequate capacity" of the system.

All the remedial measures must be completed by April 2015.

Area EPA staff members "have had nothing but praise for the way the city of Independence has been handling this," said Chris Whitley, EPA regional spokesman. "They have been very cooperative to work with.

"That is not something we are able to say in each and every case like this."

The city must compile semi-annual reports on its progress, he added.

"We have been very punctual in our dealings so far with the EPA," Dick Champion, Independence water pollution control director, said Monday.

"One of the things I do not want to do here is miss a deadline."

Champion told the Independence City Council during a Monday night budget hearing that the consent decree requires city officials to plan and design upgrades, "increasing

our conveyance capability so that we will not have overflows to the environment during those historic wet weather events."

The cost for the various upgrades could surpass $50 million, said Champion, who added "We are definitely entering a new era for public improvements."

The department is proposing to debt finance several proposed capital projects over the next several years. That, Champion said, "will take a ton of pressure off our rate-payers."

Still, some financial effect may be felt by customers of the Independence water pollution control department. As of this February, Champion said, the department's average monthly bill of $22.52 was well below the average monthly charges of $31.48, $34.84 and $47.06 paid by residents of Lee's Summit, Raymore and Belton, respectively.

A proposed increase would put the average Independence bill at $25.90.

Under the consent decree, Independence also was to address its Rock Creek Wastewater Treatment Plant. The plant serves about 55,000 residential customers and 3,500 commercial customers. That's about half of the residences and businesses in Independence, and a majority of all customers in Sugar Creek.

In March, Missouri Gov. Jay Nixon came to Independence to announce a $1 million grant to improve the treatment plant's energy efficiency. But that upgrade was not related to the federal consent decree, Champion said.

INDEPENDENCE
To reach Brian Burnes, call 816-234-4120 or send e-mail to bburnes@kcstar.com.

N.J. monitors spill, prepares action plan (*Philadelphia Inquirer*)

May 26, 2010 Wednesday
CITY-C Edition
NATIONAL; Inq World & Nation; Pg. A16
N.J. monitors spill, prepares action plan
By Sandy Bauers; Inquirer Staff Writer
So far, the likelihood of any oil from the Deepwater Horizon spill in the Gulf of Mexico reaching New Jersey's shores is remote.

But the state isn't taking any chances.

On Tuesday, Department of Environmental Protection Commissioner Bob Martin announced the formation of a "gulf spill team" to monitor the situation daily, create a

scientific model of how the oil could reach New Jersey, and, in case it does, develop a plan of action.

The move was met with both praise from environmental groups that fear the worst and derision from a critic who said that given the agency's limited funds and staff, it had far more important environmental matters to tend to.

"Right now, we are optimistic the oil will not reach New Jersey and will not affect fishing nor the summer beach season," Martin said in a prepared statement.

"However, we are keeping a close watch on this situation."

The key, said Josh Kohut, assistant professor of marine and coastal science at Rutgers University and one of the scientists working with the agency, is whether the spill is carried by the gulf's Loop Current around the tip of Florida and into the Gulf Stream, which flows north along the Atlantic Coast.

"There's a lot of uncertainty in this," Kohut said. "Ocean currents can change. So you have to continue to watch what they are doing until you know where all the oil is."

Unlike a shipping accident, where a finite amount of oil is involved, the current spill is like tracking a new spill every day "because there's still oil coming out," Kohut said.

Cindy Zipf, executive director of Clean Ocean Action, a nonprofit advocacy group, praised the state for being "proactive. I think having an action team is right on."

She added that the state developed "a very aggressive oil-spill tool kit" after the 2004 oil spill in the Delaware River from the Athos I tanker. "With some additions, it would be very appropriate for the Jersey Shore as well."

Jeff Tittel, director of the New Jersey Sierra Club, agreed it was important to develop new contingency plans "not only because of the spill in the gulf but because of the potential to drill off the coast of Virginia."

The federal Minerals Management Service recently opened an area from the northern tip of Delaware south to potential drilling.

But Bill Wolfe, director of New Jersey PEER - a nonprofit group whose acronym stands for Public Employees for Environmental Responsibility - called the state action ludicrous.

"Let's just say I'm flabbergasted by the irony," said Wolfe, a former DEP employee and now a frequent critic.

He said Gov. Christie's current policies, including more self-regulation of industry, "are exactly the kind of problem that caused the oil spill to begin with."

"There are so many issues that it masks," he added. "It leads to the appearance that the department is actively engaged and has the staff resources and leadership to respond. None of that exists."

Department spokesman Larry Ragonese said the potential for the oil spill to reach New Jersey, however slim, was impossible to ignore.

"With a coastal industry of tourism and fishing, which brings in billions of dollars a year, the commissioner felt this was not something that we could just watch and hope did not come to the state."

Scientists have been creating models for best-case and worst-case scenarios, taking into account water currents, depths, temperatures, and salinity, as well as weather conditions and potential storms.

"The scientists tell us that it's not likely to hit New Jersey's coast," Ragonese said. "But they cannot be sure. The key thing here is they're telling us this is a unique event."

He said the department was spending "virtually no money" on the effort, using in-house staff and the help of scientists from Rutgers and the Center for Marine Systems at the Stevens Institute of Technology in Hoboken.

Even if the oil does not come, "this is not wasted effort," Ragonese said, likening the exercise to drills for hurricanes and nuclear accidents.

An Environmental Protection Agency spokeswoman did not respond to a request for information on whether states to the south were setting up similar teams.

Kohut said the Rutgers lab had already been running routine models of regional ocean currents as part of a broad effort funded by the National Oceanographic and Atmospheric Administration.

If the oil eventually heads north, "we need to know what's happening locally so we can understand what the potential risks are," Kohut said.

Rutgers, which has been a leader in robotic ocean exploration, also has sent one of its underwater gliders to the gulf. Tuesday, it was 60 miles south-southwest of Tampa, Fla., surfacing every three hours to transmit data back to land.

Kohut said the data were being used to help forecast the Loop Current and predict the trajectory of the spill.

Contact staff writer Sandy Bauers

at 215-854-5147 or sbauers@phillynews.com.

Visit her blog at http://go.philly.com/greenspace.

2 Falls Lake swimming areas closed due to bacteria levels (*Charlotte News 14*)

By: News 14 Carolina Staff
RALEIGH – Sandling and Beaverdam beaches, two swimming areas at Falls Lake in Wake County, are closed due to high levels of bacteria. The sites are off Highway 50 a few miles north of Highway 98.

Both beaches were closed at some point during the summer. Sandling was closed at the exact same time last year due to bacteria.

The county tests the lakes weekly each summer for bacteria, and when the bacteria levels exceed Environmental Protection Agency standards, they are closed to swimmers.

The lake is not closed to fishing, and other swimming areas at Falls Lake will remain open.

The Wake County environmental services director said they will continue to collect water samples daily for the area and reopen the lake for swimming as soon as the bacteria levels fall below the EPA standards.

Before heading to the lake, swimmers are asked to call the recreational lake facilities to find out if they're open. And they're reminded to wash their hands with soap and water and shower after swimming in the lake to prevent any illness.

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