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ADMINISTRATOR JACKSON
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How toxic are the dispersants being used in Gulf spill? (*USA TODAY*)

The two types of dispersants British Petroleum is using to clean up the Gulf oil spill are approved by the U.S. Environmental Protection Agency but banned in the United Kingdom, ProPublica reports.

EPA data suggest these products, from the Corexit line of dispersants, are more toxic and less effective in handling southern Louisiana crude than those made by competitors, Greenwire reports. Dispersants work by breaking oil into droplets.

ProPublica learned of the U.K. ban from Rep. Edward J. Markey, D-Mass., who told the New York Times that the ban occurred because of "harmful effects" on sea life.

"The release of hundreds of thousands of gallons of chemicals into the Gulf of Mexico could be an unprecedented, large and aggressive experiment on our oceans," Markey, chairman of the House Subcommittee on Energy and the Environment, told the Times. "The information regarding the chemical composition, efficacy and toxicity of the dispersants currently being used is scarce." Read Markey's letter to the EPA, here.

ProPublica reported earlier that a compound in Corexit has been linked to headaches, vomiting and reproductive problems at high doses.

BP spokesman Jon Pack said Corexit was "pretty effective" and "rigorously tested," according to Greenwire.

EPA Administrator Lisa Jackson told a Senate panel that EPA is working with BP to get less toxic dispersants to the site as quickly as possible, reports Kate Sheppard of Mother Jones.

Obama And The Oil Spill (*New York Times*)

May 19, 2010 Wednesday
Late Edition - Final
Section A; Column 0; Editorial Desk; OP-ED COLUMNIST; Pg. 27
By THOMAS L. FRIEDMAN
President Obama's handling of the gulf oil spill has been disappointing.

I say that not because I endorse the dishonest conservative critique that the gulf oil spill is somehow Obama's Katrina and that he is displaying the same kind of incompetence that George W. Bush did after that hurricane. To the contrary, Obama's team has done a good job coordinating the cleanup so far. The president has been on top of it from the start.

No, the gulf oil spill is not Obama's Katrina. It's his 9/11 -- and it is disappointing to see him making the same mistake George W. Bush made with his 9/11. Sept. 11, 2001, was one of those rare seismic events that create the possibility to energize the country to do something really important and lasting that is too hard to do in normal times.

President Bush's greatest failure was not Iraq, Afghanistan or Katrina. It was his failure of imagination after 9/11 to mobilize the country to get behind a really big initiative for nation-building in America. I suggested a $1-a-gallon "Patriot Tax" on gasoline that could have simultaneously reduced our deficit, funded basic science research, diminished our dependence on oil imported from the very countries whose citizens carried out 9/11, strengthened the dollar, stimulated energy efficiency and renewable power and slowed climate change. It was the Texas oilman's Nixon-to-China moment -- and Bush blew it.

Had we done that on the morning of 9/12 -- when gasoline averaged $1.66 a gallon -- the majority of Americans would have signed on. They wanted to do something to strengthen the country they love. Instead, Bush told a few of us to go to war and the rest of us to go shopping. So today, gasoline costs twice as much at the pump, with most of that increase going to countries hostile to our values, while China is rapidly becoming the world's leader in wind, solar, electric cars and high-speed rail. Heck of a job.

Sadly, President Obama seems intent on squandering his environmental 9/11 with a Bush-level failure of imagination. So far, the Obama policy is: "Think small and carry a big stick." He is rightly hammering the oil company executives. But he is offering no big strategy to end our oil addiction. Senators John Kerry and Joe Lieberman have unveiled their new energy bill, which the president has endorsed but only in a very tepid way. Why tepid? Because Kerry-Lieberman embraces vitally important fees on carbon emissions that the White House is afraid will be exploited by Republicans in the midterm elections. The G.O.P., they fear, will scream carbon "tax" at every Democrat who would support this bill, and Obama, having already asked Democrats to make a hard vote on health care, feels he can't ask them for another.

I don't buy it. In the wake of this historic oil spill, the right policy -- a bill to help end our addiction to oil -- is also the right politics. The people are ahead of their politicians. So is the U.S. military. There are many conservatives who would embrace a carbon tax or gasoline tax if it was offset by a cut in payroll taxes or corporate taxes, so we could foster new jobs and clean air at the same time. If Republicans label Democrats "gas taxers" then Democrats should label them "Conservatives for OPEC" or "Friends of BP." Shill, baby, shill.

Why is Obama playing defense? Just how much oil has to spill into the gulf, how much wildlife has to die, how many radical mosques need to be built with our gasoline purchases to produce more Times Square bombers, before it becomes politically "safe" for the president to say he is going to end our oil addiction? Indeed, where is "The Obama End to Oil Addiction Act"? Why does everything have to emerge from the House and Senate? What does he want? What is his vision? What are his redlines? I don't know. But I do know that without a fixed, long-term price on carbon, none of the president's important investments in clean power research and development will ever scale.

Obama has assembled a great team that could help him make his case -- John Holdren, science adviser; Carol Browner, energy adviser; Energy Secretary Steven Chu, a Nobel Prize winner; and Lisa Jackson, chief of the Environmental Protection Agency. But they have been badly underutilized by the White House. I know endangered species that are seen by the public more often than them.

Obama is not just our super-disaster-coordinator. "He is our leader," noted Tim Shriver, the chairman of Special Olympics. "And being a leader means telling the rest of us what's our job, what do we need to do to make this a transformative moment."

Please don't tell us that our role is just to hate BP or shop in Mississippi or wait for a commission to investigate. We know the problem, and Americans are ready to be enlisted for a solution. Of course we can't eliminate oil exploration or dependence overnight, but can we finally start? Mr. President, your advisers are wrong: Americans are craving your leadership on this issue. Are you going to channel their good will into something that strengthens our country -- "The Obama End to Oil Addiction Act" -- or are you going squander your 9/11, too?

Jackson Updates Senate Committee on BP Spill Work (*EP Magazine*)

* May 19, 2010

On May 18, U.S. Environmental Protection Agency Administrator Lisa P. Jackson testified before the Senate committee on Environment and Public Works on the agency's involvement and activities related to the Deepwater Horizon rig explosion and oil release. She noted that "In the last three weeks, EPA has dispatched more than 120 staff scientists, engineers, and contractors to Alabama, Florida, Louisiana, and Mississippi to perform rigorous testing and monitoring of air and water quality. We are tracking any possible adverse impacts stemming from controlled burning of surface oil, possible chemicals rising from the oil itself, and any issues caused by the use of dispersants. We are working with state officials, with local university scientists, and other federal agencies to get the best available data, share that data in a timely fashion, and to ensure proper response for the Gulf Coast people and their environment."

The agency is testing both affected and unaffected surface water along the Gulf Coast and compiling the information for regular posting on www.epa.gov/bpspill, Jackson said.

Concerning the use of oil dispersants, Jackson explained that "We know that surface use of dispersants decreases the environmental risks to shorelines and organisms at the surface. And we know that dispersants break down over weeks rather than remaining for several years as untreated oil might. But, we are also deeply concerned about the things we don't know. The long-term effects on aquatic life are still unknown, and we must make sure that the dispersants that are used are as non-toxic as possible. We are working with manufacturers, with BP and with others, to get less toxic dispersants to the response site as quickly as possible."

According to the agency's Web site, British Petroleum is using two authorized dispersants: Corexit 9500A and Corexit 9527A. Both of these are manufactured by Nalco Energy Services LP of Sugar Land, Texas, and have about a 50 percent average effectiveness on South Louisiana and Prudhoe Bay crudes.

These chemicals were authorized under the National Contingency Plan. Jackson added that federal authorities are allowing the dispersants to be applied underwater, which should use less dispersant than surface application; however, if the agency concludes that this use is harmful to the environment, it will not be used further.

Why Is the EPA Letting BP Use Dirty Dispersants? (*Mother Jones*)

The oil firm's poor safety record led to the spill. Now it's spraying chemicals into the Gulf that could make the crisis worse.
By Kate Sheppard | Wed May. 19, 2010 3:00 AM PDT

This week, lawmakers are grilling BP executives and government officials about the devastating oil spill in the Gulf of Mexico. But they should be asking tougher questions about the recovery effort, too. BP's critics say the company is spraying hundreds of thousands of gallons of harmful chemical dispersants into the Gulf when less toxic options are available. Which raises the question: Why is the Obama administration allowing a company whose poor safety record led to the spill make crucial decisions on the chemicals used for the clean-up?

Dispersants are compounds used to break down oil into smaller globs so that it sinks and biodegrades more quickly. The two primary dispersants being used in the Gulf are Corexit 9500 and Corexit(R) EC9527A—compounds created by an Illinois-based company called Nalco. According to the Deepwater Horizon Joint Information Center [1], the unified command office set up to deal with the spill, approximately 600,000 gallons of dispersant had been deployed by Sunday, most of it sprayed over the spill site from the air. Last weekend, the Environmental Protection Agency (EPA) gave BP the green light to apply dispersants directly at the source of the spill—the first time this

method has been used. BP has stockpiled a third [2] of the world's supply of dispersants; Corexit comprises the vast majority of this supply.

But environmental experts have warned that Corexit could add to the ecological disaster in the Gulf rather than alleviate it. Oil companies designed the dispersants to reduce the amount of oil hitting land. That may spare BP the PR nightmare of oil-coated birds washing up on Louisiana's shorelines. However, as scientists such as marine toxicologist Dr. Riki Ott point out, BP's chosen dispersants will simply push the problem underwater. The chemicals, says Ott, have "the potential to cause intergenerational harm" to marine life. Corexit has been banned in the United Kingdom [3] due to environmental concerns.

"[Oil companies] want to make the visible part of the oil spill disappear—for political reasons, for limiting liability to the spillers," says Richard Charter, government relations consultant for Defenders of Wildlife Action Fund. "If we were looking at food chain impacts and biomagnification in the marine ecosystem, we probably never would have invented Corexit."

There are more effective alternatives available, though not in as large a volume as Corexit. One, called Dispersit, outperformed Corexit in EPA tests [4], dispersing 100 percent of South Louisiana crude oil, the type spilling into the Gulf. The two Corexit compounds only managed to disperse 55 and 63 percent of the oil, respectively. Dispersit is also far less toxic, according to the EPA's data. The manufacturer, U.S. Polychemical Corp., says it could produce 600,000 gallons of Dispersit per day if the EPA approves it for use in the Gulf. "They say they're going as fast as they can," says U.S. Polychemical president Bruce Gebhardt. "I keep waiting for my phone to ring." He adds, "Nalco has always been the largest player on the block, and Corexit has always been what's been stocked."

So why is BP sticking with Corexit? The answer may be Nalco's close relationship with major oil firms—including BP, as Greenwire reported last week. [5] The company was founded in 1994 as a joint venture with ExxonMobil's chemical division. Nalco bought out Exxon's share in 2001, but retained its strong oil industry ties. One Nalco board member, Daniel Sanders [6], and a vice president, Steve Taylor, both served as senior executives at Exxon. Another Nalco board member, Rodney Chase [7], worked for BP for 38 years. In an interview, Nalco spokesman Charles Pajor says that former oil industry officials are "not by any means a majority" of the company's corporate leadership. Nevertheless, cleanup effort has been good business for Nalco: the company has reported that it expects to sell $40 million worth of dispersants by the end of this week. Pajor says it's BP's decision to invest so heavily in one chemical. "It's a matter of them making a choice of what they've had experience using in the past and feel that it works for them," he says.

Although the EPA evaluates dispersants, it hasn't weighed in on which chemical would be best for the clean-up job in the Gulf. The agency's administrator, Lisa Jackson, told reporters [7] last week that the agency is responsible for approving dispersants, but BP

can use whichever one it wants. She added that "logistics and stockpiles and the ability for the responsible party to pull the materials together" were likely a factor in the oil firm's decision to rely on Corexit.

Appearing before a Senate panel on Tuesday, Jackson acknowledged the environmental concerns surrounding dispersants, but said she has been "hesitant to take it out of the tool kit all together." The agency, she said, is "working with BP and others to get less toxic dispersants to the site as quickly as possible," and is "still looking into" why Corexit was banned in the UK. The EPA will review its policies for evaluating dispersants, she said, adding, "I'm amazed by how little science there is on the issue." Asked after the hearing whether the agency would push BP to switch to less harmful products, Jackson said that the agency is "not taking that off the table."

But some lawmakers say the EPA should already have taken a stronger stance on the matter, given BP's glaring safety failures and the inadequacy of its containment efforts. Rep. Ed Markey (D-Mass.) sent a letter [8] on Monday to Jackson listing eleven questions on the EPA's role in overseeing dispersants, including why BP got to choose the chemicals for the cleanup and why less toxic options weren't selected. Dispersant use, wrote Markey, "requires careful oversight."

"Given the allegations that have come out recently about BP's decision-making process it is disturbing that BP is being given a lot of leeway at this point in the game," said Jacqueline Savitz, director of pollution campaigns at Oceana, a marine advocacy group. "At this point I think it would be appropriate for the government to start taking control."

On a daily basis, the Obama administration has been vigorously noting its spill-related actions, eager to thwart any criticism that it has not handled this crisis well. But it has allowed BP almost complete latitude in this crucial endeavor. As the disaster continues to unfold, there's no telling yet just how big a mistake that could be.

BP has been allowed too much control of response to Gulf of Mexico oil spill, critics say (*Times Picayune*)

Story also appeared: *NOLA.com*

By Bruce Alpert, Times-Picayune
May 18, 2010, 8:39PM
Since the first days after an explosion of the Deepwater Horizon sent oil gushing into the Gulf of Mexico, members of the Obama administration have pledged to hold BP responsible for cleaning up the mess and paying all the costs related to the disaster.

But, almost a month of failed efforts and marginal progress, some critics are asking whether the administration is relying too much on the oil company, particularly on what the administration says is the No.1 mission: stopping the oil at its source nearly a mile beneath Gulf waters.

"I think that there are experts from Woods Hole to MIT to Cal Tech down in the universities in the Gulf region who are ready, willing and able to move in and give the long-term scientific expertise to solve these problems," said Rep. Ed Markey, D-Mass., chairman of the House Subcommittee on Energy and Environment, one of eight congressional panels investigating the April 20 accident.

Others have raised questions about the administration's acceptance of BP's estimates of the amount of oil being spilled; its decision to authorize the company's heavy use of dispersants to break up the oil in the Gulf, chemicals that could pose serious environmental concerns; and whether administration officials were too quick to join BP in questioning the accuracy of reports from some scientists of a large oil plume under the surface.

At three separate Senate hearings Tuesday, and a press briefing aboard Air Force One, administration officials pushed back at the criticism, arguing that federal officials are consulting independent experts, both inside and outside government, to help evaluate and develop ways to stop the flow of oil, and that the government is overseeing a response that assumes a far bigger spill than estimated by BP.

Asked about the administration's reliance on BP, deputy press secretary Bill Burton said the White House "didn't choose any partner for this catastrophe" and is pressing for changes in approach when needed.

"What we've done is worked with the responsible party to do everything we can to stop oil from leaking from the bottom of the Gulf and to mitigate the environmental disaster that we're seeing in the water right now," Burton said. "We are obviously working with BP because, frankly, they have the equipment that's necessary in order to get down to the bottom of the Gulf to help plug that hole."

But some environmental groups said that the administration should be pressing BP harder.

"It seems as if the Obama administration is pretty much letting BP run the show," said Heather Emmert, Gulf States field organizer for Environment America. "And some of the things they are agreeing with are very contrary to what some scientists on the ground are saying."

John Lopez, director of the coastal sustainability program for the Lake Pontchartrain Basin Foundation, said he doesn't know what else the Obama administration can do to stem the flow of oil. But, he said that he and other officials from non-governmental agencies wish the administration were more "transparent" about the spill and the efforts to contain it.

For instance, he said, it would be helpful if the administration released the chemical make-up of dispersants being used, despite industry objections that the information is proprietary.

Administration officials discussed some of those issues at the Senate hearings Tuesday.

Sen. John Kerry, D-Mass., asked about the use of the chemical dispersant Corexit, which ProPublica, an independent, nonprofit newsroom that produces investigative journalism in the public interest, reported Tuesday is banned in the United Kingdom because of its toxicity.

ane Lubchenco, administrator of the National Oceanic and Atmospheric Administration, said the administration recognizes the "tradeoffs" of using such dispersants.

"The dispersants are less toxic than the oil," she told Kerry. "And the purpose of the dispersants is to break the oil up into smaller droplets, so that they can biodegrade naturally."

But, she conceded that federal regulators don't have "complete information about the likely impact of the dispersants on every species in the ecosystem" and that the United States has "never used dispersants in the amounts that we're using now within U.S. waters."

Louisiana lawmakers offered different views of the administration's response.

"I want to say for the record, having witnessed the response in the Gulf, that it has been thorough," Sen. Mary Landrieu, D-La, said. "It has been comprehensive, not only from Minerals Management (Services), but the Coast Guard. Unlike past disasters that have occurred when not only mid-management wasn't sent, trainees were sent down, this president has sent his Cabinet time and time again for the last three and a half weeks."

But Rep. Steve Scalise, R-Jefferson, said the "bottom line remains that this administration has been content to sit back and point the finger at others while shielding federal agencies that were also to blame for this disaster. Something went horribly wrong on board this rig and we must do everything we can to make sure this catastrophe does not happen again, but in order to do this we must have a full commitment to transparency, openness and accountability that is lacking from the administration."

Environmental Protection Agency Secretary Lisa Jackson, a New Orleans native, said the public understandably has concerns about what she and others in the administration have called an environmental catastrophe.

"We have a great deal of rebuilding to do, both in material terms and in terms of restoring this community's trust that government can and will protect them in a time of need," Jackson said. "This is one of those times."

Posted on Tue, May. 18, 2010

W.Va. debates EPA plan to revoke coal mine permit (*Associated Press*)

Story also appeared: *Lexington Herald-Leader*

By TIM HUBER
AP Business Writer
A largely pro-coal industry crowd urged the Environmental Protection Agency to ease restrictions on surface mining Tuesday.

The venue was a public hearing on an EPA plan to veto a key water quality permit for St. Louis-based Arch Coal's Spruce No. 1 mine. But hundreds of mining industry supporters and environmentalists broadened the discussion to Appalachian surface mining overall.

Under President Barack Obama, the EPA has adopted a policy designed to curtail surface mining by sharply reducing the practice of filling valleys with excess waste in a six-state region.

Though outnumbered and at times out-shouted, members of several regional environmental groups praised the EPA.

"Permits such as Spruce No. 1 bury streams," said Stephanie Tyree, an organizer with the Ohio Valley Environmental Coalition. "And they demolish mountains as you all know but most importantly, Spruce No. 1 would harm people."

Briane McElfish praised the EPA for protecting people, heritage and health.

"The EPA has vetoed this permit because of egregious concerns for environmental safety. Make no mistake environmental safety means your safety," McElfish said.

Sierra Club representative Bill Price praised the EPA.

"This action affirms a commitment to environmental justice. It affirms a commitment to sound science and it affirms a commitment to the protection of all water in Appalachia," he said.

Mining supporters countered that the EPA decision is hurting people, not protecting the environment.

Arch Coal's John McDaniel said the company can't justify investing in the Spruce mine if the EPA can reject the permit at any time.

"We believe all these issues were addressed long ago and are very disappointed."

Tim Hopkins said his small drilling supply business would suffer. "I have been living the American dream," he said. "My comment is let Arch Coal do what they do best and that's mine coal."

Kentucky Coal Association President Bill Bissett blasted the agency.

"Your director, Lisa Jackson, literally says I don't care about the economic impact," he said. "It's unfair and it's wrong. It's an injustice."

Debbie Thompson said her neighbor will lose his job at Spruce No. 1. "He won't be able to pay his bills," she said. "It will cause a domino effect."

Logan County school superintendent Wilma Zigmond drew raucous applause when she told the panel that coal provides more than $7.5 million in property taxes for her district.

"Consider the losses, both financial and emotional, and the impact this would have on the Logan County school system," she said. "Remember coal keeps the lights on and our schools running."

May. 18 2010 - 9:08 pm

EPA-hating Tea Partier wins in Kentucky (*True/Slant*)

By JEFF MCMAHON

Rand Paul isn't just a Tea Party favorite, he's a likely senator from a coal state who hasn't hesitated to abuse the Environmental Protection Agency in order to turn voters' fear to his political advantage.

He's now the Republican nominee for the open Senate seat in Kentucky, the state that has already given us Mitch McConnell.

The son of Ron Paul, Rand Paul trounced his primary opponent, Kentucky Secretary of State Trey Grayson, who enjoyed the endorsements of McConnell, Dick Cheney, and other establishment Republicans.

When the Montcoal, West Virginia, coal mine collapsed in April, Rand Paul was on a "Tea Party Bus Tour" denouncing the EPA for being "out of control." Grayson wouldn't have been much better for the EPA; he claimed the agency had "declared war on all of Kentucky."

While President Obama's support among progressives has eroded as he has conceded to oil, coal, and nuclear interests, EPA Administrator Lisa Jackson has remained popular.

If Rand Paul survives Kentucky's general election, and it seems likely he will, the effort to paint Jackson as an activist may gain traction and volume. Which is just another way of saying that the window for addressing America's contribution to climate change may have closed.

EPA chief says dispersants a trade-off (*UPI*)

Published: May 18, 2010 at 4:07 PM

WASHINGTON, May 18 (UPI) -- The top U.S. environmental official said Tuesday her agency approved the underwater use of dispersants to fight the Gulf of Mexico oil leak despite unknowns.

In remarks during an appearance at a Senate Committee on Environmental & Public Works hearing on the Deepwater Horizon oil spill disaster, U.S. Environmental Protection Agency Administrator Lisa Jackson said there "is no perfect solution" to the situation, given the oil itself poses health risks, as does controlled burns being employed to control the spreading oil slick.

"However, in the use of dispersants we are faced with environmental trade-offs," Jackson told the lawmakers in Washington. "We know that surface use of dispersants decreases the environmental risks to shorelines and organisms at the surface. And we know that dispersants break down over weeks rather than remaining for several years as untreated oil might.

"But we are also deeply concerned about the things we don't know. The long-term effects on aquatic life are still unknown and we must make sure that the dispersants that are used are as non-toxic as possible."

She said the EPA is working with manufacturers, with British oil producer BP, which owns the leaking oil well, and others to get less toxic chemicals to the leak site "as quickly as possible."

Jackson said using dispersants underwater is a "novel approach" that testing indicates will mean less of the chemicals will have to be used versus surface application.

"But let me be clear that EPA reserves the right to halt the usage of sub-surface dispersant if we conclude that at any time the impact to the environment outweighs the benefit of dispersing oil," she said.

May 18, 2010

EPA Tightens Industrial Air Pollution Rules (*ThomasNet Industrial News Room)*

By Ilya Leybovich
The EPA has announced new measures to more strictly regulate greenhouse gas emissions from major emission sources, such as power plants, while reducing restrictions on smaller industrial businesses. Some groups oppose the ruling, but others claim it will benefit small businesses in the long-term.

On Thursday, the United States Environmental Protection Agency (EPA) announced the final version of a new regulatory measure designed to create a phased approach to controlling greenhouse gas emissions. The ruling establishes standards that exempt smaller companies from many of the enforcement requirements, while setting stronger controls over larger emitters.

"After extensive study, debate and hundreds of thousands of public comments, [the] EPA has set common-sense thresholds for greenhouse gases that will spark clean technology innovation and protect small businesses and farms," EPA administrator Lisa P. Jackson said. "It's long past time we unleashed our American ingenuity and started building the efficient, prosperous clean-energy economy of the future."

Known as the "tailoring rule," the EPA's measure will adjust policies based on an emitter's size and scale of impact, focusing on facilities such as power plants and oil refineries, which account for roughly 70 percent of the country's greenhouse gas emissions from stationary sources. At the same time, the measure will loosen restrictions for smaller manufacturing firms and industrial businesses.

The tailoring rule will take effect in January 2011, when industrial firms obtaining Clean Air Act permits for other pollutants will be required to also gain permits for greenhouse gas emissions if they increase those emissions by at least 75,000 tons per year.

Beginning in July 2011, the permit rule will extend to new facilities that emit at least 100,000 tons per year and to existing facilities that make modifications that would increase emissions by at least 75,000 tons per year. According to the EPA, the permits "must demonstrate the use of best available control technologies to minimize GHG emission increases."

The final rule applies to six greenhouse gases: carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6).

By increasing the enforcement threshold to emissions of 75,000 tons per year, the measure is intended to exempt small businesses and other minor emission sources from most of the permitting requirements. The EPA estimates that 900 additional permits will come under review each year and 550 new permits will be issued for the first time due to greenhouse gas emissions.

Without the tailored rule, the EPA says, earlier requirements targeting emitters at a much lower range would take effect in January, "greatly increasing the number of required permits, imposing undue costs on small sources, overwhelming the resources of permitting authorities and severely impairing the functioning of the programs."

"Last fall the E.P.A. had indicated that the bar would be set at 25,000 tons a year, which would have imposed the permit requirement on smaller entities like family farms and large apartment buildings," the New York Times reports. In its current form, the regulation is expected to affect 15,550 sources, including coal-fired plants, cement manufacturers, refineries and solid waste landfills.

The EPA's announcement came shortly after an energy and climate bill dealing with many of the same issues was introduced to the Senate, leading to speculation that the new enforcement rules are part of an effort to achieve broader legislative goals.

"The Obama administration has long said it would prefer that Congress pass a bill to cut greenhouse gas emissions but has used the threat of EPA regulation to push lawmakers in states heavily dependent on fossil fuels to support the climate bill," the Associated Press reports. "Many large utilities and other energy companies have said they want Congress to act, believing they would be in a better bargaining position with Congress than in regulations issued by the EPA."

The new EPA rule has been criticized by various industry groups, with some citing concerns that the present threshold may eventually be lowered to include smaller and smaller businesses or to impose unrealistic requirements on existing industries.

"Fundamentally, this 'tailoring rule' takes the country in the wrong direction by using the Clean Air Act to expand the power of the EPA and allow the Agency to choose which energy sources American consumers will use," the National Association of Manufacturers said in a statement issued last week. "This new rule also creates uncertainty and adds confusing and costly new permitting requirements. The EPA has set a short timetable for implementation, which will undoubtedly cost jobs and prevent manufacturers from growing their businesses."

Although the EPA's latest round of changes to the greenhouse gas guidelines might "soften the regulation's impact on small businesses," the Washington Post reports that it is "sure to face a court challenge."

US EPA says shoreline water quality safe so far (*Reuters*)

Tue May 18, 2010 2:43pm EDT

WASHINGTON, May 18 (Reuters) - U.S. Environmental Protection Agency head Lisa Jackson said on Tuesday water quality tests performed at the shoreline so far show no increased risk to aquatic life since the Gulf oil spill.

Stocks | Regulatory News

"Based on the tests at the shoreline completed to date, water quality does not currently pose an increased risk to aquatic life in tested areas," Jackson said in testimony prepared for a hearing before the Senate Environment and Public Works committee.

"EPA will continue to sample and test water to more fully assess water quality," Jackson added. (Reporting by Ayesha Rascoe)

EPA Chief: Concerned About Unknown Effects Of Chemical Dispersant (*NASDAQ*)

Story also appeared: *Dow Jones*

By Siobhan Hughes
Of DOW JONES NEWSWIRES

WASHINGTON -(Dow Jones)- U.S. Environmental Protection Agency Administrator Lisa Jackson told Congress on Tuesday that the agency is concerned about the use of undersea chemical dispersants to combat a Gulf of Mexico oil spill because the "long-term effects" are "still unknown."

The EPA chief told the Senate Environment and Public Works Committee that the agency is "deeply concerned about the things we don't know." She said that the dispersants being used are banned in the U.K., but she said that was because of effects on the shoreline.

"I've been very hesitant to take it out of the tool kit altogether," Jackson said, because of the lack of "any other tools."

She said that the long-term effects on aquatic life are "still unknown" and that the EPA "reserves the right" to halt the use of underwater chemical dispersants if the agency concludes that the risks outweigh the benefits.

Responders to a mile-deep oil spill from a broken BP PLC (BP) underwater pipe are using chemical dispersants to keep the slick from reaching shorelines. Lawmakers have expressed concern about the effect of the underwater dispersants. Rep. Ed Markey (D., Mass.) warned on Monday that "the release of hundreds of thousands of gallons of chemicals into the Gulf of Mexico could be an unprecedented, large and aggressive experiment on our oceans."

- By Siobhan Hughes, Dow Jones Newswires; 202-862-6654; siobhan.hughes@ dowjones.com

EDITORIAL / OP-ED / COMMENTARY / LETTERS
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The EPA's Shocking Power Grab (*Forbes*)

George Allen and Marlo Lewis 05.18.10, 4:16 PM ET
The U.S. Environmental Protection Agency is carrying out one of the biggest power grabs in American history. The agency has positioned itself to regulate fuel economy, set climate policy for the nation and amend the Clean Air Act--powers never delegated to it by Congress. It has done this by declaring greenhouse gas emissions a danger to public health and welfare, in a proceeding known as the "endangerment finding."

On Tuesday the U.S. Senate will debate and vote on Alaska Sen. Lisa Murkowski's resolution of disapproval to overturn the endangerment finding. The resolution is absolutely necessary to restore democratic accountability in climate policymaking.

If allowed to stand, the EPA's endangerment finding will trigger a regulatory cascade through multiple provisions of the Act. America could be burdened with a regulatory regime more costly than any climate bill Congress has rejected or declined to pass, yet without the people's representatives ever voting on it.

Consider how the endangerment finding will expand the EPA's power beyond any plausible congressional mandate.

To begin with, the finding compels the EPA to establish greenhouse gas emission standards for new motor vehicles. About 95% of all vehicular greenhouse gas emissions are carbon dioxide (CO2) emissions from motor fuel combustion. Because there is no commercially proven technology to capture CO2 tailpipe emissions, the principal way to reduce the amount of CO2 emitted per mile is to reduce the amount of fuel consumed per mile. In other words, greenhouse gas emission standards for automobiles are basically fuel economy standards by another name. By empowering the EPA to set greenhouse gas emission standards, the endangerment finding also empowers the EPA to determine the stringency of fuel economy standards, even though the Clean Air Act gives the EPA no such authority.

Once the greenhouse gas emission standards go into effect, CO2 becomes a "regulated air pollutant" and, thus, automatically subject to additional regulation under the Act's Prevention of Significant Deterioration (PSD) pre-construction permitting program and Title V operating permits program. Under the Act, a firm must obtain a PSD permit before it can build or modify a "major stationary source" of regulated air pollutants, and obtain a Title V permit before it can operate such a source. The problem is that an

immense number and variety of previously non-regulated entities--big box stores, office buildings, apartment complexes, small manufacturers, even commercial kitchens--emit enough CO2 to qualify as "major" sources.

By the EPA's own admission, applying PSD and Title V to CO2 leads to "absurd results." The EPA and its state counterparts will have to process approximately 41,000 PSD permit applications per year (instead of 280), and 6.1 million Title V permit applications per year (instead of 14,700). Agencies' administrative resources will be overwhelmed, producing ever-growing backlogs that slam the brakes on new construction and force millions of firms to operate in legal limbo. A more potent anti-stimulus package would be hard to imagine.

To avert a red ink nightmare, the EPA proposes to "tailor" the permitting programs so that they exempt for six years all sources emitting less than 50,000 tons per year (TPY) of CO2-equivalent greenhouse gases. But the Act plainly states that a source is subject to PSD if it has the potential to emit 250 TPY of a regulated air pollutant and Title V if it has a potential to emit 100 TPY. In reality, the EPA proposes to amend the statute. This breach of the separation of powers only compounds the constitutional crisis inherent in the EPA's bid to hijack fuel economy regulation and climate policymaking.

Even if courts uphold EPA's tailoring rule, it's anybody's guess how many smaller sources EPA will try to regulate after 2016. Government burdens have a habit of ratcheting up over time.

Congress: Back off EPA on emissions (*Bismarck Tribune*)

Tribune editorial | Posted: Wednesday, May 19, 2010 2:00 am
The U.S. Environmental Protection Agency will soon set the rules on emissions of greenhouse gases from coal-fired power plants, to the great disadvantage of North Dakota, unless Congress acts.
Two actions are needed:
-- Congress should pass either a resolution introduced by Alaska Sen. Lisa Murkowski stripping EPA of any authority to regulate greenhouse gases under the Clean Air Act, or the 2-year moratorium authored by West Virginia Sen. John Rockefeller on EPA greenhouse-gas rule making. Either action will give Congress time to develop any necessary strategy related to these emissions.

Having Congress in the driver’s seat is much preferred to having EPA behind the wheel.

-- The Kerry-Lieberman climate and energy legislation, introduced last week, needs to be thoroughly understood (1,000 pages), and amended, until it provides fair, equitable and common-sense climate and energy policy for the nation. We’re not sure that it does need to regulate greenhouse gases. But if it does, how it goes about it will be vitally important to the state. EPA’s participation may or may not be needed.

The Kerry-Lieberman legislation is being pitched as bipartisan based on the participation of Sen. Lindsey Graham. of South Carolina. It puts climate and energy in one bill -- an enormous and difficult challenge.

The rule that EPA has prepared would, if Congress does not act, begin to regulate coal-fired power plans and oil refineries in July 2011, beginning with new sources of greenhouse gas emissions. The benchmark for requiring EPA permits has been raised from an initial 25,000 tons a year, which could have affected family farms and large apartment buildings, to new sources of more than 100,000 tons of greenhouse gas a year, and existing plants that increase emission by 75,000 tons a year.

Long range, EPA would ratchet down that benchmark, all of the way to 25,000 tons. The impact of that on the economy would be extremely negative.

The EPA rule needs to be at least delayed.

Generally speaking, Republicans are supporting the Murkowski resolution that strips EPA of any greenhouse authority, and Democrats are supporting the rule-delaying Rockefeller amendment. North Dakota Sens. Kent Conrad and Byron Dorgan have signed on the Rockefeller amendment. The salient point for North Dakota is that it must pass the U.S. House and U.S. Senate. The Murkowski resolution must be acted upon by June 7, an unlikely option.

Congress should at least pass the Rockefeller amendment, and get to work on Kerry-Leiberman posthaste.

MAY 18, 2010

Climate Change and the Courts (*Wall Street Journal*)

A curious case of judicial recusal on the Fifth Circuit.
One of the most destructive mass litigation theories ever devised—the climate tort—is working its way through the courts, and now with a troubling twist. To wit, green plaintiffs may have found a way to handpick sympathetic judges.
In the class-action Comer v. Murphy Oil, a dozen Gulf Coast property owners whose homes were damaged by Hurricane Katrina are suing 33 energy companies for the "nuisance" of the carbon emitted when people use their products. The claim is that these emissions allegedly contributed to climate change that allegedly increased global surface air and water temperatures that allegedly caused sea levels to rise and thus allegedly compounded the storm's damage.

Last year, Comer was dismissed by a district judge, who sensibly ruled that the Mississippi residents couldn't trace the harm they suffered to any specific company

because global warming is, well, global. But the case was resurrected by a three-judge panel of the Fifth Circuit Court of Appeals—prompting the entire court to rehear the appeal en banc. The full court was expected to affirm the original district court decision, though seven of the 16 judges recused themselves because they held stock in one or more of the companies being sued.

The en banc arguments were scheduled for this month, until the Fifth Circuit announced in April that "new circumstances have arisen that make it necessary for another judge to recuse." That move deprived the panel of a quorum and thus its ability to rehear Comer. No further explanation was offered, but it's likely another judge acquired a financial interest in one of the defendants. Judges have the discretion to disclose in a situation like this but aren't required to do so, and a court spokesman didn't return our call.

The climate tort is gaining a legal toehold in part because any judge with reasonably diversified investments will have some kind of conflict of interest and will therefore be disqualified. Since any energy company—or any business or exhaling person—contributes in some way to carbon emissions, anyone could be sued if the courts allow this theory to move forward. More ominously, plaintiffs can add defendants to the suit for the purposes of targeting judicial recusals and a more favorable hearing, given that federal financial disclosure forms are public information.

In Comer, did one of the more liberal Fifth Circuit judges buy stock specifically to blow up the quorum? That isn't as far-fetched as it sounds. One of the appellate judges who waved a similar suit through the Second Circuit last year, Peter Hall, admitted at a February conference that he doubted these nuisance cases stood much chance of success.

"Expert evidence, which is the kind of thing that will be needed in this case, ultimately, to prove causative action and whether that can be done beyond preponderance of the evidence, certainly remains an open question," Judge Hall said. But he added that the "nuisance action by nuisance action" approach was so burdensome and costly that it was like "a sword of Damocles" hanging over companies that would eventually force the political branches to adopt climate policies.

In other words, these suits are naked political intimidation meant to coerce cap and tax or some other expensive carbon crackdown regardless of what Congress wants. The same judge-shopping strategy could also apply to the Supreme Court, where Samuel Alito and Stephen Breyer hold stock in Comer defendants and Sonia Sotomayor heard the Second Circuit case. If the Comer plaintiffs succeeded in forcing one more Justice to recuse, the High Court would lack a quorum and be left unable to rule on the merits even if it wanted to.

The Fifth Circuit will decide what to do this week, and we hope the judges will find a way to reconstitute their quorum before this damaging legal theory gains any more traction.

AIR

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New air tests OK at Bannister complex (*Kansas City Star*)

Air quality testing results show there are no current health concerns from one chemical at a day-care center and an adjacent building at the Bannister Federal Complex, government officials said Tuesday.

It was the second sampling since February that showed no health concerns from polychlorinated biphenyls (PCBs), Environmental Protection Agency officials said. EPA officials say no air quality testing had been done prior to 2010 in the day-care center.

EPA tailoring rule worries biomass industry (*Biomass Magazine*)

By Anna Austin
Posted May 18, 2010, at 3:16 p.m. CST
The biomass power industry was unpleasantly surprised with the release of the U.S. EPA's final Greenhouse Gas Tailoring Rule, which does not exempt biomass power producers from greenhouse gas (GHG) permitting requirements despite past EPA affirmations that biomass is carbon neutral, and requires the same GHG reporting obligations as fossil fuel consumers.

Because the EPA did not explicitly raise the issue of biogenic carbon in their proposed tailoring rule, the agency determined that they could not make a decision regarding the treatment of biogenic carbon in the final rule. This is despite receiving a number of comments requesting that the agency exempt emissions from biogenic activities or biomass combustion or oxidation activities, including solid waste landfills, waste-to-energy projects, fermentation processes, combustion of renewable fuels, ethanol, biodiesel and other alternative energy production that use biomass feedstocks. At the same time some commenters opposed the exemption of biogenic/biomass activities, the EPA said, claiming a lack of a valid scientific basis for treating these GHG emissions differently than other GHG emissions and that it should not be assumed that all biomass combustion is carbon neutral.

NCBA, PLC Support Murkowski, Lincoln Resolution To Prevent EPA From Regulating Agriculture Out Of Business (*Cattle network*)

05/18/2010 10:54AM
The National Cattlemen's Beef Association (NCBA) and the Public Lands Council (PLC) are asking the Senate to stand up for American agriculture by supporting S. J. Res. 26

(“Resolution of Disapproval”) by Senators Murkowski (R-AK) and Lincoln (D-AR). The bipartisan resolution—expected to come before the full Senate for a vote later this week—would effectively reverse the Environmental Protection Agency's (EPA) finding that greenhouse gases (GHG) are an "endangerment to public health and welfare."

“If EPA succeeds in its efforts to trump Congress and unilaterally regulate greenhouse gas emissions under the Clean Air Act, it will be devastating not just to agriculture but to the entire U.S. economy,” said Tamara Thies, NCBA chief environmental counsel. “It would be irresponsible to allow the EPA to move forward on this type of regulation when there’s so much uncertainty surrounding humans’ contribution to climate change.”

EPA’s “endangerment” finding (issued in Dec., 2009) provides the foundation for the agency to regulate GHGs from small and large sources throughout the economy—including farms, hospitals, office buildings and schools—under the Clean Air Act (CAA). The CAA is ill-equipped to address climate change, and it was never the intent of Congress that it be used for this purpose.

“The Resolution of Disapproval would in effect reverse EPA’s finding, and instead allow the complex issue of climate change to be handled through thoughtful Congressional debate,” Thies continued. “In these challenging economic times, we cannot afford to take actions that further jeopardize the ability of the U.S. to remain competitive in the global marketplace.”

Earlier today, NCBA, PLC and nearly 50 other agriculture groups sent a joint letter in support of the resolution to members of the Senate. According to the groups, Title V operating permits alone would cost farmers over $866 million (on top of increased input costs as a result of the regulatory impacts on other economic sectors).

In addition to supporting S.J. Res. 26 and similar resolutions introduced in the House by Reps. Ike Skelton (D-MO) and Joe Barton (R-TX), NCBA and the Coalition for Responsible Regulation, Inc. (“the Coalition”) have taken legal action to prevent EPA from moving forward on GHG regulation. In December, 2009, the Coalition filed petitions with the DC Circuit Court of Appeals and EPA challenging the science behind the initial “endangerment finding,” and in April, 2010, the Coalition filed an appeal against the so-called “Johnson Memo” interpreting when GHGs become subject to the federal Prevention of Significant Deterioration (PSD) permit program. The Coalition’s most recent appeal, filed late last week, challenges EPA’s tailpipe standards for greenhouse gas emissions.

“We’re asking every member of the Senate to support democratic debate, verifiable science, and American jobs by voting in favor of this resolution,” said Thies.

Gene J. Koprowski

May 18, 2010

Scientist Disputes EPA Finding that Carbon Dioxide Poses Threat to Humans (*FOX News*)

EPA scientists say manmade carbon dioxide and other greenhouse gases are contributing to a warming of the global climate -- and as such represent a threat to human welfare. But a leading climatologist says his research indicates that CO2 poses no threat to human welfare at all, and he says the EPA should revisit its findings.

CHICAGO -- Carbon dioxide is hazardous to your health, the Environmental Protection Agency says. Oh really?

EPA scientists say manmade carbon dioxide and other greenhouse gases are contributing to a warming of the global climate -- and as such represent a threat to human welfare. Officials went so far as to declare the gas a danger to mankind in early December. But a leading climatologist says his research indicates that CO2 poses no threat to human welfare at all, and he says the EPA should revisit its findings.

“There is an overestimation of the environment’s sensitivity to CO2,” said Dr. Patrick Michaels, senior fellow in environmental studies at **the CATO Institute** and a past president of the American Association of State Climatologists.

Michaels spoke before a group of about 700 scientists and government officials at the fourth International **Conference on Climate Change.** The conference is presented annually in Chicago by the Heartland Institute, a conservative nonprofit think tank that actively questions the theory of man's role in global warming. Last year the Institute published **Climate Change Reconsidered**, a comprehensive reply to the United Nations' latest report on climate change.

Michaels described how the U.N. gathers weather information for its computer models, on which the EPA based its ruling. He said data gathering at weather stations in some parts of the world is spotty, and U.N. scientists add new figures to compensate. But in doing so, he said, they also add errors to the final research product.

“There is a systemic bias in the computer models,” said Michaels, whose research suggests that the U.N.’s adjusted computer modeling data, rather than actual observed data, is what connects the rise in temperatures to manmade causes. When one takes away the computerized modeling enhancements, he said, mankind’s contribution to global warming is virtually nil, approximately .03 degrees, rather than .07 degrees, over the last 50 years.

Thus, he said, *most* of the planet's warming is not from manmade sources. “This idea that most of the warming is due to greenhouse gases caused by man just isn’t right,” he said.

But Catherine C. Milbourn, a spokeswoman for the EPA in Washington, disagreed with Michaels' conclusions.

"The U.S. Supreme Court ruled three years ago that greenhouse gas emissions constitute air pollution, and EPA set out to determine whether that pollution threatens the health and welfare of Americans," she told FoxNews.com, explaining that the EPA ruling was based on a comprehensive review of available science from an array of peer-reviewed sources across the globe.

"The conclusion: The scientific evidence of climate change is overwhelming, and greenhouse gases pose a real threat to the American people. The question of the science is settled," Milbourn said.

Greg Wiles, an associate professor of geology at **The College of Wooster** in Ohio, agreed with Milbourn. "Despite the recent attacks on the scientific community and large-scale buy-in by some of the public, the science behind the conclusion that contemporary warming is largely anthropogenic (manmade) still stands," he told FoxNews.com.

But others disagree. Former Virginia Gov. George Allen, chairman of the American Energy Freedom Center think tank, said that the U.S. is "at a crossroads in energy policy," but that the country "cannot stand with pompous elites."

He noted that a bill has been introduced in the U.S. Senate to essentially veto the EPA's "endangerment finding" -- and he said that others, like the legislature of the state of Kansas, have also gone on record against implementing an energy policy based on EPA's findings.

Federal court refuses to review lead air quality standards (*Waste & Recycling News*)

May 18 -- A federal court has refused to review new air quality standards for lead by the U.S. Environmental Protection Agency.

The Coalition of Battery Recyclers Association and Doe Run Resources Corp. had filed suit over the new EPA standards, which they called "arbitrary and capricious." The court disagreed, saying it was not persuaded by the industry arguments.

After conducting studies for four years, and seeking public comment, the EPA set final rules and standards for maximum limits of lead allowed in ambient air. The new air standards were set on guidelines estimating how much lead could be present in ambient air over a three-month time period before an IQ loss of 2 points in children was observed.

The industry groups argued against the EPA shifting to the air measurements from its historical monitoring of blood limits, and that using IQ measurements was more uncertain than blood level monitoring.

The courts said the EPA provided valid evidence for making the shift and was within its authority in regulating lead under the Clean Air Act.

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

Scientists say kudzu creates ozone pollution (*Greenwire*)

05/18/2010
Researchers have found that an invasive plant rapidly spreading through the southeastern United States could increase low-level ozone pollution levels.

Nitric oxide emission levels double in soil where kudzu is present, according to findings published in the *Proceedings of the National Academy of Sciences*. NOx is a key component of ozone, and the researchers warn that its presence could increase regional ozone concentrations if kudzu spreads at its current rate.

"[Kudzu] is able to take atmospheric nitrogen and convert it -- with the help of bacteria that live inside the plant's roots in a symbiotic relationship -- into a form that the plant can use for its own nutritional purposes," explained co-author Jonathan Hickman of the Earth Institute at Columbia University. "Essentially, it is a new source of nitrogen entering the ecosystem because atmospheric nitrogen is otherwise unable for plants to use."

Once the plant's leaves die and decompose, the nitrogen within them is released into the soil, where it can be released as a byproduct.

Kudzu is a deep-rooting vine that was brought to the United States from Asia in the early 20th century to help combat soil erosion. The plant now covers about 3 million hectares and is spreading by 50,000 hectares a year.

Researchers ran an extreme scenario, projecting that kudzu covered all non-urban and non-agricultural soil by 2050. In that case, the plants' emissions increased the number of days in which ozone levels exceeded U.S. EPA's upper threshold by 35 percent (Mark Kinver, BBC News, May 18). **-- JP**

AWARDS

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Caliper unit gets $2.9 mn fund from Environmental Protection Agency (*Pharmabiz.com*)

Tuesday, May 18, 2010 18:00 IST
Hopkinton, Mass
A unit of Caliper Life Sciences Inc, leading provider of tools and services for drug discovery and life sciences research, Caliper Discovery Alliances and Services (CDAS) has been awarded a new funding commitment for US$ 2.9 million under its contract with the Environmental Protection Agency (EPA) for the EPA's ToxCast screening programme. Together with an initial phase-II task order awarded in November 2009, this new task order increases the cumulative funding Caliper has been awarded under phase-II of the ToxCast programme to US$ 4.7 million.

"This latest EPA task order improves the visibility we have for achieving our CDAS unit revenue projections in the second half of 2010, and should provide us good momentum into 2011," commented Kevin Hrusovsky, president and CEO of Caliper.

The long term goal of the EPA's ToxCast program is to identify in vitro assays that can predict the toxicity of chemical compounds in humans and animals, by comparing the results of in vitro testing conducted by Caliper and others with the toxicity data in the EPA's in vivo toxicity database, ToxRefDB, and then to employ those predictive tests to supplement or replace existing animal-based tests reducing cost and improving the speed of regulatory approval of new environmental chemicals.

"Phase II of the ToxCast programme will involve screening another 700 environmental compounds through a wide set of assays. We expect to begin the phase-II effort within the next several months after the Phase II compound library is delivered to us by the EPA," commented David Manyak, executive vice president, Drug Discovery Services. "Our work with the EPA is a strong validation of our services and the industry is taking notice. We have seen increased interest from the pharmaceutical, chemical, and cosmetic industries in CDAS commercial services based on in vitro toxicology assays represented in the ToxCast panel."

Caliper Life Sciences is a premier provider of cutting-edge technologies enabling researchers in the life sciences industry to create life-saving and enhancing medicines and diagnostic tests more quickly and efficiently.

BROWNFIELDS

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Article published May 19, 2010

Report calls Toledo area a 'model' of cooperation (*Toledo Blade*)

Region got U.S. aid as auto jobs ended
By LARRY P. VELLEQUETTE
BLADE BUSINESS WRITER

The inaugural annual report by the federal task force in charge of revitalizing communities hard hit by the collapse of the automotive industry cites Toledo as a "model of cooperation."
Release of the report yesterday coincided with a daylong conference at the Brookings Institution in Washington that featured several top administration officials and U.S. Rep. Marcy Kaptur (D., Toledo) and Rep. John Dingell (D., Dearborn) among its speakers.
The report, which details a variety of grants and assistance allocated to metro Toledo over the last year under federal stimulus and other programs, also commits the Environmental Protection Agency to help pay for an environmental assessment of the former Jeep Parkway plant site.
The 70-acre site on Jeep Parkway, where Chrysler used to produce Jeep Wranglers, is currently owned by OldCarCo, the remnants of the prebankruptcy Chrysler LLC. The massive factory was torn down several years ago after the new assembly plants were constructed a few miles away off Chrysler Drive and Stickney Avenue.
The Toledo-Lucas County Port Authority has been negotiating for an extended period with OldCarCo - and Chrysler before that - to purchase the site, but those negotiations have been delayed until a complete environmental assessment of the land is completed.
Joseph DeWolk, a spokesman for the White House Council on

Automotive Communities and Workers, said yesterday that the EPA environmental assessment is under way.

The 54-page report by the White House Council on Automotive Communities and Workers recalls the May, 2009, meeting at Martin Luther King, Jr., Plaza that brought together representatives from local government, labor, and agencies.
Since that meeting, the report said, metro Toledo:
•Received a pair of $200,000 brownfields assessment grants in September from the EPA to assess and characterize brownfield properties and conduct planning activities to revitalize the sites.
•Received $50,000 in "technical assistance" from the EPA to help reuse a former Champion Spark Plug facility for urban agriculture.
•Received a $7.1 million grant from the Department of Justice through its COPS Hiring Recovery program that allowed the city to keep 31 police officers on the street.
•Was awarded $10.15 million in grants by the Department of Housing and Urban Development to help the city stabilize neighborhoods "ravaged by foreclosure."

•Was awarded one of 25 Retrofit Ramp-Up awards of up to $15 million to conduct energy efficiency upgrades across neighborhoods.
•Received a $3.5 million grant through the Toledo-Lucas County Port Authority for improvements at Toledo Express Airport from the Economic Development Administration.
•Assisted solar start-up Xunlight Corp. in landing a $34.5 million tax credit from the Department of Energy to aid in the production of the company's lightweight, flexible solar panels.

CLIMATE CHANGE/GLOBAL WARMING

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Legal foundation plans lawsuit over 'tailoring' rule (*Greenwire*)

Robin Bravender, E&E reporter
05/18/2010
An Atlanta-based limited-government group is preparing to sue U.S. EPA over its "tailoring" rule that would limit greenhouse gas permitting requirements to the biggest polluters.

The Southeastern Legal Foundation, which has already filed three lawsuits this year challenging EPA's climate policies, will also sue over the tailoring rule, said Shannon Goessling, the foundation's executive director and chief legal counsel.

"We do expect to file suit on behalf of our clients and ourselves on that because the tailoring rule is a violation by the Environmental Protection Agency," Goessling said today.

EPA's rule, which was finalized last week, "tailors" Clean Air Act permitting programs to limit the number of facilities that would be required to obtain New Source Review and Title V operating permits based on their greenhouse gas emissions. EPA said the threshold would cover power plants, refineries and other large industrial plants while exempting smaller sources like farms, restaurants, schools and other facilities (*Greenwire*, May 13).

EPA air chief Gina McCarthy said last week that the agency's rule is on solid legal ground, but critics warn that a court could overturn the rule because it would alter the Clean Air Act's plainly stated permitting thresholds.

"When a federal government agency acts outside the law and asserts to the public and industry and environmentalists that they're doing it to keep a regulatory scheme from affecting them, it's disingenuous, dishonest, and the action is contrary to law,"

Goessling said. "If the Clean Air Act is not the right vehicle, then they need to go back to Congress."

In previous challenges to EPA's climate policies, the legal foundation has represented a coalition of House Republicans and industry groups, but Goessling said she is uncertain which parties would sign onto the lawsuit against the tailoring rule.

David Doniger, policy director of the Natural Resources Defense Council's Climate Center, expects the group to have trouble demonstrating standing in its lawsuit.

Small businesses won't be able to prove that they are injured by the rule because it seeks to exempt them from regulation, Doniger said, and larger businesses would be subject to the requirements with or without the rule, he added.

The legal foundation itself won't have standing on its own, Doniger said, so "they have to bring in a plaintiff who can meet the standing requirements."

Goessling said she believes the U.S. District Court of Appeals for the District of Columbia will overturn EPA's entire suite of climate regulations.

"I am confident that there is an abundant amount of case precedent that supports the judiciary stopping the Environmental Protection Agency, and we are hopeful that that is the end result," she said.

Foundation files second challenge to EPA auto rules

The foundation filed its latest **petition** last week against the Obama administration's joint tailpipe rules for greenhouse gases and fuel economy standards.

The group filed the petition on behalf of itself, the 14 House lawmakers, and a coalition of business groups including forest products, transportation and other industries.

The Republican challengers include Georgia Reps. John Linder, Phil Gingrey, Lynn Westmoreland, Tom Price, Paul Broun, Nathan Deal and Jack Kingston, as well as Dana Rohrabacher of California, John Shimkus of Illinois, Steve King of Iowa, Michele Bachmann of Minnesota, Kevin Brady of Texas, John Shadegg of Arizona and Dan Burton of Indiana.

Langdale Forest Products Co., the Georgia Motor Trucking Association Inc. and the Georgia Agribusiness Council Inc. were among the industry groups that signed onto the lawsuit.

Goessling said the group plans to challenge the auto rule based on the science underpinning EPA's endangerment finding, which serves as the basis for the auto rule, and based on the rule's economic ramifications.

That lawsuit marks the second challenging the joint rules issued last month by EPA and the Transportation Department. The Coalition for Responsible Regulation Inc., along with several industry groups, filed a separate lawsuit earlier this month (*E&ENews PM*, May 10).

The Southeastern Legal Foundation and many of the same lawmakers and industries have also filed lawsuits challenging EPA's endangerment finding and its "Johnson memo," a policy determining when greenhouse gases officially become "subject to regulation" under the Clean Air Act.

ENERGY

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Tuesday, May 18, 2010, 4:46pm CDT | Modified: Tuesday, May 18, 2010, 8:11pm

EPA recognizes Helotes for being a 'green' city (*San Antonio Business Journal*)

The City of Helotes has become an EPA designated Green Power Community because of local residents' investment in renewable energy.

Helotes, a suburb of San Antonio, is now one of only two cities in Texas to earn the Green Power Communities label. Universal City, another a suburb of San Antonio, is the other Green Power Community in Texas.

Both communities receive their power from CPS Energy and are members of the utility's Windtricity program. Through Windtricity, ratepayers can order wind-generated electricity for their homes and businesses for an added cost on their monthly utility bills.

Helotes was the first suburban city in Bexar County to become an EPA Green Power Partner in May 2009. In March, it became a Green Power Community when local ratepayers agreed to purchase nearly 2 million kilowatt-hours of wind-generated electricity annually. This represents 3 percent of the community's total electricity use. So far, 120 Helotes residents are now using Windtricity.

"We had a great response from our community," says Helotes Mayor Thomas A. Schoolcraft. "Our residents rose to the challenge."

Helotes is a city of 4,285 residents.

CPS Energy is the nation's largest municipally owned natural gas and electric utility that provides both gas and electric service.

cpsenergy.com

Energy Star faces scrutiny (*Sustainable Industries*)

by Brian Libby - 5.18.10
WASHINGTON, D.C.

Since it was first introduced by the U.S. Environmental Protection Agency in 1992, the Energy Star standard for energy-efficient consumer products has become perhaps the nation's most recognizable certification.

The Energy Star label, which is supposed to signify products using 20 percent to 30 percent less energy than required by federal standards, can be found in more than 35 product categories for the home and workplace, and has been expanded to commercial buildings and homes. Americans have purchased more than 1 billion Energy Star-qualified products since the label hit the marketplace.

"Energy star has made its way to the masses," says Hilary Bromberg, a partner with egg, a Seattle-based marketing agency focused on sustainable brands. In 2009, 75 percent of Americans said they recognized the Energy Star label, according to EPA. "It's one of these pillars that signifies to people, 'If I buy this [Energy Star-sanctioned product] I will save money,'" Bromberg says.

But EPA recently came under scrutiny when the U.S. Government Accountability Office issued a report on the Energy Star program showing that undercover auditors succeeded in earning the Energy Star label for 15 out of 20 bogus products during a nine-month study.

To Elaine Aye, principal with Green Building Services in Portland, this threat to Energy Star's integrity is indicative of the broader difficulty with self-certifying programs that lack third-party verification. "Whenever you have a self-certification program where manufacturers are providing data, you cross a line," she says. "It's part of the market transformation we're all experiencing. As a professional who relies on looking at different products, I have to rely on third-party systems to guide me. When I know that it is [certified], I'm much more inclined to support or believe the info."

It's not the first time EPA has received heat for its implementation of the Energy Star label, and it likely won't be the last. In August 2007, EPA's inspector general reported lax management of controls and oversight of the Energy Star (PDF) certification process. In October 2009, Department of Energy's inspector general found similar problems (PDF). The October 2008 issue of Consumer Reports reviewed the program and found lax qualifying standards, outdated federal testing procedures and reliance on industry self-policing.

In response to the most recent study by the Accountability Office, EPA and DOE issued a statement saying the agencies “are taking aggressive action to promote confidence in the Energy Star brand through both testing and enforcement,” noting the agencies have taken action against 35 manufacturers in the past four months for violating efficiency standards.

While the findings against Energy Star trouble some observers, egg’s Bromberg believes the damage will be minimal. “I don’t think the brand will be degraded,” she says. “People are enormously forgiving of organizations that make mistakes. But I think this will increase the rigor. Behind the scenes, we’ll see a tightening of the rules.”

EPA and DOE say they are developing an expanded testing system that would require all products seeking the Energy Star label to be tested in approved labs and require manufacturers to participate in an ongoing verification testing program that will ensure continued compliance.

Energy Star ‘s 4.0 standard for televisions, which was published in September 2009, became effective May 1, 2010. The standard is a significant jump from the 3.0 standard, dropping the maximum amount of power an Energy Star TV can consume by about 40 percent. And last year California Energy Commission requires manufacturers to meet the new, stricter Energy Star requirement by 2011.

GRANTS
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Guam EPA: 'Need General Funds' (*Pacific Daily News*)

By Steve Limtiaco • Pacific Daily News • May 19, 2010

The Guam Environmental Protection Agency, which has been entirely federally funded, will be asking for local taxpayer money as well next fiscal year, according to agency Administrator Lorilee Crisostomo.

"We do need General Funds," said Crisostomo, whose agency's legislative budget hearing is scheduled for June 4. She said the federal government gives grants to Guam EPA to perform specific jobs, but Guam lawmakers have mandated additional work for the agency, without local funding to support it.

Crisostomo said she doesn't yet know how much money her agency will need from the General Fund.

The U.S. EPA, which gives Guam EPA about $3.9 million in grant funding each year for its
operations, last month released an unflattering summary of Guam EPA's operations, saying Guam EPA doesn't seem to understand how the federal funding process works or even how much federal funding it is supposed to receive. Guam EPA mistakenly believes its grant money is released in October or November, but U.S. EPA actually doesn't release grant money until April or May, the review states. "Other states and territories plan for this schedule," the review states.

That means Guam EPA starts each fiscal year in a deficit until its first grant funding comes in. As an example, by March of this year it had a $1.1 million payroll deficit, according to an e-mail from the governor's budget office sent earlier this year.

Guam EPA's payroll has increased from 69 percent of its annual budget in 2004 to about 95 percent, U.S. EPA officials have said -- leaving little money to pay for anything else.

"They're not in a deficit now due to an award of $2.7 million received in April 2010," said governor's budget Director Bertha Duenas, whose office has been working with Guam EPA on its budget. U.S. EPA has asked Guam EPA to submit a spending plan for the rest of this fiscal year and for next fiscal year,with quarterly updates. "What we're working to avoid is the expected depletion of the current award around November 2010 given current spending
pattern and the time lag before the next award (next April 2011)."

Guam EPA's website hasn't been updated in two years, which is a symptom of its ongoing budget
problems.

Crisostomo said the website was supposed to be funded through a competitive grant, but Guam got only about $100,000 of the $400,000 it had requested. The former website vendor had not been paid, but Guam EPA now has money and is working with a new vendor to get the site working, she said.

Guam EPA also will be the subject of a legislative oversight hearing Friday afternoon, which was called in response to the concerns raised by U.S. EPA in its report.

HAZARDOUS WASTES
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Obama proposes $800M fund to clean, redevelop shuttered GM plants (*Greenwire*)

Josh Voorhees, E&E reporter
05/18/2010
The Obama administration announced plans today to create an $800 million fund to clean up and redevelop more than 90 former General Motors Co. plants shuttered during the automaker's restructuring.

The plan still needs approval from state officials and the bankruptcy court overseeing Motors Liquidation, the "Old GM" that was broken off during the bankruptcy process, but the administration said it hopes to have the trust up and running by the end of this year.

The fund would include roughly $530 million for environmental cleanup with another $300 million available for other costs, such as demolition of unwanted buildings, property taxes and plant security. It would be paid for with money set aside during the restructuring process, which was overseen by President Obama's auto task force, and is not expected to require additional federal cash.

The cleanup fund will be overseen by U.S. EPA and the White House Council on Auto Communities and Workers.

"We are making a significant investment in better health, a cleaner environment and a brighter future in communities that need our support," EPA Administrator Lisa Jackson said. "Supporting the restoration of polluted sites not only protects human health and the environment, it also fosters new economic possibilities, makes these communities more competitive and opens pathways to long-term success."

The fund is only for former GM plants and does not cover shuttered sites owned by Chrysler Group LLC, which also received billions of dollars in federal aid to undergo massive restructuring.

MINING

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Hearing set on plan to revoke W.Va. mine permit (*Associated Press*)

This story also appeared: *Charleston Gazette*

The Associated Press
May 18, 2010

CHARLESTON, W.Va. (AP) - Coal producers and environmentalists are planning to give the Environmental Protection Agency an earful about the fate of what would be West Virginia's largest surface coal mine.

The agency is holding a public hearing on St. Louis-based Arch Coal's Spruce No. 1 mine at 7 p.m. Tuesday at the Charleston Civic Center.

The EPA says it's going to veto the water quality permit granted for the Logan County mine in 2007. The problem? EPA says Arch plans to bury 7 miles of intermittent streams with mine waste and that would hurt water quality.

Environmental groups and coal industry associations from West Virginia and Kentucky say they're planning to testify as well as hold rallies.

'It Will Cause a Domino Effect' (*MetroNews*)

Charleston

It's about the economy. That was the message supporters of the largest mountaintop removal mining site in West Virginia took to the U.S. Environmental Protection Agency Tuesday night during a public hearing at the Charleston Civic Center.

The hearing was to gauge the public's response to a possible veto of a water permit related to Arch Coal's Spruce No. 1 Mine in Logan County. Each speaker was given a strict two minute time limit to give his or her spoken statement.

Citizens like Debbie Thompson expressed their concern about their neighbors losing jobs at the mine and the potential effect that could have on their own employment.

"It will cause a domino effect," Thompson told EPA officials on stage. "I'm employed at the Logan County Board of Education and it will affect me and my coworkers eventually."

However, others applauded the EPA's decision saying the environmental effects of surface mining were too detrimental to the state. Junior Walker of Whitesville said he grew up with black water running from his faucets, and he didn't want to see future generations have that same experience.

"I'm just really glad the EPA has finally decided to stand up and be the Environmental Protection Agency instead of the Economic Protection Agency," Walker said.

Environmentalists like Danny Chiotis of the West Virginia Environmental Council also testified that the economic effects did not equal out to the environmental effects. He made the claim that many of the MTR sites in the state were not being restored.

"Most of the sites are not being reclaimed. We're not developing these sites. What we're going to have is a flat West Virginia," Chiotis said.

Those with the mine industry countered by saying that they were acting within the confines of the law and have been restoring the land properly. Bill Raney, President of the West Virginia Coal Association, told the EPA's representatives that the agency had overstepped its boundaries when it chose to revoke the Spruce permits.

"Revoking a permit that was lawfully issued almost three years ago with your agency's blessing after more than 10 years of the most comprehensive environmental review, again by your agency, is as troublesome, unnecessary, and arrogant as anything we've ever seen in West Virginia," Raney said.

The hearing Tuesday lasted nearly five hours with over a hundred speakers from West Virginia, Virginia, Kentucky, and Ohio. The EPA will also take written comments on the Spruce permit until June 1st. Those statements can be submitted online at www.regulations.gov.

PESTICIDES

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May 18, 2010

Study Sees ADHD-Pesticide Link (*Associated Press*)

Story also appeared: *Wall Street Journal*

by Associated Press

An analysis of U.S. health data links children's attention-deficit disorder with exposure to common pesticides used on fruits and vegetables.

While the study couldn't prove that pesticides used in agriculture contribute to childhood learning problems, experts said the research is persuasive.

"I would take it quite seriously," said Virginia Rauh of Columbia University, who has studied prenatal exposure to pesticides and wasn't involved in the new study, published Monday in Pediatrics. More research will be needed to confirm the tie, she said.

Children may be especially prone to the health risks of pesticides because they are growing, and they may consume more pesticide residue than adults relative to their body weight.

Pesticides break down in the body into compounds that can be measured in urine. Almost universally, the study found detectable levels: The compounds turned up in the urine of 94% of the children.

Children with higher levels had increased chances of having ADHD, attention-deficit hyperactivity disorder, a common problem that causes students to have trouble in school. The children may have eaten food treated with pesticides, breathed pesticides in the air or swallowed them in their drinking water. The study didn't determine how they were exposed.

Experts said it's likely that children who don't live near farms are exposed through what they eat.

"Exposure is practically ubiquitous. We're all exposed," said the study's lead author, Maryse Bouchard, of the University of Montreal.

She said people can limit their exposure by eating organic produce. In one government report, frozen blueberries, strawberries and celery had more pesticide residue than other foods.

A 2008 Emory University study found that in children who switched to organically grown fruits and vegetables, urine levels of pesticide compounds dropped to undetectable or close-to-undetectable levels.

Because of the known dangers of pesticides in humans, the U.S. Environmental Protection Agency limits how much residue can stay on food.

But the new study shows it is possible that even tiny, allowable amounts of pesticide may affect brain chemistry, Dr. Rauh said.

Exact causes of the children's reported ADHD, though, are unclear. Any number of factors could have caused the symptoms, and the link with pesticides could be by chance.

The new findings are based on one-time urine samples in 1,139 children and interviews with their parents to determine which children had ADHD.

The children, ages 8 to 15 years old, took part in a government health survey from 2000 to 2004.

As reported by their parents, about 150 children in the study either showed the severe inattention, hyperactivity and impulsivity characteristic of ADHD, or were taking drugs to treat it.

The study dealt with one common type of pesticide called organophosphates. Levels of six pesticide compounds were measured.

For the most frequent compound detected, 20% of the children with above-average levels had ADHD. In children with no detectable amount in their urine, 10% had ADHD.

"This is a well conducted study," said Lynn Goldman of the Johns Hopkins Bloomberg School of Public Health and a former EPA administrator.

However, relying on one urine sample for each child, instead of multiple samples over time, wasn't ideal, Dr. Goldman said.

The study provides more evidence that the government should encourage farmers to switch to organic methods, said Margaret Reeves, senior scientist with the Pesticide Action Network, an advocacy group that has been working to end the use of many pesticides.

"It's unpardonable to allow this exposure to continue," Ms. Reeves said.

EPA set to impose second set of buffers (*Capital Press*)

Updated: Tuesday, May 18, 2010 9:59 AM
By MITCH LIES
Capital Press
The Environmental Protection Agency has announced plans to impose no-spray buffers of between 25 and 1,000 feet around salmon-bearing streams for three carbamate pesticides.
Carbaryl, carbofuran and methomyl are the second set of pesticides the agency has reviewed under court order. The order stems from a lawsuit brought against the agency in 2001 by the Washington Toxics Coalition.

The buffers are proposed for salmon and steelhead habitat in Washington, Oregon, Idaho and California.

The announcement stems from a May 14 letter the agency sent to the National Marine Fisheries Service. In the letter, the agency described how it will implement the service's biological opinion regarding the impact of the pesticides on salmon.

The agency is reviewing 37 pesticides under U.S. District Judge John Coughenour's ruling that EPA failed to adequately confer with NMFS on a pesticide's impact on endangered salmon.

The agency previously imposed buffers of between 100 and 1,000 feet for three organophosphates.

That decision is facing a court challenge from three pesticide manufacturers.

Pesticide industry groups cited several areas of concern in the May 14 letter, including that the agency at one point said it anticipates "these new use limitations will result in a significant reduction in use of (carbamate) pesticides."

"I'm not sure use reduction is an appropriate goal," said Heather Hansen, executive director of Washington Friends of Farms and Forests. "Shouldn't their goal be to protect habitat? If a grower can do that in such a way that still protects their crops, shouldn't that be the real goal of the agencies."

"I think the agencies have lost focus on what their real goal ought to be," she said.

Hansen also has issues with the fact EPA informed NMFS it is requiring the manufacturers or distributors that register the pesticides for use to monitor whether the new spray restrictions are protecting endangered salmon and steelhead.

"There already is so much monitoring that NMFS is refusing to use. This comes across as punitive," she said.

As with organophosphates, EPA said it intends to alter buffers based on whether applications are done by ground or air, based on wind speed at the time of pesticide application, and based on droplet size.

Hansen said the carbamate buffer proposal is a slight improvement from EPA's ruling with the OPs, given that dry stream beds are not subject to the buffers -- a departure from EPA's ruling on the organophosphates.

And EPA is looking at reducing buffers from NMFS recommendations. NMFS recommended buffers of between 200 and 600 feet for carbaryl and carbofuran and for no less than 50 feet for methomyl.

EPA said in the May 14 letter it will follow the service's recommendation to prohibit application of the three pesticides when wind speed exceeds 10 mph.

Similar to the organophosphate buffers, EPA said it will create a Web-based program that will allow pesticide users to input specifics of an application and obtain the relevant spray-drift buffer.

Also similar to the OP buffers, carbamate buffers would be measured from the normal high-water mark of a stream.

EPA to limit 3 chemicals near salmon streams (*Greenwire*)

05/18/2010
U.S. EPA plans to restrict the use of three agriculture pesticides in a bid to keep the chemicals out of salmon streams, the agency announced yesterday.

The agency decided to act after manufacturers Makhteshim Agan of North America Inc., Cheminova Inc. and Dow AgroSciences refused to voluntarily adopt limits on diazinon, malathion and chlorpyrifos.

EPA told the three manufacturers last month that they had until May 13 to signal their intention to comply with the new requirements (*Greenwire*, May 5), but the companies notified EPA on Friday that they had no plans to comply with the restrictions and that they feel there is no scientific evidence backing claims that pesticides are harming fish or critical habitat.

Federal biologists have found that the chemicals -- even at very low levels -- can interfere with salmon's sense of smell, making it harder for them to locate food, avoid predators and return to native waters to spawn.

EPA expects to craft new rules for applying the chemicals and will create no-spray buffer zones along streams and limit spraying dependent on weather conditions. There will also be requirements to report dead fish.

The decision by EPA comes after the National Marine Fisheries Service said in 2008 that the pesticides threaten the survival of more than two dozen species of salmon and steelhead protected by the Endangered Species Act in the West (Jeff Barnard, AP/MSNBC, May 17). **-- DFM**

RECYCLING
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N.Y. lawmakers struggle to reconcile e-waste bills (*Greenwire*)

Nathanial Gronewold, E&E reporter
05/18/2010

NEW YORK -- State lawmakers are getting close to passing the nation's strictest electronic-waste recycling law and ending a legal dispute that has left a New York City e-waste ordinance in limbo.

State Assembly and Senate aides say both houses are close to reconciling differences between the two e-waste bills and sending legislation to Gov. David Patterson (D) for his signature. The goal of both proposals is to require manufacturers of consumer electronics to recover and recycle around 100 million pounds of e-waste per year by the midpoint of this decade.

Both bills would also pre-empt any city or local e-waste provisions, voiding the controversial New York City law. The consumer electronics industry filed a lawsuit against the city in federal court in Manhattan asking a judge to suspend that law, arguing that it would require manufacturers to set up an unreasonably expensive door-to-door collection system.

The lawsuit is now on hold as industry lawyers and independent Mayor Michael Bloomberg's office moved the dispute into arbitration talks. Both sides confirmed the talks are ongoing but also acknowledged that the process would end should Albany pass its own measure (*Greenwire*, Feb. 8).

The New York Senate and Assembly are at odds over whether manufacturers can charge governments and nonprofits for e-waste collection. The Senate bill allows for charges to anyone but state and local government, while the Assembly bill would require manufacturers to provide free collection for all.

Staff for the bills' lead sponsors -- Assemblyman Bob Sweeney (D) and Sen. Antoine Thompson (D) -- say the differences are minor and that both houses are confident a compromise can be reached.

"We absolutely want to get it done this year," Sweeney counsel Steve Liss said. The Legislature has until July to pass bills before the session ends and campaigning for statewide elections heats up.

One complicating factor is that the Assembly has inserted its e-waste law into a draft budget, a hotly contested piece of legislation that should have been adopted by the government at the beginning of April. Industry representatives and others monitoring the talks speculate that the battle over the state's budget could derail e-waste legislation this year, but Liss downplayed the significance of the recent Assembly move.

"We'd like to get it done as part of the budget," Liss said. "It's not necessary though. We'd take it out."

Lawmakers, industry and environmentalists say the New York state bill would be the most stringent in the nation.

Both versions of the bill require that manufacturers pay for initiatives to keep electronic waste from entering landfills and expand the scope of products that must be collected. Both also require that a larger volume be collected in New York than in other states -- 3 pounds per capita on the outset, rising to 5 pounds per capita in later years. There is also no credit given for rural collection drives.

The legislation was crafted with the advice of the Natural Resources Defense Council. The environmental group also advised New York City on its bill and had intervened in the ongoing lawsuit on behalf of the city.

"We worked very closely last year with folks in both houses of the Legislature as well as the governor's office and the Department of Environmental Conservation to craft or help craft what we think is arguable the most progressive e-waste bill in the country," said NRDC lawyer Kate Sinding. "It would be inexcusable, in our view, for this bill not to become law because the two houses can't figure out a resolution to this relatively narrow issue."

A month to go

Legislative sessions are scheduled to end in June, but extensions are likely if state budget problems are not resolved by then, giving lawmakers a little over a month to pass e-waste legislation.

It is also an election year, and the entire Senate, Assembly and governor's office are up for challenges. If nothing occurs by the end of the session, both bills would be tossed out, and e-waste recycling proponents would have to start over next year.

If a bill passes, an industry representative, who requested anonymity, said the measure could be challenged in courts depending on how the e-waste recycling rules are ultimately determined.

The Senate version explicitly exempts the government from being charged for collection, which would make it the only state law to do so. The industry source said this likely was done because the Legislature wishes to switch out its information-technology infrastructure and would like manufacturers to help pay for the upgrade, possibly leaving space for a legal challenge. Officials with Sen. Thompson's office denied that assertion.

The Senate bill could also include a provision that allows the New York Department of Environmental Conservation to define and require that manufacturers provide "additional convenience" for e-waste collection. It was the New York City Department of Sanitation's definition of "convenience" -- door-to-door collection -- that sparked the federal lawsuit.

Thus far, 21 separate e-waste programs are now mandated under law across the country, including New York City's law.

Vermont became the most recent state to establish e-waste recycling last month. The industry is hoping for a federal bill that would pre-empt them all and simplify the picture, but experts say no such congressional bill is on the horizon.

The Electronics TakeBack Coalition counts nine other state e-waste laws pending, including bills introduced this year in New York, Georgia, Ohio, Pennsylvania and Massachusetts.

The Consumer Electronics Association says the industry's lobbyists first approached Congress about a possible federal bill in 2005, when only three states had laws on the books.

SUPERFUND
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U.S. Appeals Court Appears Skeptical of GE's Superfund Challenge (*Dow Jones*)

Story also appear: *Wall Street Journal*

By Brent Kendall, Of DOW JONES NEWSWIRES
WASHINGTON -(Dow Jones)- A federal appeals court appeared resistant Tuesday to General Electric Co.'s (GE) constitutional challenge to part of the federal Superfund law that gives the Environmental Protection Agency the power to order companies to clean up sites contaminated with hazardous waste.
GE, which has been subject to several cleanup orders, argued that the law violates companies' constitutional due-process rights because they have no meaningful opportunity to contest the EPA's cleanup orders before they are issued.

GE lawyer Carter Phillips argued to the U.S. Court of Appeals for the District of Columbia Circuit that the issuance of an EPA cleanup order can cause immediate harm to a company's stock price, access to credit and reputation. He said a company has little choice but to comply with a cleanup order because the potential financial costs of noncompliance are very high.

"The agency uses it as a sledgehammer," Phillips said.

The three-judge panel hearing the case appeared to disagree with GE's arguments.

Judge Thomas Griffith said that if companies believe they aren't liable for site contamination they can contest cleanup orders in court and won't have to pay a dime unless a judge orders them to do so. The EPA order, he said, "is not the end of the process."

Judge David Tatel analogized the case to the Securities and Exchange Commission's recent fraud lawsuit against Goldman Sachs Group Inc. (GS). Goldman, he said, suffered a stock drop and reputational harm after the SEC announced its allegations, but that didn't mean the firm was entitled to contest the SEC's case before the agency brought the charges.

"That's no different than here," he said. The agency, he said, still had to prove its case in court.

Justice Department lawyer Sambhav Sankar said the EPA gives companies multiple chances to present their positions to the agency before making the decision to issue cleanup orders. He said EPA issues the orders instead of suing the companies first because it is a quicker way to get hazardous sites cleaned up.

A decision is expected in the coming months.

-By Brent Kendall, Dow Jones Newswires; 202-862-9222; brent.kendall@ dowjones.com

TOXICS

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MAY 18, 2010

New Lead-Paint Law Heavy on Budgets (*Wall Street Journal*)

EPA Requires Workers on Older Building Sites to Adhere to Strict Safety Practices; Contractors Worry About the Costs
By SARAH E. NEEDLEMAN

Guardian Preservation Services

A worker wears protective clothing while removing mold from a home built prior to 1978.

Contractors and other professionals who work on building renovations are worried that a new government ruling aimed at protecting against the risks of lead-paint poisoning will add another financial burden to their already distressed sector of the economy.

As of late last month, businesses that repair or renovate older buildings—specifically homes, schools and daycare centers built before the federal government banned the use of lead-based paint in housing in 1978—are required by the U.S. Environmental Protection Agency to adhere to strict lead-safe work practices. To comply with the new regulation, those working on older sites will need to invest in lead-testing kits, plastic sheeting, respirators, protective clothing and other lead-safety materials.

At least one worker involved in such projects will also need to become certified, at a cost of $300 every five years, and pay out-of-pocket for eight hours of training. Those who don't comply could face fines up to $37,500 a day.

Renovation activities that disturb lead-based paint can create hazardous lead dust and chips, the EPA says. The agency—which estimates that 87% of homes built before 1940 and 24% of homes built between 1960 and 1978 have some lead-based paint—launched a public-service campaign last month to warn consumers about the hazards of lead-paint poisoning, which can lead to nerve disorders, high-blood pressure and memory loss.

View Full Image

John Demetriou

Workers for a ProTect Painters franchise in Ann Arbor, Mich., get ready to paint.
The new law went into effect in April, but the hazards of lead-based paint have long been known and many businesses have been taking precautions to protect against lead poisoning since the late 1970s.

But small businesses with limited cash flow, including home-repair providers, property-management firms and even landlords, say that while they support the ruling's health benefits, they are concerned about its costs.

Michael Davis, chief executive of Guardian Preservation Services Inc., a Chicago mold-removal company, figures the new ruling will add $160,000 to $300,000 a year in equipment and labor expenses. He's concerned about his ability to pass the extra expense along to homeowner customers, who have already reined in spending.

"We expect profits to decrease by about 12% if we can't recoup the cost from the client," says Mr. Davis.

A spokesman for the EPA says it conducted extensive research to determine the impact of the ruling on businesses and found the requirements "are not excessive or overly burdensome." The agency estimates that the costs will range from $8 to $167 per interior job, with exterior jobs likely to cost more.

Developments Blog
What New Lead-Paint Law
Means for Homeowners
Hadley Hurford Jr., owner of a Mr. Handyman International LLC franchise in Nashville, says he has so far invested about $2,200 in training and certification fees for himself and four employees. "It's a lot of money for a small business," says Mr. Hurford, whose company saw its sales drop to $500,000 in 2009, down from $600,000 a year earlier.

About 15% of his territory is made up of older homes, and he estimates jobs on those properties will cost an extra $15,000 to $60,000 a year.

Given the weak housing market, attempting to charge customers higher prices could backfire, says Bill Carter, chairman of the National Association of the Remodeling Industry, a 7,800-member trade group.

"Homeowners don't want to pay anything more than they have to on replacement and repair," he says, adding that it's possible some small home-renovation companies will go out of business as a result.

Homeowners invested $115.8 billion in renovations in 2009, down from $144.9 billion in 2006, according to Harvard's Joint Center for Housing Studies. At the same time, it has become more expensive to make home renovations. The average wood-window replacement job, for instance, cost $11,700 in 2009, up from $9,684 in 2005, according to annual reports from Remodeling, a monthly magazine published by media company Hanley Wood LLC. The new EPA ruling adds between 5.3% and 11.2% in material and labor expenses to the cost of home-renovation projects in older homes, the magazine estimates.

Sal Alfano, Remodeling's editorial director, says he expects some homeowners to take on renovation projects themselves to avoid paying higher fees that professionals may charge, since homeowners aren't covered under the ruling. Or, they might seek out professionals who ignore it and can therefore afford to charge less. "It's really going to pinch everybody," he says.

The U.S. House of Representatives voted recently in favor of the Home Star Energy Retrofit Act, a bill that if passed by the Senate would create a program offering financial incentives to Americans who make their homes more energy efficient.

John Demetriou, owner of a ProTect Painters International LLC franchise in Ann Arbor, Mich., with 10 employees, says he's hopeful that such efforts will help increase business by encouraging more homeowners to invest in repair or renovation projects.

"Lead is a bad thing," says Mr. Demetriou, who launched his business a year ago. If homeowners "are environmentally aware, they will want to try and do something about it."

Write to Sarah E. Needleman at sarah.needleman@wsj.com

WATER

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Study On Perchlorate's Risks Bolsters Industry Fight Against EPA Rules (*Inside EPA*)

Tuesday, May 18, 2010
The chemical and aeronautics industries are touting a new study indicating that pregnant women's thyroid function is not harmed by drinking water tainted with the rocket fuel ingredient perchlorate, undermining the findings of a landmark 2006 study that environmentalists have cited to pressure EPA to strictly regulate the chemical.

The study is the latest setback for proponents of strict regulation of perchlorate as EPA is also said to be considering an alternative approach for limiting the risks of perchlorate exposure that relies on nutritional supplements to offset potential harms from the chemical, which is known to contaminate drinking water sources in 35 U.S. states.

The Perchlorate Information Bureau, a coalition of several chemical and aeronautics companies that are potentially liable for perchlorate contamination, is distributing the study and has posted a press report about the study on their website.

The new study, which follows more than 1,600 Welsh and Italian women in their first trimester of pregnancy, concluded that "low-level perchlorate exposure is ubiquitous [in the pregnant women studied] but did not affect thyroid function in this cohort of iodine-deficient pregnant women," according to an abstract of the article, *Perchlorate and Thiocyanate Exposure and Thyroid Function in First-Trimester Pregnant Women*. The article was published last month on the website of *The Journal of Clinical Endocrinology and Metabolism.*

The researchers sought to "determine whether environmental perchlorate and/or thiocyanate exposure is associated with alterations in thyroid function in pregnancy," according to the abstract. The study, conducted by academic researchers at Boston University's medical school and in Europe, was funded by Boston University, a British biomedical research charity and an Italian foundation.

The findings could call into question the 2006 study by U.S. Centers for Disease Control & Prevention (CDC) researcher Benjamin Blount and colleagues, indicating that as many as one-third of American women could be at risk for thyroid problems and may be at risk for thyroid impacts as a result of food and water exposure to the rocket fuel contaminant.

The Blount study, published in 2006, led environmentalists and public health advocates to push EPA and other regulatory agencies to tighten drinking water standards for the chemical. At the time, sources said the Blount study could warrant a drinking water standard of 3-5 parts per billion (ppb), significantly stricter than EPA's existing standard of 15 ppb.

It has also led to calls for EPA to strengthen the reference dose (RfD), or safe daily ingestion level of perchlorate set by the National Academy of Sciences in 2005.

EPA has adopted the NAS' number as its RfD for perchlorate in 2007, and has so far declined to re-visit the issue as it considers whether to regulate perchlorate in drinking water. The RfD is the basis for that decision -- and the Bush EPA used the RfD in part in its preliminary determination that there was insufficient public health benefit gained by regulating perchlorate nationally.

Review Of Industry-Backed Approach

While the Obama administration has decided to revisit the Bush administration's preliminary determination, sources said recently the agency is considering an industry-backed approach that calls for boosting iodine levels in those facing harm, which proponents say is a more effective way of addressing risks posed by exposure to so-called sodium iodide symporters (NIS) than regulating perchlorate, which accounts for a relatively small impact on iodine levels.

The authors of the new study note their findings do not support Blount's. "Our results do not support the findings reported in the United States that similar levels of perchlorate exposure increase serum [thyroid stimulating hormone] and lower serum T4 in mainly nonpregnant women with urine iodine concentrations less than 100 g/liter. Our study is the largest sample to date of women with low urinary iodine values [1,002 women], all of whom were pregnant, and should have been adequately powered to detect effect sizes similar to those reported by Blount et al., whose study included only 348 women with urinary iodine values less than 100 g/liter. Further studies are needed to determine the reasons for these differences."

In an interview, the new study's lead author, Elizabeth Pearce of Boston University School of Medicine, called it "quite a different result" than that of Blount's study. "I don't know why," she said, adding that "the study populations were quite different."

Pearce's study used a subset of data from a screening study of some 22,000 pregnant women in Cardiff, Wales and Turin, Italy, intended to determine whether a certain treatment for hypothyroid or hyperthyroid pregnant women would improve fetal development. She noted that the European women she studied tended to be more iodine deficient -- which increases the likelihood and affect of exposure to perchlorate and other chemicals which reduce the thyroid's ability to take up iodine -- than the American women in the CDC researchers' study. As a result, she said she would expect the women in her study to be more impacted by perchlorate than the women in the CDC researchers' study -- not less.

Pearce and colleagues selected the 1,600 women based on the availability of stored urine samples and thyroid function data. Median iodine levels measured in the women's urine was low, and perchlorate was detected in all of the samples. "The lack of association between low-level environmental perchlorate exposure, as assessed by urinary perchlorate concentrations, and first-trimester thyroid function in the present study is reassuring. The iodine deficiency of the women in the present study might have

made them particularly vulnerable to any adverse thyroidal effects of perchlorate exposure," according to the study.

The Blount study, *Urinary Perchlorate and Thyroid Hormone Levels in Adolescent and Adult Men and Women Living in the United States*, examined data from 1,111 women -- most were not pregnant -- and found the body's hormone regulation pattern was disturbed in 36 percent of women with low iodine levels as a result of perchlorate exposure.

The new study, however, raises questions about these findings by indicating that the thyroid function of women with low iodine levels were not affected by low-level perchlorate exposure.

Both Pearce and Blount are pursuing additional research. Pearce says she intends to perform similar research with a larger population of American women over the next few years. She is currently working with a small cohort of U.S. women, studying the impact of perchlorate exposure on breastfeeding women and their infants. -- *Maria Hegstad*

EPA Pushing For Comprehensive Assessment Of Phosphate Mine Impacts (*Inside EPA*)

Tuesday, May 18, 2010
EPA is urging the Army Corps of Engineers to take a comprehensive, "area wide" approach to assessing the impacts of proposed new phosphate mines in Florida, a move activists say could prove to be a useful tool for addressing their concerns about the environmental impacts of phosphate mining nationally and in Florida.

The White House Council on Environmental Quality recommends the use of an area-wide or programmatic environmental impact statement (EIS) when similar actions share common timing or geography. But the approach has seen limited use in phosphate mining, according to one Florida activist involved in litigation aimed at forcing industry and the federal government to assess the environmental impacts of some of the proposed new mines.

The agency's support for the novel approach is "very encouraging," a second activist says.

EPA has long advocated for examining the cumulative impacts to what it calls the "important and environmentally sensitive mining region" in central Florida known as Bone Valley, according to a March 10 letter from EPA Region IV officials to the Corps reiterating the agency's push for an area-wide or programmatic EIS.

Specifically, EPA says it "is interested in developing a new approach [for reviewing permits issued under section 404 of the Clean Water Act (CWA)] to include

consideration of overall cumulative impacts within the Bone Valley, rather than incremental review of permits and their associated impacts."

As described in the EPA letter, an area wide "(or Programmatic) EIS is broader and more general than an individual project EIS that assesses site-specific direct, secondary (indirect) and cumulative impacts." Once the area-wide EIS is completed, site-specific project impacts can be assessed through individual project EISs or environmental assessments (EAs), the agency says, noting that these follow-up reviews may still be necessary to "assess the cumulative impacts to the resources within the project area" despite completion of an area wide EIS.

In support of conducting such an EIS, the agency says it "has substantial concerns with the cumulative impacts and the downstream effects on the [Charlotte Harbor National Estuary] resulting from proposed 404 permit actions for mining in the 'Bone Valley.'" In addition, the "Peace River supplies potable water directly or through purchase to approximately 700,000 citizens, and any water quality deterioration due to mining activities may compromise public drinking water supplies and adversely impact public health," EPA says.

The completion of an area-wide EIS could aid environmentalists in their efforts to limit new mining and ensure that the potential impacts of any mines that do go forward in the area are adequately addressed, the first activist says. According to the activist, it is easier for industry to obtain multiple mining permits on a site-specific, case-by-case basis than to have to comply with a broad, area-wide EIS.

Area-Wide EIS

Under an area-wide EIS, federal regulators could "look at the big picture" and determine that particular portions of a region are too sensitive for phosphate mining, which the activist says could aid environmentalists' efforts to limit new mining to certain areas deemed less sensitive.

Without an area-wide EIS, it would be easier for industry to win site-specific permits in sensitive areas, the activist claims. But with an area-wide EIS, environmentalists would have more leverage with which to pursue legal action if industry tries to mine such areas, the activist says.

If the area-wide approach to assessing the environmental impacts of new phosphate mines is successful in Florida's Bone Valley, activists are hoping it could also be used in other phosphate mining regions in Florida and other states, the activist says. For example, environmentalists have also been fighting new phosphate mining proposals in North Carolina in recent years, and while EPA has objected to some proposed permits there, not all of the activists' concerns have been resolved.

In Florida, activists are pursuing litigation against some of the mining proposals. In one lawsuit, which Earthjustice has filed in federal court on behalf of the Sierra Club, People

for Protecting Peace River and others, activists argue the Corps' issuance of one mining permit to Mosaic under CWA section 404 violates the water law, National Environmental Policy Act and Administrative Procedure Act.

The activists argue the Corps' decision to conduct only a supplemental EA before issuing the permit rather than prepare a full EIS was improper. Although the supplemental EA reached a "finding of no significant impact," the activists argue that the permit in question "authorizes the destruction of 480 acres of high-quality wetlands in the headwaters of Horse Creek, a major tributary of the Peace River."

Activists have also cited EPA concerns that as many 40,000 people living on former phosphate mining lands in central Florida are being exposed to dangerous levels of radiation in their homes in letters to EPA, the Corps and other federal agencies asking that they prepare EISs before permitting new mines.

In a March 19 letter to Acting EPA Region IV Administrator Stan Meiburg and officials with the Corps and other federal agencies, a coalition of environmental groups cite *Inside EPA*'s January article about the exposure concerns and demand the officials complete full EISs before they permit any new mines.

The article "reported that in some residential areas built on former sites people are exposed to up to 500 millirems [mrem] per year of radiation, substantially more than the 15 mrem level [EPA] has historically considered safe," the activists note. "At the 500 mrem level about 1 in 40 people would be expected to develop cancer, a risk 250 times greater than the 1 in 10,000 cancer risk scenario normally applied at Superfund sites."

This "alarming information is important not only because the risk must be considered in any decision to allow further mining, but also because the potential cleanup cost is huge," say the activists, which include the Sierra Club, Protect Our Watersheds and the Clean Water Network of Florida. -- *Douglas P. Guarino*

Kansas City reaches $2.5B settlement with U.S. over sewer overflows (*Greenwire*)

Paul Quinlan, E&E reporter
05/18/2010
Kansas City, Mo., will spend more than $2.5 billion on a sewer-system overhaul aimed at ending discharges of untreated wastewater during heavy rains under a legal settlement announced today by U.S. EPA and the Justice Department.

The agreement filed in U.S. District Court for the Western District of Missouri ends yearlong negotiations between the city and the federal government and sets timelines for making fixes over the next 25 years in what is being called the largest infrastructure project in the history of the city, which was founded in 1838.

The city will also pay a civil penalty of $600,000 to the federal government and spend $1.6 million to connect low- to moderate-income families whose houses are on septic systems to sewer lines.

"This is a landmark day in the history of Kansas City," said Karl Brooks, EPA's Region 7 administrator. "These provisions put one of the nation's largest municipal sewer systems on a steady path toward compliance with the Clean Water Act by committing it to address deficiencies that have harmed the environment and posed risks to public health and safety for decades. Over time, our area streams and rivers should become much cleaner and safer as a result."

Since 2002, regulators said, there have been 1,294 illegal sewer overflows -- including at least 138 unpermitted combined sewer overflows, 390 sanitary sewer overflows and 766 backups in homes and buildings -- all violations of the Clean Water Act and Kansas City's federal pollution discharge permits.

Kansas City's overflows result in the annual discharge of about 7 billion gallons of untreated sewage into the Missouri River, Fishing River, Blue River, Wilkerson Creek, Rocky Branch Creek, Todd Creek, Brush Creek, Penn Valley Lake and their tributaries, according to the Obama administration.

Sewage overflows dump bacteria, oxygen-depleting nutrients, suspended solids and toxic metals and chemicals into waterways. As part of the settlement, the city has agreed to install disinfection-treatment systems at all its sewage treatment plants by 2013.

Kansas City's sewer system serves 650,000 people spread over 420 square miles in the city and in 27 neighboring communities. The system has seven treatment plants, 38 pumping stations and more than 2,800 miles of sewer lines.

The settlement gives top priority to repairs in the system's 58-square-mile urban core, whose sewers carry both stormwater and wastewater.

Today's settlement is subject to a 30-day public comment period and approval by the court.

Lax regulation leads to Calif. nitrate contamination -- investigation (*Greenwire*)

05/18/2010
Water that serves more than 2 million Californians was exposed to harmful levels of nitrates due to weakened regulation, according to an investigation by the nonpartisan reporting group California Watch.

State law requires public water systems to remove nitrates, but many rural areas do not have the necessary treatment centers, the investigation found. The chemical can seep into the ground from farm fertilizer and animal manure and can leave nearby wells and tanks contaminated.

The number of California wells that exceeded the health limit for nitrates reached 648 in 2007, up from nine in 1980, California Watch reports. Nitrates have been tied to "blue baby syndrome," where an infant loses its oxygen supply.

The investigation found a number of problems with California regulation that could have led to the rise in nitrates. Nitrogen fertilizer, one of the leading sources of the pollution, is unregulated. Dairy farms are not fined if their wells exceed the health limits and nitrate polluters are rarely ordered to clean up contaminated groundwater.

"The people who are polluting the water, they don't pay for that cleanup -- the ratepayer does," said Debbie Davis, a legislative analyst for the Oakland-based Environmental Justice Coalition for Water. "If California is going to meet the water challenges of the future, we have to figure out how to deal with nitrates."

Darrin Polhemus, deputy director for the State Water Resources Control Board's division of water quality, said the agency focuses more on chemicals such as dry cleaning solvents, which have more acute health effects. The state keeps no records of health problems resulting from nitrate exposure, including blue baby syndrome (Julia Scott, California Watch/*San Francisco Chronicle*, May 17). **-- JP**

Posted on Tue, May. 18, 2010

Feds, KC agree to massive sewer plan (*Kansas City Star*)

By KAREN DILLON The Kansas City Star

Kansas City has agreed to upgrade its sewer systems at an estimated $2.5 billion over 25 years, the Justice Department and U.S. Environmental Protection Agency announced today.
The outlines of the agreement already had been reported by The Star but today's action makes it official.

A consent decree lodged today in U.S. District Court for the Western District of Missouri requires the city to implement an Overflow Control Plan to eliminate overflows of untreated raw sewage and to reduce pollution levels in urban stormwater.

When completed, the sanitary sewer system will be able to capture combined stormwater and sewage and move it to the city's treatment plants, keeping billions of gallons of untreated sewage from reaching surface waters, federal officials said.

“Today’s agreement will have positive, lasting effects on both public health and the environment,” said Ignacia S. Moreno, assistant attorney general for the Justice Department’s Environment and Natural Resources Division.

“The agreement prioritizes neighborhood sewer rehabilitation projects in the urban core, reducing basement and other sewer backups and thereby significantly improving public health.”

Karl Brooks, EPA regional administrator, called it a “landmark day in the history of Kansas City.

“This agreement charts a course for the largest infrastructure project in the city’s history, and what we believe to be one of the largest municipal green infrastructure projects undertaken anywhere in the nation,” Brooks said.

“Over time, our area streams and rivers should become much cleaner and safer as a result.”

Under the agreement, Kansas City will pay a federal civil penalty of $600,000.

The plan also is structured to encourage the city to use “green infrastructure,” such as green roofs, rain gardens and permeable pavement.

As part of the agreement, Kansas City will spend $1.6 million on a supplemental environmental project to implement a voluntary sewer connection for income-eligible residential property owners who elect to close their septic tanks and connect to the public sewer.

The settlement is subject to a 30-day public comment period and approval by the federal court.

Kansas City officials previously had expressed relief that federal officials had agreed to allow an extra decade to complete the massive sewer project.

That would prevent the astronomical sewer rate increases that might have hit residents.

Rates will still rise quickly if a proposed agreement between the city and the Environmental Protection Agency is finalized, but not as precipitously as if the city had been forced to complete the project in 15 years, as earlier feared.

Kansas Cityis the only city in the country to win such a long extension, officials say. The city, however, still faces penalties for violating state and federal clean water laws.

When negotiations with the city began, the EPA had been requiring cities to complete their work within 15 years.

As talks progressed, the city wanted 28 years to complete the project, while the EPA had proposed 23 years. They compromised at 25 years.

For years, the city has faced the need to separate its combined sewer and storm-water pipes, some dating to the Civil War. The massive project, once completed, is expected to reduce the typical amount of raw sewage overflows yearly to 1.4 billion gallons from 6.3 billion gallons.

Even with the decade extension, Kansas City's sewer customers are expected to see 15 percent rate increases over the next several years. That means the current average rate of $23 per month would be $30.35 in 2011 and $52.16 by 2015. (Sewer rates are separate from water rates.)

If the EPA had insisted on a faster schedule, the sewer rate increases would have been even more accelerated.

The city has estimated that the public would then start to see major work within 18 months, but the most significant probably would not be visible for a few years.

Because the city has delayed fixing the sewer problems for more than 30 years, it faced the penalties for violations of state and federal water laws.

The project would replace combined sewer and storm-water pipes that run under a substantial portion of the city's urban core from Wheeler Downtown Airport and downtown, south to 85th Street, west to State Line Road, and east to the Blue River -- about 56 square miles.

The project would be massive. Workers would tear up streets, yards and landscapes, touching the lives of many who live in the project area.

At least one huge tunnel, possibly 30 feet in diameter, would be laid, possibly 300 feet down. The tunnel would be used to divert rainwater, sewage and storm water during heavy rains.

Over past decades, the project has been delayed because of the huge cost.

The plan should not be thought as the total fix. It does not cover sewer overflows occurring in other parts of the city that violate federal clean water laws. Those fixes would require billions of dollars more.

To reach Karen Dillon, call 816-234-4430 or send e-mail to kdillon@kcstar.com.

Spilled ash to stay in Kingston (*Chattanooga Times Free Press*)

Wednesday, May 19, 2010
By: Pam Sohn (Contact)
The remaining 2.5 million cubic yards of ash from TVA's 5.4 million-cubic-yard Kingston ash spill will remain onsite, according to a TVA plan approved Tuesday by EPA.
The cleanup plan calls for putting ash from the Swan Pond embayment back into a "re-engineered" but still unlined Tennessee Valley Authority dredge cell that failed in late 2008.
"It's horrible," Harriman, Tenn., resident Sarah McCoin said of the decision. "TVA's disaster is going to be kept right in here in Roane County. And we're going to be the only location in the country that will be treated differently than (EPA's) new coal waste rules (that require lined disposal areas)," she said.

The work will take four years and cost about $268.2 million. That cost includes an estimated $686,000 in annual maintenance expenses for 30 years, according to the agreement between TVA and the U.S. Environmental Protection Agency.

TVA and EPA officials said the plan eliminates potential risks and costs of taking the ash off-site and shipping it over public roads or by rail.

Residents say it is "disheartening" for the community that was turned upside down on Dec. 22, 2008. That's when an earthen wall broke, dumping ash into the Emory River and onto the rural community of Swan Pond in Harriman, Tenn.

EPA project manager Craig Zeller said the re-engineered landfill will have adequate safety features.

"I would counter that this reconstructed cell is going to be a dramatic improvement over what was there," Mr. Zeller said.

A three-mile dike of soil-cement columns will be constructed using 8-foot-diameter augers to drill 60-70 feet to bedrock, Mr. Zeller said. The "lattice of columns" will be able to withstand a 6.0-magnitude earthquake, he said.

Ash will be placed atop a foundation of sand, gravel and geo-fabric and covered with two feet of clay and one foot of topsoil. Vegetation then will be planted to prevent erosion, he said.

The landfill will be about 30 feet lower than the one that failed, Mr. Zeller said. Groundwater will be monitored for leaching, he said.

On May 4, EPA issued its proposed rules for regulating coal ash, but TVA spokeswoman Barbara Martocci said the proposed rules will not affect TVA or the Kingston agreement finalized Tuesday.

Steve McCracken, TVA's general manager of the Kingston Ash Recovery Project, said TVA and EPA considered three alternatives. Two involved removing all or part of the spilled ash to landfills in Alabama or above Knoxville.
Mr. McCracken said the choice was made after weighing environmental and human health and safety factors, cost effectiveness and how well each plan could be implemented.

"And the cost was the last consideration," he said. "I think it will still fall somewhere in that range we've stated before," between $933 million to 1.2 billion.

Mr. Zeller said the sloughs of the river will be restored "to pre-spill conditions and replanted" with aquatic and woodland vegetation and wetlands.

"Residents have said this was the best place to catch crappie, and our goal is to restore that fishery," he said.

TVA's Katie Kline said the agency within the year also will be completing a land-use plan for the more than 100 properties it bought from area residents.

Ms. McCoin said she feels betrayed by the decision.

"First, TVA told us they'd get the mess cleaned up in six to eight weeks, and how many times have I heard them say they would be a 'good corporate neighbor?' Then when EPA came in, we saw them as a savior. Now it feels as if we've been jeopardized by the collaboration of the two."

To add "salt to the wound," she said, residents there just got new property appraisals.

"Our property appraisals all went up 130 to 150 percent," she said. "How can that be right?"

TVA decides to store ash at Kingston spill site (*Associated Press*)

By BILL POOVEY (AP)
CHATTANOOGA, Tenn. — The Tennessee Valley Authority will permanently store onsite more than 2 million cubic yards of coal ash from a massive spill as part of the utility's second phase of clean up.

At $270 million, the onsite storage will consist of 25-foot-tall heap with no liner system beside the Emory River west of Knoxville. It was the cheapest of several options TVA considered, and Steve McCracken, the utility's cleanup project manager, said it should keep overall costs within the projected $1.2 billion total.

The onsite storage plan includes closing the ash pond that was contained behind an earthen dike until it failed at the coal-fired plant in December 2008. The second phase is expected to take about four years and is to be followed by a third phase that includes monitoring the river for contaminants.

Environmental Protection Agency Remedial Project Manager Craig Zeller said water and air monitoring in the spill area have shown no adverse health or environmental impacts.

"This has been a very carefully and comprehensively monitored cleanup project," Zeller said.

While the spilled coal ash contained arsenic and potentially carcinogenic heavy metals, it is not regulated as hazardous waste. EPA recently decided to consider using some hazardous waste standards in regulating the ash.

TVA's Dec. 22, 2008 spill sent 5.4 million cubic yards of ash into the river and onto nearby private property about 40 miles west of Knoxville in Roane County. In the first phase of cleanup that is near completion, the utility has dredged about 3 million cubic yards of ash from the river, much of it shipped by rail to a landfill in Alabama.

The TVA statement said dry ash will be stored onsite on a "foundation of sand, gravel and geo fabric enclosed by an underground perimeter wall constructed of cement mixed with subsurface soil to divert drainage and control runoff."

"The area will not include a liner system, however the long-term closure plan will include extensive groundwater monitoring of existing and new wells," the statement said.

Zeller said "there is no discernible ground water contamination" at the site of the former ash pond. He said the closed area of the river is to be reopened May 29.

He said the shipments of dredged ash to the Alabama landfill will continue until this fall. Phase 3 will involve removing another 500,000 cubic yards of "residual ash" from the river and environmental monitoring.

TVA also considered offsite disposal that would have involved trains and trucks — with cost estimates ranging up to $740 million — but McCracken said health and environment were also factors ahead of cost. He also said transporting the ash "does have risks" not posed by onsite storage.

"All those things get considered," McCracken said.

TVA is battling federal lawsuits seeking damages from the spill and has purchased more than 100 properties.

The utility has nearly 9 million consumers in Tennessee, Alabama, Mississippi, Kentucky, Georgia, North Carolina and Virginia.

Action Plan in Chesapeake Bay Area Underway (*Epoch Times*)

By Kristina Skorbach
Epoch Times Staff
Last Updated: May 18, 2010
Administrators from the Environmental Protection Agency (EPA) and other federal officials recently presented the action plan for cleaning up the Anacostia River in the capital's Chesapeake Bay.

They discussed their continuous effort in working with the local government and the locals to clean up the pollution in the bay area.

Last year in an address, President Barack Obama said the federal government should lead the initiative to restore the watersheds, but that the progress of the restoration would also depend on local and state governments, other interested parties, and residents of the Chesapeake region.

He added that a Federal Leadership Committee would be formed specifically for managing every aspect of restoring the Chesapeake Bay area. The administrator of the EPA or his designee would sit as the chairperson of the committee.

The EPA was responsible for drafting a Chesapeake Bay Action Plan, which would describe the main initiatives that needed to be implemented to take maximal action for watershed restoration. EPA was also to submit an Annual Progress Report, which would outline the steps needed for applying the action plan and the best ways to evaluate the environmental conditions in the bay.

Last Wednesday, the EPA and other federal officials gathered after a one-year anniversary of establishing their project at the Chesapeake Bay. They unveiled their strategies in the Chesapeake Bay Action Plan report, which describes their findings and the actions they plan to take in order to improve the overall situation in the bay.

For example, according to the Executive Summary report, the test on water quality showed that around 89 of the 92 segments of the bay and its tidal waters are impaired with pollution from nitrogen, phosphorus, and sediments. The Action Plan will aim to make 60 percent of those segments pollutant free by the year 2025.

The Executive Summary report further includes various strategies, such as restoration of riparian forest buffers and maintenance of a healthy population of Blue Crabs. EPA will be responsible for the restoration of the Chesapeake Bay's 64,000 square-miles watershed area, which, if all goes well, should achieve its target no later than 2025.

Seafood testing could last years (*USA TODAY*)

May 19, 2010 Wednesday
FINAL EDITION
NEWS; Pg. 3A
Seafood testing could last years;
Feds double area off-limits to fishing in Gulf as a precaution
By: Brian Winter
The danger posed by the Gulf of Mexico oil spill to the U.S. food supply is worse than previously thought and could make testing of seafood necessary for decades to come, officials and scientists say.

The National Oceanic and Atmospheric Administration (NOAA) said Tuesday it was more than doubling the area in the Gulf where commercial and recreational fishing are temporarily off-limits as the oil slick spreads to the south and east. The prohibited area is now about 46,000 square miles, roughly the size of Pennsylvania or one-fifth of federal waters in the Gulf.

Federal officials had already shut down fishing from the Mississippi River to the Florida Panhandle.

The spill "will affect the Gulf, and possibly the entire North American region, for maybe years, if not decades," said Rowan Gould, acting director of the U.S. Fish and Wildlife Service.

Gulf products account for about 5% of the seafood consumed in the United States. Since the Deepwater Horizon oil rig exploded April 20, opening a gusher of oil from the ocean floor, testing has not found "substantial" quantities of contaminated seafood, said Roy Crabtree, the regional administrator for NOAA's Southeast regional office.

Oil contains harmful chemicals such as polycyclic aromatic hydrocarbons that can cause cancer if ingested by humans in high concentrations, said LuAnn White of the Tulane University Center for Applied Environmental Public Health. She said, however, that monitoring efforts by the federal government and the seafood industry make the possibility of significant levels of toxic contamination "extremely unlikely ... in anything that gets to market."

"For the sake of people and the industry, it's better to take some short-term hits than let anything tainted get in there," said White, who participated in a meeting last week with **Environmental Protection Agency** officials to help contain fallout from the spill.

Testing includes daily laboratory samples and the use of "sniffers": people trained to detect the presence of oil in seafood by using their noses. "The human nose is actually

the best oil detection tool we have available," White said. "It's like your grandmother told you -- 'If it doesn't smell good, don't eat it.' "

Crabtree said government agencies are "doing everything we can" to ensure that no contaminated products make their way to Americans' plates. Yet he said that concerns over the spill's effect on ocean wildlife had intensified after recent reports of massive plumes of oil just beneath the surface, plus the continued movement of oil toward a current that could carry polluted water quickly toward the Florida Keys.

"We're incorporating some of this uncertainty into our plans," he said. "We're trying to get more information about what's actually happening underneath the water."

Most of the thickest oil has stayed offshore. Officials have put down more than 1 million feet of inflatable barriers to keep oil out at sea.

Lisa Suatoni, an ocean scientist for the Natural Resources Defense Council environmental group, agreed that short-term risk to humans from seafood seemed minimal because of the monitoring.

She said, however, that the globs of oil under water -- which she said reminded her visually of a "toxic lava lamp" -- and chemicals being used to disperse oil could have a lasting impact on the ocean's food chain.

"For some animals, even if they don't die from the exposure, they can squirrel away those chemicals and survive," Suatoni said. "Anything that eats them could then get a concentrated dose of that (chemical)."

The food chain is especially sensitive at the moment because of the spring breeding season, Gould said. Gulf waters are full of recently hatched fish that are consumed by larger fish and other predators.

Suatoni said the oil could make its way to the shallow ocean shelf, which is a habitat for fish such as snapper, and remain there for an extended period. The long-term consequences are what worry her the most, she said.

"We may have to do this monitoring for a long, long time, and that's expensive," Suatoni said.

President Obama has said that all cleanup efforts must be paid for by BP, the energy company that was operating the rig when it exploded.

EPA gives Mystic C- for water quality (*The Somerville News*)

By Andrew Firestone

Sunday was a beautiful day for a paddle fest on the Mystic River but concerns about substandard water quality continue to flow.

Curt Spalding, recently appointed by President Barack Obama as the Environmental Protection Agency's New England administrator, said the Mystic River's water quality was given a C- grade.

The low grade was based on bacteria levels in the water.

According to an EPA report, the Mystic River meets boating standards 93 percent of the time, but swimming standards only 57 percent of the time. The grade has failed to rise for the last three years, since rising from a D in 2008.

"It is persistence that matters in restoring urban waters," said Spalding. "It's not going to be a day or a week, it's going to take years," he said.

EkOngKar Singh Kahlsa, the executive director of the MRWA, who also acted as MC for the day's paddle and running event, was less than pleased, but recognized the need for continued effort. "We want to get higher than a C-" he said.

The two races were held with support from local businesses. The 5K run was won by Todd Callaghan, of Somerville, who ran a monster 16:55 and Suzanne Andrews who ran 19:55.

Andrews raced alongside former Princeton teammate Sarah Brohne who placed second in the woman's category, and both attributed their success to the other.

"You're more relaxed racing with a teammate," said Andrews. "It was competitive in a sense, but it was beneficial, like we were feeding off each other," added Brohne.

The next event was a canoe-race, in which over 100 paddlers from all over New England participated in a 3, 9 and 12 mile loops. Francisco Urena of Lawrence, a former Marine found that his military-style mentality played perfectly into the trek. "Paddle as fast as you can on the way there, even faster on the way back," he said.

Frederick Laskey, Executive Director of the Mass Water Resources announced the $117 million storm water detention basin, which would help in separating pollutants such as sewage.

Mystic River Watershed Steering Committee member Karen Pelto also announced the renovation of a dam to unite the upper and lower Mystic lakes which would allow herring, eels and other marine life into the upper lake years after the dam had sealed off any circulation.

EPA to recommend new water supply for St. Louis (*Morning Sun*)

Michigan
Published: Wednesday, May 19, 2010
By LINDA GITTLEMAN
Gratiot Managing Editor
St. Louis may not have to worry about finding tens of millions dollars to pay for a new water source.

When the Chicago office of the Environmental Protection Agency makes its recommendations for plans for the St. Louis cleanup, they will all include the cost for a new water source.

EPA representative Tom Alcamo made it clear that the EPA's Remedy Review Board will have the final say, but it's a first step. He also stated that the funding is not because residents are at risk at this time. The water continues to be safe to drink, but for how long isn't clear. Studies completed by the Michigan Department of Natural Resources and the Environment have shown that toxic chemicals are following in the path made by pCBSA, a by product of DDT, right into the city's wells. The pCBSA found in the water now is within standards established by the state and poses no risk.

On Tuesday, the Chicago office issued a press release announcing the plan for funding a new water source..

If that happens, the EPA will be saving itself money, Alcamo explained.

By closing down the city's well field, the EPA will not have to pump and clean so much water, he said.

"It's cheaper to get rid of the well field than to treat the water," he said.

St. Louis has begun studying a proposal to hook up with Alma's water system, instead of searching outside the city for new wells. Estimated cost for the replacement of the St. Louis water system is in the neighborhood of about $30 mmillion.

Alcamo said the water system replacement will be included in all the EPA's options that will be provided to the Remedy Review Board. The board is expected to meet in August on the issue and to make its final decision in early 2011.

"I think it's the most wonderful news I've heard," said St. Louis City Council Member and Pine River Task Force Member Bill Shrum. "We needed it very badly."

St. Louis City Manager Bob McConkie said he too thought it was "very good news.

"However," he said, "other steps have to take place."

Clean up at the Velsicol plant site is divided into two separate units. One is the 52-acre plant site itself and some adjacent properties. A clean up that took place in 1984, was not adequate.

The second unit includes the clean up of contamination of sediment and fish in the Pine River. The EPA and the state spent about $100 million on the clean up. But recently, another area near the plant site – the burn pit – was added to the list of Superfund sites.

EPA gives Mystic C- for water quality
By Andrew Firestone

Sunday was a beautiful day for a paddle fest on the Mystic River but concerns about substandard water quality continue to flow.

Curt Spalding, recently appointed by President Barack Obama as the Environmental Protection Agency's New England administrator, said the Mystic River's water quality was given a C- grade.

The low grade was based on bacteria levels in the water.

According to an EPA report, the Mystic River meets boating standards 93 percent of the time, but swimming standards only 57 percent of the time. The grade has failed to rise for the last three years, since rising from a D in 2008.

"It is persistence that matters in restoring urban waters," said Spalding. "It's not going to be a day or a week, it's going to take years," he said.

EkOngKar Singh Kahlsa, the executive director of the MRWA, who also acted as MC for the day's paddle and running event, was less than pleased, but recognized the need for continued effort. "We want to get higher than a C-" he said.

The two races were held with support from local businesses. The 5K run was won by Todd Callaghan, of Somerville, who ran a monster 16:55 and Suzanne Andrews who ran 19:55.

Andrews raced alongside former Princeton teammate Sarah Brohne who placed second in the woman's category, and both attributed their success to the other.

"You're more relaxed racing with a teammate," said Andrews. "It was competitive in a sense, but it was beneficial, like we were feeding off each other," added Brohne.

The next event was a canoe-race, in which over 100 paddlers from all over New England participated in a 3, 9 and 12 mile loops. Francisco Urena of Lawrence, a former Marine found that his military-style mentality played perfectly into the trek. "Paddle as fast as you can on the way there, even faster on the way back," he said.

Frederick Laskey, Executive Director of the Mass Water Resources announced the $117 million storm water detention basin, which would help in separating pollutants such as sewage.

Mystic River Watershed Steering Committee member Karen Pelto also announced the renovation of a dam to unite the upper and lower Mystic lakes which would allow herring, eels and other marine life into the upper lake years after the dam had sealed off any circulation.

Salem businesses may face higher stormwater costs (*Satesman Journal*)

By Thelma Guerrero-Huston • Statesman Journal • May 19, 2010
Comments (0) Recommend Print this page E-mail this article Share Del.icio.us Facebook Digg Reddit Newsvine
Buzz up!Twitter FarkIt Type Size A A A Next Page1| 2Previous PageThe city of Salem wants to start charging residents for the stormwater that runs off their property.

While the plan wouldn't raise any additional money from ratepayers, it would generally shift costs from homeowners to business owners, city officials said.

The city is proposing the change because of stricter federal regulations that call for better control of stormwater runoff to ensure the quality of drinking water, said Robert Chandler, Salem's assistant public works director.

Under the current billing system, stormwater costs are included in the sewer portion of water and sewer bills.

The city uses money from its sewer rates to fund the stormwater program, which costs about $10 million per year.

Under the proposed system, a separate stormwater charge will be shown on sewer bills. New bills will read: "sewer and stormwater."

Under the new rate structure, most homeowners would see their combined sewer and stormwater charge stay the same or decrease slightly compared to their current charge, while many businesses and owners of large developed property would see their charge increase, Chandler said.

For example, a family that pays a current sewer charge of $40 per month, could see its combined "sewer and stormwater" charge drop to $35 per month.

Large stores, such as grocers and home product stores, could see their charges double to $1,000 or more.

Ron Hays, president of Marion-Polk Food Share, worries the new tax would place a heavy burden on his and other nonprofits.

"Like schools and churches," he said. "I'm concerned about our facility because we have a large parking lot and a big roof on our structure, and because the rate is going to be based on water runoff and not water usage."

David Truitt, co-owner of the Truitt Bros. food processing business, said his company welcomes any decrease in fees it can get given a sluggish economy.

"As I understand it, this will probably help us," he said. "Any help is appreciated."

He added that because of the way the city currently assesses wastewater usage fees, Truitt Bros. is charged wastewater fees similar to those charged to big box stores.
(2 of 2)

"Therefore, we've been paying more than our fair share," he said.

Though the calculation method is still being refined, the stormwater rate will be based on the amount of a property's impervious surface. An impervious surface is one which prevents water from being absorbed into the ground, such as sidewalks, driveways, parking lots, pavement, roofs and other nonporous materials.

The cities of Keizer, Portland and Eugene already charge customers stormwater fees based on impervious surface.

To help it determine the amount of a property's impervious area, Salem officials took aerial photographs of residential and commercial properties in the city.

"We feel this is the most fair and equitable way to fund Salem's stormwater program," said Salem's Chandler. "Everybody has a role to play in reducing the adverse impacts of stormwater."

Mike McLaran, president of the Salem Area Chamber of Commerce, expressed concern about the new rate structure.

"We'd like the city to consider that if they are going to mandate a fee, to perhaps take a look at mandating that fee on the excess pavement that has been created beyond what (the city) previously mandated," McLaran said. "There needs to be care taken with how it's done."

The total amount of money spent by the city controlling stormwater runoff will remain at $10 million even after the new charge takes effect, Chandler said.

The majority of the money goes to maintain the stormwater system's 420 miles of storm drain pipes, drainage ditches, streams and more than 14,000 collection basins, street sweeping and much more.

Stormwater pollution has been a growing problem throughout the nation, according to the U.S. Environmental Protection Agency.

Officials say rain water runoff picks up litter, dirt, lawn and garden chemicals, animal waste, metals, oils, bacteria and other contaminants on its way to streams and rivers.

The foul brew can contaminate drinking water, pollute creeks and rivers, and cause flooding, landslides, erosions and other hazards.

The city began its effort to create a stormwater utility last fall.

In January, it took its plan to the public at neighborhood associations and public workshops.

City staff will take the plan to the Council for final adoption in the fall.

If approved, the new charge would begin on July 1, 2011.

"We're letting the public know 18 months in advance," Chandler said, "so that they can make changes to impervious surfaces on their property if they want to."

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Kansas City, Missouri, To Spend $2.5 Billion To Eliminate Sewer Overflows (*Wall Street Journal*)

WASHINGTON - The city of Kansas City, Mo., has agreed to make extensive improvements to its sewer systems, at a cost estimated to exceed $2.5 billion over 25 years, to eliminate unauthorized overflows of untreated raw sewage and to reduce pollution levels in urban storm water, the Justice Department and U.S. Environmental Protection Agency (EPA) announced today.

The settlement, lodged today in federal court in Kansas City, requires the city to implement the overflow control plan, which is the result of more than four years of public input. The plan is designed to yield significant long-term benefits to public health and

the environment, and provide a model for the incorporation of green infrastructure and technology toward solving overflow issues.

When completed, the sanitary sewer system will have adequate infrastructure to capture and convey combined storm water and sewage to treatment plants. This will keep billions of gallons of untreated sewage from reaching surface waters.

"Today's agreement will have positive, lasting effects on both public health and the environment. The agreement prioritizes neighborhood sewer rehabilitation projects in the urban core, reducing basement and other sewer backups and thereby significantly improving public health," said Ignacia S. Moreno, Assistant Attorney General for the Justice Department's Environment and Natural Resources Division. "The Justice Department is committed to enforcing our nation's environmental laws so that the environment and the health of our communities are protected."

"This is a landmark day in the history of Kansas City," said Karl Brooks, EPA Regional Administrator. "This agreement charts a course for the largest infrastructure project in the city's history, and what we believe to be one of the largest municipal green infrastructure project undertaken anywhere in the nation. These provisions put one of the nation's largest municipal sewer systems on a steady path toward compliance with the Clean Water Act by committing it to address deficiencies that have harmed the environment and posed risks to public health and safety for decades. Over time, our area streams and rivers should become much cleaner and safer as a result."

Under the agreement, Kansas City will pay a civil penalty of $600,000 to the United States, in addition to the estimated $2.5 billion it will spend to repair, modify and rebuild its sewer system. The plan is also structured to encourage the city to use natural or engineered "green infrastructure," such as green roofs, rain gardens and permeable pavement, to minimize stormwater burdens on the improved system.

As part of the agreement, Kansas City will spend $1.6 million on supplemental environmental projects to implement a voluntary sewer connection and septic tank closure program for income-eligible residential property owners who elect to close their septic tanks and connect to the public sewer.

Kansas City's sewer system collects and receives domestic, commercial and industrial wastewater from a population of approximately 650,000 people in the city and 27 neighboring satellite communities, including a portion of Johnson County, Kan. The system covers more than 420 square miles, and includes seven wastewater treatment plants, 38 pumping stations and more than 2,800 miles of sewer lines, making it one of the nation's largest.

Of the 420 square miles covered by the system, 58 square miles mostly within the city's urban core are presently served by combined sewers, which carry both stormwater and wastewater, and the remainder of the system is served by separated sewers. Under the consent decree, Kansas City has agreed to expedite certain projects that are expected

to provide more immediate relief to residences and other properties presently served by combined sewers in the urban core.

Since 2002, Kansas City has experienced approximately 1,294 illegal sewer overflows, including at least 138 unpermitted combined sewer overflows, 390 sanitary sewer overflows, and 766 backups in buildings and private properties. The overflows are in violation of the federal Clean Water Act and the terms of the city's National Pollution Discharge Elimination System (NPDES) permits for operation of its sewer system.

Untreated sewage from overflows can cause serious water quality problems and health issues from pollutants including harmful bacteria, oxygen-depleting substances, suspended solids, toxic metals and chemicals, and nutrients. As part of today's settlement, the city has agreed to install disinfection treatment systems at all of its wastewater treatment plants by 2013.

Kansas City's overflows result in the annual discharge of an estimated 7 billion gallons of raw sewage into local streams and rivers, including the Missouri River, Fishing River, Blue River, Wilkerson Creek, Rocky Branch Creek, Todd Creek, Brush Creek, Penn Valley Lake and their tributaries.

The settlement, lodged today in the U.S. District Court for the Western District of Missouri, is subject to a 30-day public comment period and approval by the federal court. A copy of the consent decree is available on the Justice Department website at www.justice.gov/enrd/Consent_Decrees.html.

YUCCA MOUNTAIN

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The Demise of Yucca Mountain (*Independent Review*)

Spring 2010

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The Demise of Yucca Mountain
By: Beaver, William.
William Beaver is a professor of social science at Robert Morris University.

The Obama administration's recent announcement that it would cut funding for the development of a nuclear waste repository at Yucca Mountain, NV, may be the beginning of the end for one of the country's longest and most contentious political battles. Although the project was not officially canceled, a spokesperson for the US Department of Energy declared that Yucca Mountain is not an option, and Energy Secretary Steven Chu stated that radioactive wastes can be stored safely in concrete

and steel containers at nuclear plants until a new strategy is developed. Many believe that failure to develop a permanent solution to the waste problem leaves the future of nuclear power up in the air because utilities may be reluctant to order new reactors with so much uncertainty still present. Perhaps the answer to dealing with radioactive waste will ultimately require a technological fix that will mitigate the political obstacles.

The Obama administration's recent announcement that it would cut funding for the development of a nuclear waste repository at Yucca Mountain, Nevada, may be the beginning of the end for one of the country's longest and most contentious political battles. Although the project was not officially canceled, a spokesperson for the U.S. Department of Energy (DOE) declared that "Yucca Mountain is not an option," and Energy Secretary Steven Chu stated that radioactive wastes can be stored safely in concrete and steel containers at nuclear plants until a new strategy is developed (Vogel 2009). The new policy contrasts sharply with that of the Bush administration, which sought to increase the size of the Yucca Mountain repository significantly to avoid the need for a second storage facility and to have it open by 2017.

The announcement elicited mixed reactions. Senate majority leader Harry Reid of Nevada, who had fought the Yucca Mountain project for years and was instrumental in the funding reductions, was elated. "I'm glad I was able to make these cuts and bring the Yucca Mountain project another step closer to its rightful end," he stated. In contrast, the nuclear industry was frustrated by the decision. An industry spokesperson said, "We continue to ask the federal government to provide a clear solution for what the long-term storage of spent fuel will be" (Hawthorne 2009). The industry frustration was undoubtedly deepened by the fact that the nation's utility companies have paid the government more than $22 billion in fees to help build the repository.

Regardless of one's view about the project, the decision to halt its development represents a significant government failure. Consider that Congress selected Yucca Mountain in 1987 and that the government has already spent almost $10 billion on it. In the meantime, nearly 60,000 tons of spent Fuel have piled up at the country's 104 commercial nuclear plants, for which the federal government bears ultimate responsibility. Many believe that failure to develop a permanent solution to the waste problem leaves the future of nuclear power up in the air because utilities may be reluctant to order new reactors with so much uncertainty still present. This development comes at a time when estimates indicate that the United States will need to increase electrical output by 25 percent over the next two decades. Just as important, nuclear plants emit no greenhouse gases that contribute to **global warming.** In fact, several prominent environmentalists have endorsed the technology for that reason (Moore 2006). In any event, the Obama decision raises the questions, Why was this decision taken now, and what comes next? To understand how we arrived at this point, it is important first to examine the policies that produced it.

A Government Responsibility

The Atomic Energy Act of 1954 made the federal government ultimately responsible for

disposal of the spent fuel that commercial nuclear plants would generate. The most obvious reason for this assignment of responsibility is that significant dangers are involved. Nuclear reactors have thousands of fuel rods that periodically must be replaced, and they will be radioactive for thousands of years. For this reason alone, long-term on-site storage of the spent fuel was considered unacceptable because power plants are often located near population centers and along waterways, where leaks or acts of terrorism might have disastrous consequences. So the plan was to place the used rods in 40-foot-deep steel-and-concrete swimming pools (each nuclear plant has one), and then the federal government, utilizing its expertise and resources, would at some future point remove them for ultimate disposal elsewhere.

The government also took responsibility for the waste for reasons tied to economics and politics. Put simply, few utilities would have agreed to construct a nuclear plant if they were to be held responsible for dealing with the waste. Nuclear power, particularly in the 1950s and 1960s, made little economic sense. Conventional generating plants met the growing demand as electricity prices declined and utility profits increased. The country had not yet become concerned about the environmental problems associated with burning coal. Therefore, if utilities were going to consider the nuclear option, sloughing off the costs and risks of waste disposal would be necessary. Why then did the government promote nuclear power before the economics of the technology were more favorable for commercial development? In short, the answer is that nuclear power emerged at the height of the Cold War and quickly became part of the ideological struggle between the United States and the Soviet Union. By developing the peaceful atom, the U.S. government hoped to demonstrate its technological superiority over the Soviet Union. Senator John Pastore of Rhode Island expressed a widely held view when he warned, "If we are outdistanced by the Russians in this race it would be catastrophic" (U.S. Congress 1956, 14). In this light, it seemed essential that the United States take the lead in developing civilian reactors, and, in view of the costs and risks, the federal government would have to be the driving force in doing so. Even President Dwight D. Eisenhower, who was always leery of government involvement in technological development, threatened to build "Nuclear TVAs [Tennessee Valley Authorities]" if the nation's utilities didn't begin to construct reactors on their own.

Some people fervently believed that nuclear power, beyond winning a significant foreign-policy struggle with the Soviet Union, would usher in a new era of prosperity if urgently pursued. Harnessing the atom's power would not only provide abundant, inexpensive electricity, but also power our automobiles, planes, and rockets, among other things. This emphasis on developing peaceful uses of atomic energy emerged shortly after World War II and was tied to the idea that something so powerful and potentially destructive should be put to positive use for the benefit of mankind. In December 1953, President Eisenhower echoed these sentiments in his "Atoms for Peace" speech at the United Nations, in which he urged all nations (with U.S. help) to develop peaceful Lises of atomic energy (Pilat, Pendler, and Ebinger 1985).

Early Attempts to Dispose of Wastes

In such an atmosphere, the rather mundane subject of waste disposal did not receive much attention. More than 90 percent of government funding in those early years, not surprisingly, was channeled into reactor development. However, the waste problem was not totally ignored, and, at the time, it was not considered to be highly perplexing. The assumption made early on was that radioactive waste could be placed in bullet-shaped canisters and dumped into ocean sediments thousands of feet below the surface. The navy did bury low-level wastes at sea, but this option was eventually ruled out because in such deposits the waste would be difficult, if not impossible, to monitor. The idea of burying wastes at the South Pole was also dropped. Another bizarre plan called for launching the spent fuel into outer space to orbit the sun or Venus. (Shapiro 1980, 228) The problem, of course, is that rocket technology would have to made fail-safe, a perfection never achieved.

A more practical alternative involved storing radioactive wastes in underground salt domes, which tend to be stable and dry. The Atomic Energy Commission did operate a demonstration project in Kansas in the 1970s. Several safety issues were unfortunately not resolved, however, including the effects of radiation on the salt itself, so the project was ended (Kearney and Garey 1982). In addition, other states with salt domes, including Texas, Louisiana, and Mississippi, had the political clout to stall any future development (Wald 1989). Nevertheless, in 1974 the DOE constructed the Waste Isolation Pilot Plant in a New Mexico salt dome to store government-generated waste. The plant's opening was delayed for almost two decades for fear that water might seep into the chamber 2,100 feet under the ground and corrode the waste containers. Such an event has fortunately not occurred, and since 1999, when the facility was put into use, nearly 35 cubic meters of wastes have been stored there (Munger 2009).

Reprocessing was another option that received considerable attention early on and was thought to hold the most promise. Reprocessing involves chemically dissolving the spent fuel rods and then recovering the uranium and plutonium to make new rods. Recovering one metric ton of spent fuel yields potential energy equivalent to 10,000 tons of oil (Valenti 1995). To spur development, the Atomic Energy Commission funded and performed basic research at the national laboratories, and one of the first reprocessing technologies resulted from these efforts in the 1960s. In addition, the government agreed to purchase the recovered plutonium from the utilities, thereby reducing the utilities' fuel costs and making nuclear power even more attractive.

On the surface, reprocessing made good sense, transforming a waste product into something useful. Nonetheless, after reprocessing, highly radioactive wastes still exist and must be dealt with, although the volume may be reduced by as much as 95 percent (Tucker 2009). Another reprocessing issue involved costs. Could reprocessed fuel be competitive with mined uranium-235, the only naturally occurring material capable of sustaining a chain reaction? Some in the private sector apparently believed that it could. The first commercial reprocessing facility opened in 1966, in West Valley, New York, at which time three more plants were in various stages of development, including one under construction by General Electric in Illinois. Much of the early enthusiasm was based, at least in part, on the assumption that once nuclear power took off, the price of

mined uranium would rise, maldng reprocessed fuel competitive. The government also hoped that competition would not only spur innovation, but drive down costs. On the positive side, the early competition did produce some new reprocessing techniques, but it also convinced the firms involved that they would have a difficult time turning a profit. This expectation, along with the government's lack of power to force continued operations, ended all private ventures by 1975 (Campbell 1987).

In retrospect, these early failures should not be surprising. The technology was new, and costs were difficult to estimate. With the benefit of hindsight, however, it is difficult to make the argument that reprocessing can ever be profitable. A recent study estimates that the price of uranium would have to increase by a factor of ten for reprocessing to be cost effective (Kintisch 2005). In the end, uranium proved to be more abundant than expected and was never in short supply. Hence, any reprocessing efforts had to be government driven. In any event, new White House policies rendered serious discussion of reprocessing moot. In 1976, President Gerald Ford temporarily suspended all reprocessing efforts. In 1977, President Jimmy Carter announced, "We will not enter the plutonium age," and he banned the construction of any reprocessing facilities (Gilinsky 1978). Both presidents feared that reprocessed plutonium might be used to construct a nuclear weapon if rogue nations or terrorists gained access to it.

Today, some nuclear advocates believe that the decision to end reprocessing in the United States is the major reason why the nuclear waste dilemma continues. The fears of nuclear proliferation have proven to be unfounded. Nations that built nuclear weapons found other means to acquire die necessary materials, and, as far as we know, terrorists have not been able to acquire plutonium, although some still believe that terrorists might get their hands on these materials (Inman 2005). Much is also made of the French success in reprocessing spent fuel at La Hague, Normandy, since the 1970s. France, which generates 78 percent of its electricity from nuclear power, reprocesses not only its own spent fuel, but also fuel from several other countries, which has helped offset the costs. To date, few problems have arisen at the 750-acre facility, although environmental groups have protested shipments of spent fuel to La Hague (Rust and Haig 2001).

The French maintain that the plant is one of the most heavily guarded and monitored nuclear facilities in the world. It is also highly automated, with robotic manipulators handling more than 1 ,000 metric tons of spent fuel each year. The radioactive wastes that remain are then stabilized by a process known as vitrification, in which the waste is first mixed with borosilicate glass and then stored on site in corrosion-resistant, steel alloy containers (Valenti 1995; Cox 2008). The final resting place for the vitrified waste, however, has yet to be determined. During the 1980s, the French government selected possible underground sites without consulting with the local communities involved. A public backlash ensued, and a law was passed in 1991 requiring a fifteen-year moratorium before a final site may be chosen (MacLachlan 2006). Although the moratorium has expired, no site has been selected.

The French reprocessing experience is generally viewed as positive, but Great Britain's

is not. The Thorp reprocessing plant, located at Sellafield, opened in 1994 and has had a checkered history of operations, with several accidents reported, including the leakage of thousands of gallons of radioactive waste in 2005. The spill appears to have been contained within the plant. Making matters worse, though, the plant has typically operated at only 50 percent of capacity and has been mired in red ink despite initial predictions of profitability. For these reasons, the facility's future is uncertain (Merrell 2003).

Drawing on the French experience and aware that Yucca Mountain faced major hurdles, the Bush administration attempted to revive interest in reprocessing. In 2006, it announced the formation of the Global Nuclear Energy Partnership. The purpose of the twenty-five-nation organization was to reinvigorate nuclear power and spur interest in reprocessing. The administration accordingly hoped to construct a new reprocessing facility by 2010, but lack of funding stymied these efforts (Hylko 2008). Assuming that the French success can be duplicated, costs will undoubtedly be a major issue. A study by the National Research Council in 1996 estimated that reprocessing all of the existing spent fuel would cost up to $100 billion, whereas finishing the Yucca Mountain facility would run in excess of $90 billion (Kintisch 2005). Another study, by the Boston Consulting Group for Areva, the French nuclear firm that operates La Hague, found that reprocessing "is in an economic range that can be competitive." The report noted specifically that reprocessing can increase the capacity of a repository because the volume of wastes is reduced, thus eliminating the need for a second facility. In addition, spent fuel would not have to be stored on site, so utility costs would be reduced and safety concerns lessened ("New Report" 2006). However, reprocessing is envisioned in conjunction with a repository, not without one. Reprocessing would thus be more costly than a repository alone.

Yucca Mountain

By the early 1980s, it had become clear that salt domes and reprocessing were not realistic possibilities, so the government turned to underground burial as the only viable option remaining. There was also a growing sense of urgency that something needed to be done. As Luther Carter wrote in Science at the time, "it is an acute embarrassment that the waste problem has not been solved" (1983, 33). In this vein, Congress passed the National Waste Policy Act in 1982, requiring the DOE to examine potential locations for repositories, one to be located in the East and the other in the West. The president would then make the final selection, opening the facility in 1998. There were two reasons for selecting two repositories. First, it seemed only fair that no single part of the country should have to store all of tit e waste. The second reason was more practical. It made sense to locate a facility in the East because the bulk of the waste is located there, and a nearby site would both reduce transport distances and lessen safety concerns associated with hauling highly radioactive materials across the country. The idea of an eastern site was eventually dropped, however, in large part for political reasons. It was unlikely that any state would agree to house a repository, and the eastern states' larger congressional delegations have more clout to block pending legislation. The argument can also be made that the West is better suited for a

repository because it has a lessconcentrated population and a larger land area.

In 1986, the DOE announced that three sites in the West would be considered: one in Texas, one in Washington, and one in Nevada - Yucca Mountain. No eastern site would be developed, at least in the near term. To say the least, western politicians were outraged and demanded a legal justification, but none was forthcoming (Marshall 1986). The legislative process then began to move quickly, spearheaded by Louisiana senator Bennett Johnston, who sold the plan for a Nevada site by arguing that it would be less costly to develop because more was known about it, not to mention that many considered Yucca Mountain the best location. At the same time, states such as Texas and Washington could escape the possibility of getting a repository, and eastern states would no longer have to worry about a second repository because the legislation indefinitely deferred that possibility. As a final sweetener, Johnston attached the legislation to a finance bill that included a number of porkbarrel projects, and the legislation was passed in December 1987. Nevada, with the smallest congressional delegation, was the least able to resist the forces in motion. Harry Reid called the new law "base raw power politics" (Rasky 1987). Senator Johnston felt fairly certain that the waste issue had finally been resolved, but others were not so sure. One DOE aide remarked, "It's a roll of the dice with Yucca Mountain. We have reason to believe it will work out, but if it doesn't . . . man, we're in trouble" (Marshall 1988).

The legislation provided for an intensive study of the Nevada site, which is located about 100 miles northwest of Las Vegas, near the nuclear test range where hundreds of nuclear devices were detonated in the 1950s and 1960s. The area seems to have inherent advantages. It is dry (receiving only about seven inches of rain a year), remote, and geologically stable. Some scientists objected to the selection of Yucca Mountain not because the site is necessarily a bad one, but because they felt that all of the potential locations should have been thoroughly investigated and more experimentation carried out in regard to underground burial before a final selection was made. On balance, however, most technical experts believed that a repository, if built correctly, could store the wastes with minimal risk to the public (Krauskopf 1990). As H. W. Lewis observes in his book Technological Risk, "[I]t is embarrassingly easy to solve the technical problems, yet impossible to solve the political problems" (1990, 245^16). Sure enough, the political problems cropped up immediately.

The Struggle

In 1989, Nevada enacted legislation making it illegal to store high-level radioactive waste in the state, and the state refused to issue environmental permits necessary to do a study of the Yucca area. Federal court decisions reversed the permit ban, and the study began after the DOE revamped it (Slovic, Flynn, and Layman 1991). The episode marked the beginning of a twenty-year struggle between the federal government and Nevada, where a prerequisite for election to any statewide office was opposition to the repository. Besides taking various legal actions, the state cited almost every possible technical problem as a reason to end the project. Consider that Nevada recently submitted 229 technical objections to the Nuclear Regulatory Commission (NRC) to

explain why the repository should not be built ("Nevada Points Out" 2008). Some of these concerns may be legitimate. For example, a DOE geologist raised early on the possibility that an earthquake might alter the repository so that groundwater might enter the radioactive waste chamber, producing radioactive steam that would eventually find its way to the outside. A scientist at Los Alamos National Laboratory in New Mexico hypothesized that the waste might actually explode in the 300-meter underground chamber. In response, the DOE appointed independent review panels to examine both claims, but in the end the panels did not find them credible, although some still believe that earthquakes can threaten the repository's integrity. More serious perhaps is the danger of volcanic activity. Scientists believe that an eruption occurred approximately one million years ago near Yucca and another perhaps twenty thousand years ago. Nevada governor Robert Miller claimed that such recent activity should immediately disqualify the site. In response, the DOE asked ten experts to estimate the danger of an eruption. The average estimate was a one in ten thousand chance that an eruption would occur in the next ten thousand years, which apparently satisfied the department (Kerr 1998). In 1999, DOE issued a report stating that it had identified "no show stoppers" at Yucca and had confidence that the repository "would protect public health and the environment for thousands of years" (U.S. DOE 1999).

Not all concerned parties were so positive. For example, a U.S. General Accountability Office report stated that the DOE's predictive models are inadequate and that water might still be a problem. Others believed that high humidity might pose potential threats and that not enough is known about the rock formations at Yucca. Hence, delay and further study were needed (Ewing and Macfarlane 2002). Despite everything, the DOE recommended in 2002 that President Bush designate Yucca Mountain as the repository for high-level radioactive waste in the United States. The president did so, and Congress approved the Yucca Mountain site (Wald 2002). Following congressional approval, Nevada continued to fight the repository with every means available, citing environmental, technical, and transportation concerns, along with poor project management by DOE. The state also refused to grant DOE permission to use the water necessary to drill bore holes to study the site ("Gov. Gibbons" 2007). Along the way, the project picked up both supporters and detractors. The National Academy of Sciences came out in favor of Yucca Mountain, but Nevada gained the support of influential senators such as Hilary Clinton, Barack Obama, and Barbara Boxer, all of whom came out against the repository. To some extent, views on Yucca Mountain were divided along party lines, with Republicans in favor and Democrats opposed.

The process continued to drag on. A federal district court had placed a hold on the licensing process for construction, but finally, in June 2008, the DOE submitted an 8,600-page document to the NRC. Shortly thereafter, the U.S. **Environmental Protection Agency** issued its long-awaited radiation standards for the repository. The million-year standard requires that any person outside the boundaries of the repository receive no more than 15 millirems per year for 10,000 years and 100 millirems per year for the next 990,000 years. The agency maintains that the average person receives about 360 millirems per year from naturally occurring sources. Senator Reid objected to the lowered standard after 1 0,000 years, stating that it would put people at risk. He also

indicated that the **Environmental Protection Agency** ruling might bring about more litigation (Speckman 2008).

By filing the licensing application before the 2008 presidential election, the Bush administration hoped to make it more difficult for Barack Obama, should he become president, to derail the program (John McCain favored the repository), and it appears that the licensing process will continue. However, it will probably take three or four years, with hundreds of technical challenges being raised by Nevada and other concerned parties. Moreover, budget cutbacks may make it difficult for the NRC to investigate all of the challenges (Rogers and Tetreault 2009). Nevertheless, if the NRC eventually approves the repository, President Obama may feel forced to cancel the program, given his sentiments concerning Yucca Mountain. If he does so, the nation's utilities are likely to file lawsuits to recover the billions of dollars they have paid to the federal government for a repository, on top of the more than four dozen lawsuits they have already filed because of the government's failure to dispose of the waste (Vartabedian 2005; Hughes 2008).

Might It Have Been Different?

The long struggle to construct an underground repository may well end with little to show for it. Let us consider whether things might have been done differently to ensure a repository's construction, keeping in mind that most countries heavily involved with nuclear power believe that some type of underground burial will be required ("Planning" 2005), To answer the question, we must examine the fairness issue. Nevada was selected for a repository that no other state wanted and in this sense was treated unfairly. Perhaps if the DOE had stuck to the original plan and selected both an eastern and western location, a sense of "sharing the burden" would have lessened the sense of injustice. Even without an eastern site, DOE could have extensively studied the three western locations as originally planned, while conducting various experiments on underground burial that might have more clearly resolved some of the remaining environmental and technical issues, as some in the scientific community had urged. If this path had been followed, a greater sense of fairness and objectivity would have been embedded in the selection process. The irony, of course, is that in order to speed construction of a repository, none of these actions was taken.

Another possibility would have been to add enough sweeteners to entice Nevada to accept the repository. Such scenarios are not without precedent. For example, people who live near French nuclear plants receive free electricity. The original legislation that designated Yucca Mountain called for the host state to receive $100 million per year, but the amount was later reduced to $20 million (Marshall 1988). Of course, we cannot know now whether more dollars would have assuaged Nevada's feelings of inequitable treatment. Perhaps the payment's reduction further antagonized the state's congressional delegation. However, once the legislation was passed, and Nevada's political leaders initiated a mission to stop the repository, accepting more federal dollars would have been viewed as a bribe and become more difficult to accept.

In any event, the Yucca Mountain episode clearly demonstrates how difficult building a repository will be - after all, Nevada has less political muscle than other states and possesses a site that many believe is well suited for the project. At this point, one can only conclude that the prospects for a repository are bleak. Part of the problem lies in the federal system itself. Although states may not have veto power over federal policies, they clearly can obstruct them, making objectives difficult, if not impossible, to achieve (Kearney and Garey 1982). Harry Reid's recent accession as Senate majority leader, with more control over the budget process, guaranteed more delays even without Barack Obama's election as president.

Politics aside, perhaps the ultimate impediment to construction of a repository is fear of radiation. In this regard, Nevada is a particularly interesting case because the Yucca Mountain area was the site for tests of atomic weapons both above and below ground beginning in the 1950s. In ail, more than nine hundred weapons were detonated, and, at one time, Clark County (where Las Vegas is located) displayed a mushroom cloud on its official seal (Schultz 2009). Thus, one might have expected less opposition to a repository there. Yet surveys indicate that more than 70 percent of Nevadans oppose Yucca Mountain. Beyond the millions spent by the state on advertising to influence public opinion (Zeller 2002), Americans' attitudes toward nuclear power and the wastes it generates have changed over the years. Beginning in the 1970s, the environmental movement and antinuclear activists made the public more aware of the possible dangers and reinforced the fears of radiation. Spencer Weart, in his book Nuclear Fear (1988), has traced these feelings to the early decades of the twentieth century, when images of hideous deformities caused by radiation and fears of mass death and destruction first appeared. Such fears became a horrifying reality in the devastation of Hiroshima and Nagasaki, and the accidents at Three Mile Island and Chernobyl only heightened them. In addition, the government's handling of nuclear waste has not always inspired confidence. During the 1970s alone, eighteen spills of radioactive waste occurred at the government's Hanford Reservation in Washington State. Nuclear scientists have always maintained that these fears are irrational. Recent reports indicate that radiation damage at Chernobyl was much less than predicted, and one scientist has urged that construction of a repository at Yucca Mountain merely be delayed in order to allow the fears to subside further ("Science and Technology" 2005). Unfortunately, such attenuation may take decades to occur, if it ever does, because fears of radiation, irrational or not, are deeply etched in the public mind.

Now What?

At this point, the Obama administration has made no specific proposals about the nuclear waste problem besides ruling out Yucca Mountain. The DOE may appoint a blue-ribbon commission to study the options. In this regard, Obama suggested during the presidential campaign that another site might be developed. Of course, the obvious question is, Where? No state is likely to volunteer for the honor, and, if a state is selected, years of haggling and obstruction probably lie ahead because it is unlikely that any site will measure up to the scrutiny to which it will be subjected. If history is not to be repeated, new techniques for dealing with the waste may be required, as Energy

Secretary Chu has intimated. What might these techniques be? A process known as transmutation, which has been discussed for years, would reduce the period during which spent fuel would be highly radioactive from ten thousand years to three or four hundred. If this technique were to be developed successfully, some state, given the right incentives, might be persuaded to accept a repository. It is obviously much easier to assure a structure's integrity for hundreds of years rather than thousands. Indeed, one of the disconcerting questions Yucca Mountain has always raised is, Can anything be guaranteed for ten thousand years?

Reprocessing may also be pursued once again. To make the technology more palatable, researchers have been investigating techniques that lessen the chances of terrorists' acquiring plutonium from a reprocessing plant. One way to do so is to mix plutonium with uranium (a form of transmutation), creating what is called MOX fuel, which can then be used in commercial nuclear reactors. A MOX fuel demonstration plant under construction in South Carolina has faced major delays, however, and is not expected to open until 2017 (Henderson 2009). Nonetheless, if the process becomes well established, reprocessing might become more acceptable, allowing a reduction of the amount of waste to be stored. In the end, perhaps a combination of newly developed technologies will emerge that makes the storage of radioactive waste less ominous and the construction of a repository more likely.

Conclusions

More than fifty years after the first commercial nuclear plant opened, the radioactive waste dilemma continues to persist with no end in sight. Americans have enjoyed the benefits of nuclear power but have failed to deal with its major burden. Most scientific experts believed early on that the issue could be resolved, and, in a purely technical sense, it might have been solvable. However, nuclear power and politics have always been intertwined, especially with regard to the disposal of nuclear waste. No single state wants to accept a repository, and under the U.S. federal system, forcing a state to do so is extremely difficult. At present, no one seems to know how to resolve the issue. Hence, for the time being and perhaps for a long time, the spent fuel rods will remain at the power plants by default. Perhaps the answer to dealing with radioactive waste will ultimately require a technological fix that will mitigate the political obstacles. Without a doubt, however, the generations that innovated nuclear power will leave the waste problem for later generations to solve, which is perhaps the innovators' ultimate failure.

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