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Table of Contents
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Friday, April 30, 2010

ADMINISTRATOR JACKSON 4
You just feel helpless (*USA TODAY*) 4
Casey wants EPA to investigate (*The River Reporter*) 7
Environmental catastrophe looms from Gulf Coast oil spill (*Kansas City Star*) 8
Gulf of Mexico oil spill reaches Louisiana coast (*Washington Post*) 11
Gulf Coast oil spill could eclipse Exxon Valdez (*Associated Press*) 14
Story also appeared: *Chattanooga Times Free Press* 14
Jackson Vows To Begin Negotiations Over Post-2016 Vehicle GHG Rules (*Inside EPA*) 18
EPA Moves Ahead Of DOT In Drafting GHG Standards For Trucks (*Inside EPA*) 20
Senator Urges EPA To Use Current Authority To Address Drilling Concerns (*Inside EPA*) 22
Industry Backs EPA Coal Ash Enforcement Un der Weaker Waste Rules (*Inside EPA*) 25
FTA Funding Denial Over Rights Issue May Embolden EPA Equity Review (Inside EPA) 28
District Court Order Could Bolster EPA In Pursuit Of Power Plant MACT (*Inside EPA*) 31
Kentucky Permits May Mark Early Showdown Over EPA Mountaintop Guide (*Inside EPA*) 33
EDITORIAL / OP-ED / COMMENTARY / LETTERS 36
Cleanup crucial for stream, lake (Albany Times Union) 36
AIR 37
Hearing set for Lafarge air permit (*Albany Times Union*) 37
EPA issues order against Tonawanda Coke (*Buffalo News*) 38
No health threats found in air samples (*Tampa Bay Newspapers)* 39
Pollution monitor fails Poconos, along with most of Pa.(*Pocono Record*) 40

Air pollutants 42
DHH, DEQ, EPA Monitoring Air Quality (*WDSU*) 42
GOP Sees Opening For Softened Utility Air Bill After Climate Effort Stalls (*Inside EPA*) 42
EPA Air Chief Highlights Major Research Barriers To Multipollutant Rules (*Inside EPA*) 46
EPA Eyes Dual Emissions Caps To Limit Trading In CAIR Replacement (*Inside EPA*) 48
ARSENIC 51
Industry Ramps Up Hill Lobbying To Delay EPA Arsenic Risk Assessment (*Inside EPA*) 51
BROWNFIELDS 53
EPA 'brownfield' awards give $3 million to 8 communities (*Times Argus*) 53
BUDGET 54
Senate Budget Resolution Offers $400 Million Boost To EPA In FY11 (*Inside EPA*) 54
CLIMATE CHANGE / GLOBAL WARMING 55
Plan B: California Braces for Climate Change (*Wired News*) 55
EIA to Assess Senate Climate Bill's Impacts on Energy Supply, Demand (*New York Times*) 58
Narrower Climate Bill Alternatives Attract Attention After Stalled Roll-Out (*Inside EPA)* 60
CORRECTION 61
Correction (*Inside EPA*) 61
ENERGY 61
Crystal River Elementary School (Carbondale, Colo.) selected as contestant in EPA National Building Competition (*Ethiopian Review*) 61
ENFORCEMENT 62
Industry Sees Ruling Opening Door To Court Review Of Data Quality Suits (*Inside EPA*) 65
EPA Offers Enforcement Flexibility For Lead Paint Renovation Rule (*Inside EPA*) 67
GENERAL 68
Federal Career Intern Program blasted by some as undermining open market hiring (*Washington Post*) 68
HAZARDOUS WASTE 70
White House closely watching oil spill (*MSNBC*) 70
EPA: City responsible for landfill cleanup (*Middletown Press*) 71
MINING 72
EPA sets public hearing on Spruce Mine permit (*Charleston Gazette*) 72
PESTICIDES 74
Court forces reregistration of pesticide (*Capital Press*) 74
EPA Faces Host Of Queries Over Looming Draft Chemical Spraying Permit (*Inside EPA*) 75
SOLID WASTE 78
Industry Backs EPA Coal Ash Enforcement Under Weaker Waste Rules (*Inside EPA*) 78

SUPERFUND 81
Byerly questions county's spending on homeless center (*Gainesville Sun*) 81
TOXICS 83
US EPA launches public database containing toxicity test results for chemicals (*Chemical Watch*) 83
TSCA Reform Bill Could Target Broad List Of Manufacturers, Industry Fears (*Inside EPA*) 83
WATER 86
Citing Faulty Data, SBA Petitions EPA To Soften Strict Construction ELG (*Inside EPA*) 87
EPA Extends Strict Federal Stormwater Control Approach To Municipalities (*Inside EPA*) 88
Mining Officials Warn New EPA Water Guide May Affect Other Industries (*Inside EPA*) 90
Water Utilities Urge EPA To Quickly Require Industry Monitoring For Atrazine (*Inside EPA*) 92
Industrial Disasters Drive Activist Push For Stricter Environmental Controls (*Inside EPA*) 93
EPA Eyes New Perchlorate Safety Method, Complicating Regulatory Push (*Inside EPA*) 95
In court, EPA seeks Lake Champlain pollution curbs (*Barre Montpelier Times Argus)* 98
EPA: Magellen to pay $418,000 fine for gas spill (*BusinessWeek*) 101
Sullivan joins pro-oil group against EPA (*Water World*) 101
EPA will reconsider Lake Champlain cleanup plan (*Burling Free Press*) 103
EPA fines Magellan for leak (*Tulsa World*) 104
EPA orders action on pollution control (*Patriot News*) 105
Perchlorate limits to be set for water (*North Jersey com*) 106
Judge sets aside Wash. standards for salmon farms (*Associated Press*) 107
Story also appeared: *Seattle Post Intelligencer* 107

ADMINISTRATOR JACKSON

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You just feel helpless (*USA TODAY*)

April 30, 2010 Friday
FINAL EDITION
SECTION: NEWS; Pg. 1A
'You just feel helpless';
The massive oil spill heading toward Louisiana threatens to become an economic and environmental disaster -- and is raising new questions about offshore drilling
BYLINE: Brian Winter and Rick Jervis
VENICE, La. -- Looking out to sea, awaiting one of the worst oil spills in U.S. history, fourth-generation oyster farmer John Tesvich thought about the last major disaster to hit the Gulf Coast.

"It's just like what we saw with Hurricane Katrina," said Tesvich, 53. "At first, it was just another storm, just like this was just another oil spill. But by the time they realize how bad it really is, it's too late.

"Why is the response taking so long? Why can't they stop this?"

More than a week after the oil rig Deepwater Horizon exploded off the Louisiana coast, the Delaware-sized oil slick could make landfall as early as today, Louisiana Gov. Bobby Jindal said. President Obama pledged "every single available resource" to help, including inflatable booms from the Navy to try and corral the spill. But he warned that the oil eventually could affect a wide stretch of coastline from Texas to Florida.

The spill threatens to have far-reaching consequences.

It could cause widespread damage to wildlife in an area of highly sensitive marshes, wetlands and estuaries that produce one-quarter of the seafood consumed in the USA, said Rep. Charlie Melancon, D-La., whose district includes Louisiana's southeast coast. "Every American is going to feel this if it gets as bad as they say it might," he said.

Melancon said he was "waiting for answers" from the federal government as to what equipment was available to stop the oil from spreading, and when it could get there. "You just feel helpless," he said. "This is an area that has been through an awful lot."

Jindal warned that billions of dollars' worth of coastal restoration projects undertaken after Hurricanes Katrina and Rita hit in 2005 are at risk. The disaster also could affect a pillar of Obama's energy plan -- an initiative announced a month ago that could open up new areas off the Atlantic Coast and elsewhere to offshore drilling.

Fisherman Acy Cooper said he was frustrated that the cleanup effort -- headed by the Coast Guard and the oil rig's operator, global energy giant BP -- waited until Thursday

to begin recruiting local fishermen to help.

"We should've been the first ones they contacted," Cooper said. "We know the bayous better than anyone else."

The growing magnitude of the disaster prompted comparisons with another famous spill -- the 1989 accident involving the Exxon Valdez oil tanker, which spilled almost 11 million gallons of crude into Alaska's Prince William Sound, killing at least 250,000 sea birds and leaving many others bathed in thick, black sludge.

Jeff Short, a former government chemist living in Juneau, Alaska, who helped assess damage from the Valdez two decades ago, said he was feeling "deja vu all over again."

For now, the Gulf spill is smaller -- spewing an estimated 210,000 gallons a day, the Coast Guard says. Yet BP says it still has not determined the cause of the April 20 explosion -- which means BP and government officials are uncertain how to plug the leaks that are nearly a mile underwater and out of reach of most equipment.

BP officials initially underestimated the size of the spill, saying earlier this week that the leak was releasing about 42,000 gallons a day.

Short said that unless the leaks are plugged within the next two to four weeks, the amount of oil spilled could equal that of the Valdez.

In Venice, La., near the mouth of the Mississippi River, workers were unfurling hundreds of feet of oil-catching booms and loading them into supply boats, which motored to nearby bayous and barrier islands. Cleanup materials, such as giant "socks" that soak up oil and skimming drums, were being brought to local staging areas, Coast Guard Chief Petty Officer Robert Birdwell said.

Sally Brice-O'Hara, a Coast Guard rear admiral, said in Washington that officials were mobilizing to prevent "an Exxon Valdez-type of case."

Delay on drilling plan?

In Washington, fallout from the spill was turning some of Obama's usual allies against him. Sen. Bill Nelson, D-Fla., sent Obama a letter saying he would file legislation calling for a temporary halt to the president's plans to expand offshore drilling.

Obama says that more drilling is part of a comprehensive plan to reduce America's dependence on foreign oil. He also has announced investments in renewable energies such as solar and wind power and tougher emissions standards for cars.

Offshore drilling in the USA accounts for about 7% of what the nation consumes each day -- which is why environmental advocates such as Short say it's not worth the environmental risks.

However, about 60% of the USA's undiscovered oil is thought to be offshore, according to estimates by the U.S. Minerals Management Service.

White House spokesman Robert Gibbs has said Obama had not decided to modify his drilling plan, though he said an investigation into the explosion's cause could change his mind.

Another Senate Democrat, Ben Cardin of Maryland, said Thursday the spill likely would cause the plan to be "modified, if not totally rejected."

"America has not yet understood exactly what this disaster means," Cardin said. "When they start to see wildlife come up dead, covered with oil, beaches closed, people losing jobs because of the seafood industry being adversely affected ... it will finally convince people that this is risky business."

Jack Gerard, president of the American Petroleum Institute, which represents energy companies, called the spill a "tragic incident" but said it should not affect offshore drilling.

"Nothing has changed," he said. "When we get back to the politics of energy, oil and natural gas are essential to the economy and our way of life."

The Deepwater Horizon, like many offshore oil rigs, had a primary shut-off system that is supposed to turn off the oil in the event of catastrophic failure.

However, the shutoff system apparently failed.

Asked why the oil industry did not have more effective safeguards in place to prevent spills such as the one in the Gulf, or help stop leaks in deep waters once they happen, Gerard replied: "We don't know why this (spill) happened. We're in meetings with government officials at the highest levels to identify the causes and figure out a solution."

Melancon, the Louisiana congressman, said he also supports more drilling.

"It's an accident that happened," he said. "It's a matter of doing the best we can, getting it cleaned up, and finding out what went wrong."

He said the Valdez accident prompted tighter safety regulations for oil tankers. "There may be something we can learn from this disaster, too."

'It could be a real problem'

Ayana McIntosh-Lee, a BP spokeswoman in Venice, said the company was scrambling to clean up the damage. "We understand the urgency," she said. "We are looking for

assistance from all different sectors."

Obama said the government was sending SWAT teams to the Gulf to inspect all platforms and rigs. He also dispatched several Cabinet officials to the area including Environmental Protection Agency chief Lisa Jackson.

The spill already is hurting the coastal economy. Hunter Caballero, who captains a 32-foot catamaran for charter fishing trips, says two of his customers canceled Thursday -- and when he came back to shore, he had 30 missed calls on his cellphone from concerned clients.

Even as his boat cruised 40 miles north of the spill, Caballero said he could detect the pungent smell of oil. "If it keeps coming, it could be a real problem," he said.

Greg Stone, chief marine scientist for Conservation International, said cleanup in Gulf Coast wetlands "is probably going to be harder" than it was in Alaska following the Valdez spill.

"If it was a rock or a beach, like in Alaska, you can just scrape it off. It's expensive and hard but you can do it. With marshes, it's a different story," Stone said.

The Louisiana Department of Wildlife and Fisheries said in a statement it was considering partnering with the Department of Corrections to train prisoners to help clean birds affected by oil.

Tesvich, also head of the Louisiana Oyster Task Force, an industry group, was less hopeful the spill could be a learning experience. He said a task force of local fishermen was formed after the Valdez incident. The group met once -- but there hasn't been any follow-up for 20 years, he said.

"I was just telling my business partner this could be it. This could go on for a month, two months. Then what do we do?"

Contributing: David Jackson in Washington, D.C. Winter reported from McLean, Va.

Casey wants EPA to investigate (*The River Reporter*)

Dimock contamination cited as reason for drilling caution
By FRITZ MAYER
SCRANTON, PA — Senator Bob Casey joined up with residents of Dimock at a news conference at his Scranton office on April 26 to call on the Environmental Protection Agency (EPA) to conduct an examination of gas drilling as it relates to ground water contamination and other possible harmful consequences in the state.

In a letter to EPA administrator Lisa Jackson, Casey noted that the private drinking wells of 14 families in Dimock have been contaminated. He wrote, “Several drinking water wells have exploded due to a suspected buildup of natural gas and many wells have been found to contain so much natural gas that one homeowner was advised to open a window if he plans to take a bath.”

In 2009, Casey introduced the Fracturing Responsibility and Awareness of Chemicals Act (FRAC). The legislation would repeal a Bush Administration exemption provided for the oil and gas industry and would require them to disclose the chemicals they use in their hydraulic fracturing processes. Currently, the oil and gas industry is the only industry granted an exemption from complying with the Safe Drinking Water Act.

Cabot Oil and Gas recently agreed to provide permanent sources of potable water to the 14 families in Dimock, and to plug and abandon three gas wells located close to two of the homes. In a press release issued on April 19, Cabot said it had also hired Dr. Robert Watson of Penn State University to assist the company in its effort to fix the problems in the area.

The release came in the wake of an order issued by the Pennsylvania Department of Environmental Protection (DEP) on April 15 that Cabot could not drill any more wells in the state until it plugged the wells in question, which the DEP believes are the source of underground migrating methane and other materials that have contaminated the wells.

The company, however, continues to deny that their drilling operations are the source of the contamination. Cabot spokesman Ken Komoroski said it is scientifically “not fair” to judge that Cabot is responsible for the contamination for the short period of time being considered. He said the complexity of the geology in the region means that the source of the contamination might not be accurately determined for years.

Environmental catastrophe looms from Gulf Coast oil spill (*Kansas City Star*)

April 30, 2010 Friday
SECTION: A; Pg. 1
By Star news services
VENICE, La. | An oil spill that threatened to eclipse even the Exxon Valdez disaster spread out of control and started washing ashore Thursday night along the Gulf Coast.

Fishermen rushed to scoop up shrimp, and crews spread floating barriers around marshes.

The spill was bigger than imagined — five times as great as first estimated — and closer to shore than officials had estimated Thursday afternoon. Fingers of oily sheen were reaching the Mississippi River delta, lapping the Louisiana shoreline in long, thin

lines.

“It is of grave concern,” David Kennedy of the National Oceanic and Atmospheric Administration told The Associated Press. “I am frightened. This is a very, very big thing. And the efforts that are going to be required to do anything about it, especially if it continues on, are just mind-boggling.”

Resources from the Navy were marshaled to supplement an operation that already consisted of more than 1,000 people and scores of vessels and aircraft.

The oil slick could become the nation’s worst environmental disaster in decades, threatening hundreds of species of fish, birds and other wildlife along the Gulf Coast, one of the world’s richest seafood grounds, teeming with shrimp, oysters and other marine life. Oil was thickening in waters south and east of the Mississippi delta about five miles offshore.

The Navy provided 50 contractors, seven skimming systems and 66,000 feet of inflatable containment boom. About 210,000 feet of boom had been laid down to protect the shoreline in several places along the Gulf Coast, though experts said that marshlands presented a far more daunting cleaning challenge than sandy beaches.

Cade Thomas, a fishing guide in Venice, worried that his livelihood would be destroyed. He said he did not know whether to blame the Coast Guard, the federal government or oil company BP PLC.

“They lied to us,” Thomas said. “They came out and said it was leaking 1,000 barrels (a day), when I think they knew it was more. And they weren’t proactive,” he said. “As soon as it blew up, they should have started wrapping it with booms.”

The Coast Guard worked with BP, which operated the oil rig that exploded and sank last week, to deploy floating booms, skimmers and chemical dispersants, and set controlled fires to burn the oil off the water’s surface.

The fires, which were stopped Wednesday when seas became too rough, came after crews operating submersible robots failed to activate a shut-off device that would halt the flow of oil.

Government officials said the blown-out well 40 miles offshore was spewing about 5,000 barrels, or 200,000 gallons, of oil a day.

At that rate, the spill could eclipse the worst oil spill in U.S. history — the 11 million gallons that leaked from the grounded tanker Exxon Valdez in Alaska’s Prince William Sound in 1989 — in the three months it could take to drill a relief well and plug the gushing well 5,000 feet underwater.

Doug Suttles, chief operating officer for BP Exploration and Production, had initially

disputed the government's larger estimate. But he later acknowledged on NBC's "Today" show that the leak might be as bad as federal officials said.

An emergency shrimping season was opened to allow shrimpers to scoop up their catch before it was fouled by oil. And shrimpers were being lined up to use their boats as makeshift skimmers in the shallows.

Louisiana Gov. Bobby Jindal declared a state of emergency Thursday so officials could begin preparing for the oil's impact. He said at least 10 wildlife management areas and refuges in his state and neighboring Mississippi were in the oil plume's path.

The declaration also noted that billions of dollars had been invested in coastal restoration projects that might be at risk. He also asked the federal government if he could call up 6,000 National Guard troops to help.

President Barack Obama dispatched Homeland Security Secretary Janet Napolitano, Interior Secretary Ken Salazar and **Environmental Protection Agency** administrator Lisa Jackson to help with the spill. The president said the White House would use "every single available resource" to respond.

Obama has directed officials to aggressively confront the spill, but the cost of the cleanup will fall on BP, White House spokesman Nick Shapiro said.

Napolitano announced the creation of a second command post in Mobile, Ala., in addition to the one in Louisiana, to manage potential coastal impact in Alabama, Mississippi and Florida.

The response effort has been driven by BP under the oversight of the Coast Guard. Although federal resources, including naval support, were available before Wednesday, officials had given little indication that such reinforcements would be deployed so quickly and at such a scale.

"Some of it existed from the start," Rear Adm. Mary Landry of the Coast Guard, the federal on-scene coordinator, said of the federal resources. "We can ramp it up as we need it."

Asked whether the Coast Guard has maintained confidence in BP's efforts, Landry said, "BP, from Day 1, has attempted to be very responsive and be a very responsible spiller."

BP in turn has pointed out on more than one occasion that Transocean owned the oil rig and the blowout preventer, a device that apparently failed to function properly. That is continuing to be the most significant obstacle to stopping the spill.

Underscoring how acute the situation has become, BP is now soliciting ideas and techniques from four other major oil companies — ExxonMobil, Chevron, Shell and

Anadarko.

BP officials have also requested help from the Defense Department in their attempts to activate the blowout preventer, a stack of hydraulically activated valves at the top of the well that is designed to seal off the well in the event of a sudden pressure release.

Timeline of a catastrophe April 21: An explosion rocks the huge Deepwater Horizon oil drilling platform in the Gulf of Mexico, injuring 17 people and setting off a search for 11 missing workers.

April 22: The oil platform sinks, creating the potential for a major spill.

Saturday: Crews discover the leak and estimate it is spewing 1,000 barrels a day.

Sunday: Robot submarines are launched to try to shut off the leak.

Tuesday: Crews plan controlled burns of the leaking oil

Wednesday: Officials find a second leak and revise their estimate of the spill to 5,000 barrels a day.

Thursday: Federal government ramps up its assistance as the oil begins reaching the Louisiana shore.

Gulf of Mexico oil spill reaches Louisiana coast (*Washington Post*)

April 30, 2010 Friday
Suburban Edition

A-SECTION; Pg. A01
Maryland
Gulf of Mexico oil spill reaches Louisiana coast;
Drilling plans criticized Damage could be worse than Exxon Valdez
By Steven Mufson and Michael D. Shear
The worsening oil spill in the Gulf of Mexico on Thursday threatened not only the shores of five states but also President Obama's plan to open vast stretches of U.S. coastline to oil and gas drilling.

Hours before the spill started washing ashore in Louisiana late Thursday, members of Congress issued new calls for Obama to abandon his plans for expanded offshore drilling, and White House officials conceded that the spreading oil slick could cause the president to rethink his position. "We need to figure out what happened," White House press secretary Robert Gibbs said. "Would a finding of something possibly affect that? Of course."

The outlook in the Gulf of Mexico remained bleak in the wake of the April 20 explosion that sank the Deepwater Horizon drilling rig and killed 11 workers. A change in the weather and choppy waters prevented a second burn of oil at sea and slowed efforts by a flotilla of ships to skim the oily mixture from the surface of the gulf, federal officials said. Continuing efforts to use remote-controlled robotic submarines to activate a malfunctioning blowout preventer lying on the sea floor in 5,000 feet of water failed.

The Coast Guard approved an experimental plan by petroleum giant BP, which had leased the rig, to apply chemical dispersants underwater near the places where oil is gushing from three breaks in the well pipes at an estimated rate of 5,000 barrels a day.

In Washington, the White House held a series of high-profile media events aimed at communicating that the administration is fully engaged in the crisis. Obama went to the Rose Garden and said, "While BP is ultimately responsible for funding the cost of response and cleanup operations, my administration will continue to use every single available resource at our disposal, including potentially the Department of Defense, to address the incident."

At a midday news conference, the administration rolled out two Cabinet chiefs and other senior White House advisers to assert that the government would do whatever it could to help BP stop the leak.

The administration is well aware that the president's campaign victory was built in part on a belief among voters that he would do a better job at responding to disasters like Hurricane Katrina than did President Bush. "This is in that list: Are you competently running government?" Gibbs said. He said the news conference with senior officials was aimed at letting the press and the public "know what we've done to respond."

Janet Napolitano, secretary of the Department of Homeland Security, said there were more than 50 vessels as well as aircraft deployed to the area of the spill and that workers had laid down 174,060 feet of absorbent foam booms and recovered 18,180 barrels of an oily mixture from the gulf's surface. She said they would also open a second command center in Mobile, Ala., in addition to the one in Louisiana.

The Navy said it is sending 66,000 feet of inflatable boom and seven skimming systems, and would offer its bases in the region as staging areas for the operation.

White House officials said they began holding regular conference calls with BP executives soon after the accident. On Thursday, Obama also called the governors of the five Gulf Coast states, and Interior Secretary Ken Salazar met with oil and gas industry executives to appeal for ideas and help. Louisiana Gov. Bobby Jindal declared a state of emergency and mobilized National Guard troops.

On Friday, Napolitano, Salazar and **EPA** Administrator Lisa P. Jackson will travel to the Gulf Coast at the president's request with Carol Browner, the White House director of energy and **climate change** policy, and Jane Lubchenco, head of the National Oceanic

and Atmospheric Administration, to inspect ooperations dedicated to minimizing environmental risks.

Extensive damage

Despite these efforts, it remained possible that the oil leak could continue for as long as three months, by which time it would rival the size of the 1989 spill from the Exxon Valdez. If efforts to reactivate the blowout-preventer fail, BP will try to lower 100-ton domes on top of the leaks in the pipes now lying on the sea floor and funnel the oil up through pipes to storage vessels. Such methods have been used before, but generally at depths of 350 feet or less.

BP also plans to start drilling a relief well Friday that would intercept the oil from the existing well and plug the leak, but the company said that could take several weeks. It took more than two months to plug a similar well blowout off the coast of Australia late last year.

By that time, the damage from the spill could be extensive and the political effect on Obama's offshore drilling plan and broader **climate change** agenda uncertain.

"I don't know whether it changes our understanding of offshore oil," David Pumphrey, deputy director of the energy and national security program at the Center for Strategic and International Studies, said of the accident. "But I think it changes the political debate quite a bit."

In backing wider offshore oil and gas exploration only a month ago, Obama promised to "employ new technologies that reduce the impact of oil exploration." He acknowledged that his decision would provoke criticism from those who decried the expansion and those who said it did not go far enough.

"Ultimately, we need to move beyond the tired debates of the left and the right, between business leaders and environmentalists, between those who would claim drilling is a cure-all and those who would claim it has no place," Obama said.

Political damage, too

The accident in the gulf may provide more firepower for the critics on the left who for years have lobbied presidents and Congress to keep in place federal moratoriums on further offshore exploration. Those moratoriums have expired.

Florida Sen. Bill Nelson (D) called on Obama to step back from his expanded offshore drilling plans. In a letter to the president, Nelson said he would file legislation to ban the Interior Department from following through on Obama's proposal for new seismic and drilling activity. He said the gulf spill "may be an environmental and economic disaster that wreaks havoc for commercial fishing and tourism along the Gulf of Mexico coast."

Dan McLaughlin, a top aide to Nelson, said it was too early to say whether the federal government had responded adequately to what he called "our worst nightmare come true." But McLaughlin asked why the government had not done more to ensure that the oil companies could shut down a well if a catastrophic failure happened. "Somebody is going to have to ask the question as to why the regulators didn't put this question to the industry before?" McLaughlin said. "If everything fails, then what?"

That inquiry will likely focus on the blowout-preventer, which like the sunken drilling rig was owned by Transocean. In Norway, for example, blowout preventers are required to have a device known as an acoustic valve that can help assure activation in the event of an accident, but that device isn't required in the United States and wasn't part of the blowout preventer used on this well. BP Chief Executive Tony Hayward said Wednesday that the blowout preventer had been inspected 10 days before the accident.

The Minerals Management Service, a part of the Interior Department that oversees safety on offshore rigs, said it would complete new inspections of all gulf exploration drilling rigs within seven days to prevent a repeat of the April 20 blast.

Obama aides stressed at the midday briefing that BP would bear the cost of the spill, including the cost of plugging the well, cleaning shorelines and paying for government air and water tests. Separately, fishermen and others anticipating environmental damage filed class-action suits against the company. On a day when the stock market rose broadly and sharply, BP's stock price fell more than 8 percent to $52.56 a share.

Gulf Coast oil spill could eclipse Exxon Valdez (*Associated Press*)

Story also appeared: *Chattanooga Times Free Press*

Friday, April 30, 2010
Associated Press
By CAIN BURDEAU and HOLBROOK MOHR
Associated Press Writers
VENICE, La. — An oil spill that threatened to eclipse even the Exxon Valdez disaster spread out of control with a faint sheen washing ashore along the Gulf Coast on Thursday night as fishermen rushed to scoop up shrimp and crews spread floating barriers around marshes.

The spill was bigger than imagined — five times more than first estimated — and closer. Faint fingers of oily sheen were reaching the Mississippi River delta, lapping the Louisiana shoreline in long, thin lines.

“It is of grave concern,” David Kennedy of the National Oceanic and Atmospheric Administration, told The Associated Press. “I am frightened. This is a very, very big

thing. And the efforts that are going to be required to do anything about it, especially if it continues on, are just mind-boggling."

The oil slick could become the nation's worst environmental disaster in decades, threatening hundreds of species of fish, birds and other wildlife along the Gulf Coast, one of the world's richest seafood grounds, teeming with shrimp, oysters and other marine life. Thicker oil was in waters south and east of the Mississippi delta about five miles offshore.

The leak from the ocean floor proved to be far bigger than initially reported, contributing to a growing sense among many in Louisiana that the government failed them again, just as it did during Hurricane Katrina. President Barack Obama dispatched Cabinet officials to deal with the crisis.

Cade Thomas, a fishing guide in Venice, worried that his livelihood will be destroyed. He said he did not know whether to blame the Coast Guard, the federal government or oil company BP PLC.

"They lied to us. They came out and said it was leaking 1,000 barrels when I think they knew it was more. And they weren't proactive," he said. "As soon as it blew up, they should have started wrapping it with booms."

The Coast Guard worked with BP, which operated the oil rig that exploded and sank last week, to deploy floating booms, skimmers and chemical dispersants, and set controlled fires to burn the oil off the water's surface.

The company has requested more resources from the Defense Department, especially underwater equipment that might be better than what is commercially available. A BP executive said the corporation would "take help from anyone."

Government officials said the blown-out well 40 miles offshore is spewing five times as much oil into the water as originally estimated — about 5,000 barrels, or 200,000 gallons, a day.

At that rate, the spill could eclipse the worst oil spill in U.S. history — the 11 million gallons that leaked from the grounded tanker Exxon Valdez in Alaska's Prince William Sound in 1989 — in the three months it could take to drill a relief well and plug the gushing well 5,000 feet underwater on the sea floor.

Ultimately, the spill could grow much larger than the Valdez because Gulf of Mexico wells tap deposits that hold many times more oil than a single tanker.

Doug Suttles, chief operating officer for BP Exploration and Production, had initially disputed the government's larger estimate. But he later acknowledged on NBC's "Today" show that the leak may be as bad as federal officials say. He said there was no

way to measure the flow at the seabed, so estimates have to come from how much oil rises to the surface.

Mike Brewer, 40, who lost his oil spill response company in the devastation of Hurricane Katrina nearly five years ago, said the area was accustomed to the occasional minor spill. But he feared the scale of the escaping oil was beyond the capacity of existing resources.

“You’re pumping out a massive amount of oil. There is no way to stop it,” he said.

An emergency shrimping season was opened to allow shrimpers to scoop up their catch before it is fouled by oil. And shrimpers were being lined up to use their boats as makeshift skimmers in the shallows.

This murky water and the oysters in it have provided a livelihood for three generations of Frank and Mitch Jurisich’s family in Empire, La.

Now, on the open water just beyond the marshes, they can smell the oil that threatens everything they know and love.

“Just smelling it, it puts more of a sense of urgency, a sense of fear,” Frank Jurisich said.

The brothers hope to get all the oysters they can sell before the oil washes ashore. They filled more than 100 burlap sacks Thursday and stopped to eat some oysters. “This might be our last day,” Mitch Jurisich said.

Without the fishing industry, Frank Jurisich said the family “would be lost. This is who we are and what we do.”

Louisiana Gov. Bobby Jindal declared a state of emergency Thursday so officials could begin preparing for the oil’s impact. He said at least 10 wildlife management areas and refuges in his state and neighboring Mississippi are in the oil plume’s path.

The declaration also noted that billions of dollars have been invested in coastal restoration projects that may be at risk. He also asked the federal government if he could call up 6,000 National Guard troops to help.

As dawn broke Thursday in the oil industry hub of Venice, about 75 miles from New Orleans and not far from the mouth of the Mississippi River, crews loaded an orange oil boom aboard a supply boat at Bud’s Boat Launch. There, local officials expressed frustration with the pace of the government’s response and the communication they were getting from the Coast Guard and BP officials.

“We’re not doing everything we can do,” said Billy Nungesser, president of Plaquemines Parish, which straddles the Mississippi River at the tip of Louisiana.

Tension was growing in towns like Port Sulphur and Empire along Louisiana Highway 23, which runs south of New Orleans along the Mississippi River into prime oyster and shrimping waters.

Companies like Chevron and ConocoPhillips have facilities nearby, and some residents are hesitant to criticize BP or the federal government, knowing the oil industry is as much a staple here as fishing.

“I don’t think there’s a lot of blame going around here. People are just concerned about their livelihoods,” said Sullivan Vullo, who owns La Casa Cafe in Port Sulphur.

A federal class-action lawsuit was filed late Wednesday on behalf of two commercial shrimpers from Louisiana, Acy J. Cooper Jr. and Ronnie Louis Anderson.

The suit seeks at least $5 million in compensatory damages plus an unspecified amount of punitive damages against Transocean, BP, Halliburton Energy Services Inc. and Cameron International Corp.

In Buras, La., where Hurricane Katrina made landfall in 2005, the owner of the Black Velvet Oyster Bar & Grill couldn’t keep his eyes off the television. News and weather shows were making projections that oil would soon inundate the coastal wetlands where his family has worked since the 1860s.

It was as though a hurricane was approaching, maybe worse.

“A hurricane is like closing your bank account for a few days, but this here has the capacity to destroy our bank accounts,” said Byron Marinovitch, 47.

“We’re really disgusted,” he added. “We don’t believe anything coming out of BP’s mouth.”

Signs of the 2005 hurricane are still apparent here: There are schools, homes, churches and restaurants operating out of trailers, and across from Marinovitch’s bar is a wood frame house abandoned since the storm.

A fleet of boats working under an oil industry consortium has been using booms to corral and then skim oil from the surface.

BP conducted a test burn on Wednesday, but abandoned a plan to set fire to more oil after weather conditions deteriorated. The attempt to burn some of the oil came after crews operating submersible robots failed to activate a shut-off device that would halt the flow.

Adm. Mike Mullen, chairman of the Joint Chiefs of Staff, was briefed Thursday on the issue, said his spokesman, Capt. John Kirby. But Kirby said the Defense Department

has received no request for help, nor is it doing any detailed planning for any mission on the oil spill.

Obama dispatched Homeland Security Secretary Janet Napolitano, Interior Secretary Ken Salazar and Environmental Protection Agency administrator Lisa Jackson to help with the spill. The president said the White House would use “every single available resource” to respond.

Obama has directed officials to aggressively confront the spill, but the cost of the cleanup will fall on BP, White House spokesman Nick Shapiro said.

Mohr reported from Jackson, Miss. Associated Press writers Janet McConnaughey, Kevin McGill, Michael Kunzelman and Brett Martel in New Orleans, and Melinda Deslatte in Baton Rouge also contributed to this report.

April 30, 2010

Jackson Vows To Begin Negotiations Over Post-2016 Vehicle GHG Rules (*Inside EPA*)

EPA Administrator Lisa Jackson is vowing to engage in new negotiations with automakers, other federal agencies and California in an effort to continue through model year 2017 and beyond a landmark pact between the various groups that resulted in first-time national greenhouse gas (GHG) and fuel economy vehicle rules for model years 2012-2016.

At an April 28 House Energy & Commerce Committee hearing, Jackson promised to get the negotiations going in response to questions from Rep. John Dingell (D-MI) on extending the federal rules. Securing a second broad nationwide pact is key because California is already starting work on new rules for post-2016 model year vehicles, which could result in more stringent GHG limits than whatever EPA and the Transportation Department (DOT) end up requiring.

Jackson at the hearing told Dingell that “it would be a stretch” to say that actual negotiations have begun on federal vehicle GHG rules for model years 2017 and later. Instead, she characterized it as more of an expression of interest for such negotiations by automakers, who want the Obama administration to begin talks on the next round of federal rules as soon as possible, so that California does not end up driving the national standard for 2017 and beyond.

Jackson told Dingell -- chairman emeritus of the energy panel -- that it would be “only a matter of time” before the agency gets involved in the next round of discussions. But

Dingell sought to make it a priority, noting model year 2017 vehicles are only a year or two away from being designed, and Jackson agreed to do so.

EPA June 30 approved California's Clean Air Act waiver request that allowed the state to establish first-time GHG vehicle rules for model years 2012-2016, which 13 other states also adopted.

The administration approved the waiver as part of the deal with automakers, states, and other stakeholders to apply the California standards nationwide, which also addressed industry's concerns about a "patchwork" of differing state standards and maintained California's ability to implement its own rules for model years 2017-2025 (*Inside EPA*, July 3).

Earlier this month, automakers asked federal courts to dismiss their long-running challenge against the California GHG vehicle rules, which was filed ahead of the national agreement, but reserved the right to file future suits over California's pending rules for later model years (*Inside EPA*, April 16).

California has been working on its proposed GHG standard for model years 2017-2025 but has pushed back until at least the fall the adoption of the standard, after earlier suggesting it could be adopted this summer, a state source has said.

California and federal officials have indicated a general effort to closely coordinate the new state standards with federal rules in the hope of reaching a second national pact on GHG limits and fuel economy standards, and the auto industry has said California should work with EPA and DOT officials to develop the next round of limits.

At the energy committee hearing, Jackson added that the automaker agreement on the model year 2012-2016 rules has spawned industry interest outside the passenger vehicle sector looking for a similar approach. EPA and DOT are also working toward a possible combined GHG and fuel efficiency standards for large trucks (*see related story*).

At the hearing Jackson also defended the legality of the agency's proposed GHG "tailoring" rule that establishes when first-time GHG limits will apply in Clean Air Act permits, saying the final rule would likely stand during an expected legal challenge. That in turn would give Congress more time to pass comprehensive climate legislation without causing disastrous consequences for never-before-regulated sources that would be subject to GHG limits the tailoring rule will exempt.

In response to questions from Energy & Commerce Committee Chairman Henry Waxman (D-CA), Jackson said the agency's general counsel believes the tailoring rule is legally sound. But if it is challenged it is unlikely that the rule would be stayed during the litigation, allowing the rule to remain in place and shield small GHG sources from regulation, Jackson said.

EPA is expected to soon finalize the rule, which will significantly raise the Clean Air Act regulatory threshold for GHGs at stationary sources, targeting the largest sources first and then phasing in smaller sources. Jackson called the rule a “very slow, measured approach” to establishing GHG limits and noted that everything the agency has done in terms of GHG rules is designed to minimize their impact under the air law.

When EPA proposed the tailoring rule last fall, sources said the approach may be on shaky legal ground but the legal uncertainty could have been part of the agency’s strategy in prodding Congress to act (*Inside EPA*, Oct. 9).

Jackson said the final rule will include only sources subject to Title V permitting for a criteria pollutant and then later next year will phase in a small number of other large sources.

April 30, 2010

EPA Moves Ahead Of DOT In Drafting GHG Standards For Trucks (*Inside EPA*)

EPA has been quietly working on a draft rule to regulate greenhouse gas (GHG) emissions from medium- and heavy-duty trucks, undertaking a speedier, separate track from the Department of Transportation (DOT) that could merge into a combined rulemaking. EPA is preparing to send a draft rule to White House regulatory reviewers in June for a public release in September, sources say.

One informed source says EPA and DOT have already reached a deal whereby EPA will take the lead on what will end up being a single standard, but a trucking industry source says while that is the hope, no deal has yet been reached and both agencies are moving forward.

EPA’s work on the rule comes as trucking industry associations are publicly opposing the agency stepping into regulate the sector, arguing that because DOT better understands its issues and that it should retain its prime authority over the issue. But the informed source says DOT “doesn’t understand heavy-duty” fuel economy while EPA has years of experience setting engine emission requirements and diesel fuel rules.

The 2007 energy law granted DOT the explicit authority to move forward with such rules. However, EPA is citing its authority from the Supreme Court ruling granting it authority to regulate GHGs.

Not all trucking industry officials are opposing the EPA rules. Six CEOs from major trucking and transportation companies are drafting a letter to EPA Administrator Lisa Jackson and DOT Secretary Roy LaHood backing the pending EPA rulemaking. The six companies include Federal Express, Con-way, Waste Management, Cummins Engine

Co., Eaton Corp. and Wabash National. The letter, which was to have been sent April 23, says the companies support federal efforts to control GHGs and improve fuel efficiency through a rule, the informed source says. “They are stepping out and being very brave and progressive [by offering] an endorsement,” the source notes.

The letter has been in the works for some time and the source rejects the notion that it is in response to an April 9 letter from independent truckers to LaHood opposing possible climate change legislative language that would formally transfer trucking fuel economy authority from DOT to EPA.

DOT officials could not be reached for comment on the pending trucking fuel economy rule, but an EPA spokeswoman referenced the agency’s regulatory “gateway” website, which contains information about a planned rule for the “control of [GHGs] from heavy-duty vehicles” that the agency says is slated for publication in August.

“This action would set national emission standards under the Clean Air Act to control [GHGs] from heavy-duty trucks and buses. This rulemaking would significantly reduce GHG emissions from future heavy-duty vehicles by setting GHG standards that would lead to the introduction of GHG-reducing vehicle and engine technologies.” EPA cites Clean Air Act section 202 as its authority, noting it “follows the U.S. Supreme Court decision in *Massachusetts v. EPA* and would follow EPA’s formal determination on endangerment for GHG emissions.”

Additionally, EPA has acknowledged it is working on “potential” GHG standards for heavy-duty trucks, according to the EPA air office’s draft National Program Manager guidance for 2011.

The informed source says EPA’s Office of Transportation & Air Quality has taken the lead and reached a deal to work with DOT’s National Highway Safety Transportation Administration (NHTSA), similar to recently issued fuel economy/GHG standards for passenger vehicles.

The trucking industry source says a joint trucking rule “seems like a logical fit” because the “worst-case scenario for our industry is two separate rulemakings that aren’t parallel.” However, the source says NHTSA could have to win congressional approval to issue a joint rule with EPA. The energy law requires NHTSA to finalize its rule in the fall of 2012 while EPA’s rule is expected to go final next year.

The trucking rules could be bolstered by a recent National Academy of Sciences report, also mandated by the 2007 energy law, that outlines a number of ways of improving trucking fuel economy without undue costs. The March 31 report, *Technologies & Approaches to Reducing the Fuel Consumption of Medium- and Heavy-Duty Vehicles,* recommends advanced diesel engines, improved aerodynamics, hybrid powertrains and other measures. It also endorses setting a fuel consumption standard that accounts for the amount of freight or passengers carried, rather than a miles-per-gallon measure used to regulate passenger vehicles.

April 30, 2010

Senator Urges EPA To Use Current Authority To Address Drilling Concerns (*Inside EPA*)

Sen. Robert Casey (D-PA) is urging EPA to use its current authority under several environmental laws to “investigate and respond to” reports of drinking water contamination in Pennsylvania allegedly caused by natural gas extraction, echoing long-standing calls from activists for EPA to take action now even while they call for more authority for the agency.

But an industry source says EPA has no reason to step in because the state is already taking strong steps to address the issue, even though EPA has authority to address drilling under several statutes, including the Safe Drinking Water Act (SDWA), Clean Water Act (CWA) and Comprehensive Environmental Response, Compensation & Liability Act (CERCLA), known as Superfund law.

And in the House, Reps. John Sullivan (R-OK), Mike Ross (D-AR) and James Sensenbrenner (R-WI), are urging the House energy committee’s leaders and EPA not to pursue federal oversight of hydraulic fracturing, a drilling practice in which sand, water and chemicals are injected underground to crack rock formations and release gas. The lawmakers argue that there is no proof of contamination and raising concerns that increased regulation could hurt the economy.

Casey in an April 26 letter to EPA Administrator Lisa Jackson calls for the agency to “examine its current authority to determine whether it can take additional steps in Pennsylvania to investigate and respond to groundwater contamination and other potentially harmful consequences of drilling.” *Relevant documents are available on InsideEPA.com.*

Casey also touts a bill he introduced, S. 1215, that would require disclosure of the chemicals used in fracturing fluid and give EPA authority to regulate the practice under SDWA. Rep. Diana DeGette (D-CO) also has introduced a companion bill in the House, H.R. 2766.

The Casey letter echoes long-standing efforts by environmentalists to urge EPA to crack down on drilling under its existing authority, even while pushing for legislation to further regulate the process. For example, a coalition of environmental groups, led by Earthjustice, filed comments in 2009 arguing that the agency should broaden its review of CWA effluent limitation guidelines beyond coalbed methane and set a suite of new standards for oil and gas wastewater, in part to protect against chemicals used in the hydraulic fracturing process.

The senator acknowledges a pending EPA study of the environmental impact of fracturing, which lawmakers requested in the agency’s fiscal year 2010 budget bill, but

calls for the agency to also look into reports of contamination in Pennsylvania. Casey also requests a meeting with the administrator and Science Advisory Board officials who are reviewing the agency's plan to study fracturing.

A spokeswoman for Casey says it is up to EPA to decide what authority it should use to look into contamination in Pennsylvania, but notes that the agency could use its authority under the CWA, the Resource Conservation & Recovery Act and Superfund law. The spokeswoman notes that EPA Region VIII has already used its Superfund authority to investigate drinking water contamination in Pavillion, WY, allegedly caused by fracturing.

A spokesman for Region VIII says EPA is still analyzing data it collected last fall and again in February and will release the results of the assessment in July. It is rare in the region to use Superfund authority to investigate possible drilling contamination, but the region decided to pursue the investigation in response to long-standing concerns in the area and a request for help from the state environment department, the spokesman says.

One source with the Natural Resources Defense Council notes that Superfund could be an avenue for EPA to both investigate and respond to drilling contamination. While petroleum is exempt from Superfund, the ingredients in drilling muds and fracturing fluids are not, the source says. Even if EPA decides not to investigate the reports in Pennsylvania under Superfund law, the agency should conduct field studies of such cases in its pending fracturing study, as activists have urged in comments on the study plan, the source says.

The industry source agrees that EPA has authority to investigate and respond to reports of water contamination under a range of statutes. Even though hydraulic fracturing is exempt from SDWA permitting requirements, the agency still has authority under the law to take emergency action to protect threatened groundwater, regardless of the cause, the source says. EPA also has authority under the CWA to take action to protect threatened surface water, the source says.

However, EPA is most likely to use Superfund, because it gives the agency the broadest authority to address releases, the source says. But the source notes that just because an investigation is initiated under Superfund, as it was in Wyoming, the investigation will not necessarily trigger Superfund liability.

Nevertheless, the industry source questions why Casey would call on EPA to act in Pennsylvania, since the state Department of Environmental Protection (DEP) has repeatedly taken strong action in response to reports of contamination from drilling.

For example, the Casey letter notes that DEP recently fined Cabot Oil and Gas Corporation, ordered it to plug three wells believed to be the source of contamination in Susquehanna County, prohibited it for one year from drilling the area and required it to install permanent water treatment systems in homes affected by contamination.

But even as Casey pushes for more federal oversight, a bipartisan group of House members are pushing to keep drilling oversight in the states' hands.

Sixteen representatives including Sullivan and Ross wrote an April 27 letter to Rep. Henry Waxman (D-CA), the chair of the House Energy & Commerce Committee, and Rep. Edward Markey (D-DE), the chair of the environment subcommittee, raising concern about the economic impact of federal regulation of fracturing and urging the committee leaders to wait to act on legislation until EPA's pending study is completed.

"We believe it would be short-sighted and potentially economically devastating for the committee to pass legislation placing hydraulic fracturing under the SDWA in the absence of a complete study," the lawmakers write.

Markey had indicated at a February hearing that lawmakers should wait to take action until the study was completed. But the industry source says Sullivan and Ross likely sent the letter because a recent questionnaire from Waxman and Markey asking drilling companies to provide information about their fracturing practices may have sent a signal that the committee leaders now did not plan to wait to take action.

In addition, Sensenbrenner wrote an April 27 letter to EPA administrator Lisa Jackson raising concern that the agency seems to be on track to take over fracturing regulation from the states. "EPA's actions on fracking thus far, and particularly the commencement of the 2-year study, lead me to believe that the agency will usurp state control over fracking guidelines and replace it with a federal standard," the letter says.

Sensenbrenner cites legal language in a recent merger between ExxonMobil and XTO to raise concern that federal regulation of fracturing could make the practice illegal or commercially impracticable, and argues that EPA should instead make it easier to extract and burn the fuel because of its low greenhouse gas emissions compared to coal.

Industry has been ramping up lobbying on the Hill in support of drilling, with the American Petroleum Institute this week flying in almost 70 oil and gas workers to Washington, DC, to talk with lawmakers about the importance of the sector to economic growth and job creation.

Meanwhile, activists say that a recent decision by the New York Department of Environmental Conservation (DEC) barring drilling in the New York City watershed without additional environmental review should bolster their calls for a drilling ban in the area and for federal legislation to increase oversight of the practice.

The DEC announced April 23 that drillers in the New York City and Skaneateles Lake watersheds cannot rely on the draft supplemental general environmental impact statement for fracturing in the area and must instead conduct case-by-case environmental reviews to protect EPA determinations that allow New York City and Syracuse to avoid filtering their drinking water (*see related story*).

One source with the activist group Catskill Mountainkeeper says the announcement is a victory of sorts because it shows the practice is dangerous, even though it does nothing to bar drilling in the watershed and actually could speed drilling in other parts of the state. “This announcement acknowledges that hydro-fracking is dangerous and its too dangerous for New York City,” the source says, but notes, “They are going to sacrifice the rest of us.”

A source with the Oil and Gas Accountability Project at Earthworks agrees, and argues that both the DEC decision and the Casey letter point to a need for more regulation and for the pending legislation to boost federal oversight of drilling.

April 30, 2010

Industry Backs EPA Coal Ash Enforcement Un der Weaker Waste Rules (*Inside EPA*)

Industry groups pushing for EPA to issue scaled-back waste rules to regulate coal ash disposal at power plants have presented administration officials with an 11th-hour proposal that seeks to provide a mechanism to ensure that EPA can retain federal enforcement authority if the agency pursues the “solid waste” designation that industry and states favor.

Environmentalists and some EPA officials oppose use of the less-stringent solid waste approach, saying provisions in subtitle D of the Resource Conservation & Recovery Act (RCRA) for addressing solid waste are not stringent enough and does not provide the agency with adequate authority to oversee state waste rules. As a result, environmentalists and some EPA officials have instead called for a more stringent “hazardous waste” approach under RCRA subtitle C, which also provides EPA with a stronger federal role.

At a meeting earlier this month, the Edison Electric Institute (EEI) and the Utility Solid Waste Activities Group (USWAG) met with EPA and White House regulatory review officials where they detailed a plan that would allow EPA to retain oversight of coal ash regulated under subtitle D.

According to documents presented at the meeting, the agency would retain authority under section 4010(c) of RCRA to oversee state rules regulating solid wastes, much as the agency already does with municipal solid waste landfills (MSWLs) and non-municipal solid waste landfills that may receive conditionally exempt small quantity generator (CESQG) hazardous waste. *Relevant documents are available on InsideEPA.com.*

The industry push to give EPA a mechanism to retain authority using a subtitle D option comes as several industry sources say EPA within the last 10 days sent a revised coal

waste proposal to the White House Office of Information & Regulatory Affairs (OIRA) and has asked the White House to complete its final review prior to the close of business April 30. That would allow EPA Administrator Lisa Jackson -- who has called for a federal “backstop” in any coal ash plan -- to sign the proposal before the end of the month, in line with the agency’s plan to issue the proposal in April after delaying the original date from last December.

“The EPA objective is apparently to sign the proposal before the end of April,” one industry source says.

Both EPA and OIRA officials declined to comment on the timeframe for the proposal. An OIRA spokesman says the “complicated” rule remains under interagency review. “All parties are working hard to resolve the remaining issues.” An EPA spokeswoman adds the agency expects “to issue a proposed rule in the near future.”

The revised proposal -- which EPA first sent to OIRA last October -- is expected to no longer include regulation of the ash as a hazardous waste as EPA’s preferred option and instead is expected to offer several options, including hazardous subtitle C and nonhazardous subtitle D approaches, on a level playing field.

Under one subtitle D approach EPA may consider, the agency would seek to impose performance criteria that a state would have to meet within a certain deadline in order to continue to run the program. That option would include a trigger for a federal takeover of state programs if a state is unable to meet the criteria, sources said.

Additionally, the proposal is expected to include a revised cost-benefit analysis showing significant impacts on beneficial reuse under a RCRA hazardous listing, compared to the original analysis which showed zero impacts, sources added.

EPA had wanted to list some forms of coal combustion waste -- including ash stored in wet impoundments such as one that failed at a Tennessee Valley Authority plant, causing a massive spill and the impetus for the current regulatory effort -- as hazardous while declaring waste that is beneficially reused in concrete as nonhazardous. However, the hybrid approach was met with stiff industry opposition over concerns that any hazardous declaration would decimate the recycling industry.

Now, EEI and USWAG are pushing the subtitle D approach using MSWLF and CESQG as the model, according to documents from their April 2 meeting with OIRA and EPA officials.

“EPA’s current view is that RCRA does not provide the agency with permitting and enforcement authority for subtitle D [coal waste] rules; we believe, however, that RCRA subtitle D already provides EPA with this authority under section 4010(c),” the industry presentation says.

RCRA section 4010(c) requires the EPA administrator to issue rules for facilities that may receive hazardous household waste or hazardous waste from small quantity generators. “At a minimum such revisions for facilities potentially receiving such wastes should require groundwater monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate,” the section says.

EEI and USWAG note that EPA limited the scope of municipal landfill rules to subtitle D facilities that actually received CESQG waste, after taking the position that the term “may” in section 4010(c) “did not compel it to include in the rulemaking any subtitle D facilities -- such as [coal waste] disposal units -- that could receive CESQG hazardous waste. This narrow reading of 4010(c) is not compelled by the statute and there is nothing to prevent EPA from revisiting its interpretation of this provision of RCRA.”

The groups add that EPA could use the same discretion to apply the language to coal waste disposal units “as they are solid waste management units that, under RCRA’s statutory scheme, may receive CESQG hazardous wastes. Nothing in this language requires EPA to limit the scope of this provision to only those units that actually receive CESQG. EPA should revisit the question of whether it has the discretion under 4010(c) to promulgate federally enforceable subtitle D rules for a specified subset of subtitle D facilities -- i.e. [coal waste] management units -- that ‘may receive’ CESQG hazardous wastes,” the presentation adds.

An USWAG source says the argument is “somewhat new” and came about because the industry wanted to reinforce its support for a subtitle D approach. So it took a careful look at RCRA and found that in section 4010(c), “EPA has enforcement authority, if states aren’t implementing the subtitle D rules that EPA puts out” for municipal solid waste landfills. “And we believe that the same logic and rationale” can apply to coal ash. “So EPA could issue D rules and states could implement them and in cases where that is not adequate, EPA could then step in with much greater federal enforcement authority,” the source explains.

Also at the meeting, industry raised concern about “collateral impacts” of hazardous rules on power plant operations far beyond disposal issues. “There has been much debate and discussion on the impact on beneficial reuse, but impacts from subtitle C rules can affect utility operations not dealing with disposal, upstream to disposal, and handling and collection at the plant. We wanted to make sure [this issue] was not lost,” the USWAG source says.

Meanwhile, industry sources say a new EPA Region III report investigating alleged groundwater contamination from a coal ash-lined golf course that finds no leaching and recommends the site not be included on the Superfund National Priorities List lends credence to their push for nonhazardous rules.

“There isn’t contamination, so people, as it turns out, are jumping to conclusions,” the USWAG source says of the report, released April 22. “This report should put their minds at ease . . . and it doesn’t provide rationale for regulation as a hazardous waste.”

However, environmentalists say the study of residential wells near the Batttlefield Golf Club in Chesapeake, VA, should not impact the pending rulemaking. “The good news is that there is not yet any evidence of groundwater contamination,” one activist says. “The bad news is that the site will have to be monitored for the foreseeable future to ensure there is no migration or leaching. It is not questioned that if this coal ash reaches local water sources, those sources would become unusable. . . . In short, this report should have no bearing on the basic regulatory decision that these wastes are hazardous.” -- *Dawn Reeves*

April 30, 2010

FTA Funding Denial Over Rights Issue May Embolden EPA Equity Review (Inside EPA)

The Federal Transit Administration’s (FTA’s) historic decision to withdraw funds for a San Francisco transportation project based on a civil rights discrimination complaint could embolden EPA to take first-time similar punitive action as it undertakes a broad review of its backlog of equity petitions claiming rights violations, sources say.

“Hopefully this will give EPA the support it needs” to issue a first-time finding of discrimination in a slew of Civil Rights Act Title VI complaints long pending before the agency, says on environmental justice advocate. EPA is undertaking a review of its rights complaints backlog, with some unresolved cases more than 15-years-old, according to a list of complaints the agency released as part of a landmark legal settlement (*Inside EPA*, April 16).

Observers say one reason for the backlog is that EPA has struggled to find a legally defensible definition for whether an agency action creates a disparate impact on a minority community. EPA has never issued such a finding for fear that if it lost a court case it would set a damaging precedent, an agency source has said.

But FTA’s recent decision to rescind funds for the San Francisco project -- and require new equity analyses -- “shows it is possible to address” Title VI complaints in a timely and fair way, according to an informed source. “So if EPA still has a big Title VI backlog, shame on them.” The source adds the FTA decision “extends way beyond the transportation arena. It applies to any entity that uses federal money that has programs that could affect people.”

Title VI prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal financial assistance, according to the Justice

Department's Web site. Federal agencies have authority under the law to rescind or block funds for projects if they determine they violate Title VI.

FTA, part of the Department of Transportation (DOT), earlier this year revoked $70 million in federal funds for the first time since the 1970s on civil rights grounds. The Jan. 15 decision has delayed plans by the Bay Area Rapid Transit (BART) District to build the proposed Oakland Airport Connector (OAC) in response to a Sept. 1 complaint alleging violations of Title VI and Executive Order 12898 on equity because BART failed to conduct an equity analysis of service and fare changes as required. *Relevant documents are available on InsideEPA.com.*

The project would build a 3-mile rail link to Oakland International Airport at a projected cost of $500 million and charge a one-way fare of up to $6, replacing an existing bus link with a $3 fare, says the complaint. The connector would "traverse a corridor with many low-wage jobs that employ local residents, yet it will apparently be built without any intermediate stops. Even if such stops were added in the future, its extremely high fare will exclude low-income riders.

"More than just a procedural shortcoming, BART's failure to evaluate the equity impacts of the OAC project . . . is likely to have disparate impacts on environmental justice populations," according to the complaint.

In addition to revoking the $70 million in stimulus law funds after finding that "the allegation was true and the complaint was well founded," FTA also notified BART of other "serious concerns" about its Title VI compliance.

FTA required BART to complete a "corrective action plan" to address a number of equity issues. These include developing an inclusive public participation plan targeting equity areas, a plan to conduct environmental justice analyses for construction projects, evaluating service equity analysis, evaluating fare changes and more.

An FTA spokesman says the corrective action plan should be made public within weeks. A BART spokesman confirms the plan is in the works, but defends the district's decision not to conduct the equity analysis in the original project proposal "because no fare has yet been set. We can't tell you what the disparity is if we don't know the baseline." FTA, however, says that is unacceptable so BART is conducting the analysis using a range of fares.

One advocate praises the FTA decision as a "landmark action," noting it "marks the first time the Obama administration has held back stimulus funds based on noncompliance" with Title VI of the Civil Rights Act.

FTA was also the first, and to date only, federal agency to issue guidance on how to determine when an action creates a disparate impact on a minority community in a legally defensible way (*Inside EPA*, Dec. 4).

Defining disparate impact has long been a struggle at EPA, which under agency Administrator Lisa Jackson is seeking to significantly boost its responsiveness to civil rights and environmental justice.

In a speech in South Carolina April 19, Jackson said the agency and environmentalists need to do a better job of using the clout they've accumulated to ensure more environmental justice. "This is part of the unfinished business of the environmental movement," she said, according to local press accounts.

But the agency has never issued a finding of discrimination or a finding of disparate impact.

While FTA in its civil rights decision did not explicitly rule that the OAC would create a disparate impact, it did fault BART for not conducting the required analysis that would help determine whether there was such an impact. It also allowed BART to put the $70 million to other uses, including averting service cuts, fare hikes and layoffs -- "a good, solid response," according to one source familiar with the decision.

The source adds that EPA's concern about setting a poor legal precedent is valid, noting widespread speculation that the Supreme Court is open to a case that would kill the disparate impact standard altogether after issuing a 2001 ruling that required such claims to prove the discrimination was intentional.

But the source adds, "Most of the time if you just [process] these administrative complaints in a normal everyday way, you end up signing a settlement or a corrective action plan, and there isn't a legal challenge. The nuclear weapon for Title VI is cutting federal financial assistance, and that is almost never done."

The source adds the FTA decision is having "ripple effects" throughout the country, with various agencies and advocacy groups seeking to replicate it. The source cites as one example a briefing on the case held by the Department of Justice that included civil rights officials from all federal agencies.

Other civil rights cases are also working their way through the court systems, including an intentional discrimination complaint filed last summer by Arlington County, VA, alleging state and federal transportation officials violated Title VI in proposing to built "high occupancy toll" lanes by exempting significant portions of the proposed project from requirements under environmental statutes (*Inside EPA,* Aug. 28).

The U.S. District Court for the District of Columbia judge in the case, *County Board of Arlington v. Department of Transportation, et al*., issued an April 15 order allowing the case to go forward -- including on the Civil Rights Act claims -- by rejecting portions Virginia's motion to dismiss.

The source cites another case brewing in Washington, D.C., over the region's transit agency's decision to cut bus fares more drastically than rail fares, as well as a handful of housing-related discriminatory suits.

To help agencies better address civil rights, Marc Brenman, a former top civil rights policy adviser at DOT during the Clinton and George W. Bush administrations, is drafting a paper to help agencies conduct the required equity impact analyses, including for resource allocation decisions, discrimination avoidance and for preventative enforcement of environmental regulations.

The analysis, when done properly, will "help reduce the hazards of litigation," a draft of the paper says, but notes, "It is hard to identify the implicit assumptions in a policy or practice, particularly if you were responsible for drafting it and its intentions are benevolent." Brenman advises that such analyses include proper recordkeeping and transparency, and disaggregate data by race, ethnicity, income, age, gender and language.

Additionally, the draft paper outlines steps to determine whether a "cumulative impact" has occurred, that includes a five-step evaluation a defined by a 1985 appeals court ruling.

"Equity impact assessments have some similarities with reviews done for environmental purposes," Brenman writes. "If one thinks in terms of benefiting people at least as much as one benefits animals and the natural environment using environmental protection laws, it is a step in the right direction. Although this may sound offensive to some, the reality is that endangered animals have more legal protections than endangered people do, under current law." -- *Dawn Reeves*

April 30, 2010

District Court Order Could Bolster EPA In Pursuit Of Power Plant MACT (*Inside EPA*)

EPA's efforts to develop a strict maximum achievable control technology (MACT) standard to cut air toxics from power plants could get a boost from a recent district court order mandating the issuance of a MACT rather than other regulatory options, environmentalists say, though industry is downplaying the order's significance.

The U.S. District Court for the District of Columbia in an April 15 order finalized a consent decree in *American Nurses Association (ANA), et al. v. Lisa Jackson* that sets a March 16, 2011, deadline for EPA to propose the MACT and issue the final rule by Nov. 16, 2011. The approved decree explicitly says EPA must develop a MACT under section 112(d) of the Clean Air Act rather than other, potentially less stringent, regulatory options.

Industry fought to strike the language from the consent decree referring to a mandate for issuing a MACT -- which requires the maximum level of emission controls possible to cut air toxics -- and instead require EPA to pursue only “final agency action,” which observers say could have included less stringent regulatory options.

The Utility Air Regulatory Group (UARG), a group representing power plants that intervened in the *ANA* suit, wanted “Paragraph 4 of the proposed consent decree revised to eliminate the reference to section 112(d) standards and instead require EPA to take ‘final agency action’ by an appropriate deadline,” according to District Judge Rosemary Collyer’s memorandum opinion finalizing the consent decree in the *ANA* suit.

But the final consent decree retains the reference to issuing a MACT rather than “final agency action,” which environmentalists say bolsters a mandate for EPA to pursue the strict approach, and could help EPA defend a MACT from any future industry suit. *The order is available on InsideEPA.com.*

Industry wanted the decree “to contain mushy language that EPA just needed to do something, EPA just needs to ‘take final action,’ whatever that means,” says one environmentalist. “Had the consent decree just said that, industry would have waged a relentless lobbying campaign to urge EPA to do something other than a MACT standard.”

The Obama EPA previously announced it would develop a power plant MACT following the U.S. Court of Appeals for the District of Columbia Circuit’s vacatur of the Bush-era clean air mercury rule, which would have established a trading program to cut power plant air toxics emissions -- an approach activists and others say is too weak.

Even prior to the consent decree’s finalization, the agency was widely expected to propose a MACT standard for air toxics from power plants in 2011. EPA announced the draft consent decree on Oct. 28, 2009 and in December approved an information collection request to help it develop a MACT for power plants.

The decree requires EPA to propose its MACT by next March in order to address a lawsuit filed in December 2008 by ANA and a coalition of environmental groups following the mercury trading rule’s vacatur. The groups argued that EPA failed to fulfill its non-discretionary duty under the air act to promulgate a MACT to cut emissions of hazardous air pollutants from coal- and oil-fired electric utility steam-generating units.

The environmentalist adds that even though EPA is pursuing a MACT, the consent decree is still significant because now EPA must specifically issue a MACT or be in contempt of court. “EPA can invoke the consent decree as obligating it to issue a MACT standard, which the agency fully intends to do,” the source says.

Industry however criticizes the language in the consent decree and also downplays its significance, with one industry legal source saying the order would have little influence on any potential litigation over the final MACT.

April 30, 2010

Kentucky Permits May Mark Early Showdown Over EPA Mountaintop Guide (*Inside EPA*)

State regulators in Kentucky are proposing to issue water permits for mining operations that do not include the strict salinity standards that EPA called for in its recently issued guidance on the subject, setting the stage for a showdown with the agency over its controversial steps to limit mountaintop mining in Appalachia.

If EPA objects to the permits, the state would have an opportunity to address the agency's concerns. But if EPA finds the state's modifications unsatisfactory, EPA could take over the authority to issue the permits with more stringent controls -- a step that environmentalists have already petitioned EPA to take.

Some industry sources have worried that EPA would use the requirements in its mining guidance as a "back door way" to take over all coal-mining permitting, without having to completely take over state water permitting programs for other operations, although state sources are more skeptical that would be the case. Nevertheless, industry sources say EPA review of the pending Kentucky permits could provide a mechanism to sue the the agency over the guidance's provisions, a move they are not able to do now because EPA has only issued it in "interim" form.

Since EPA April 1 unveiled its sweeping water quality guidance, Kentucky has proposed to issue, renew or modify more than a dozen National Pollutant Discharge Elimination System (NPDES) permits for surface mining. EPA has the authority to review or object to such permits, and in its guidance, the agency said surface mining permits that did not contain numeric conductivity limits -- a measure of water salinity -- likely would draw such objections. EPA said projects that would cause conductivity levels to rise above 500 microsiemens per centimeter (uS/cm) generally would trigger violations of water quality standards, which the agency would block, while levels below 300 uS/cm would generally be acceptable.

Sources say other states in the region also are likely to issue draft permits that conflict with EPA's guidance, but no others appear to have issued new permits since the guidance was released April 1. The guidance applies to operations in Kentucky, West Virginia, Virginia, Ohio, Tennessee and Pennsylvania.

In an April 27 letter to EPA Administrator Lisa Jackson, Kentucky Energy and Environment Secretary Leonard Peters asks more than 30 questions about how the guidance will be applied and what information EPA relied on in crafting it. Peters asks what legal authority the guidance has and whether it represents a final agency action subject to judicial review, as well as requesting what data "specific to Kentucky" EPA relied on in outlining the harms to water quality caused by surface mining and asking

EPA's justification in applying the guidance to only six states. *Relevant documents are available on InsideEPA.com.*

Peters also notes that EPA has presented the guidance in the context of targeting just mountaintop mining, which takes place mainly in those six Appalachian states, although the document itself references all surface mining. "Is the guidance for mountaintop mining or for surface mining operations as a whole?" Peters asks. "Is it U.S. EPA's determination that surface coal mining is restricted to Appalachia?"

Essentially, state and industry sources say EPA in its guidance creates a presumption that surface coal mining in the region has a reasonable potential to cause or contribute to an exceedance of water quality limits for conductivity, often expressed in narrative terms, thereby necessitating numeric water quality limits.

Peters asks whether EPA has made such a presumption and if the agency has determined that Clean Water Act permits may not be conditioned on requirements that data be collected during a mine's operation to perform a reasonable potential analysis that could force the permit to be modified once such an analysis is complete -- an approach the state is taking. And he asks if it is EPA's position that states are prohibited from using other approaches to implement narrative standards, such as whole effluent testing or best management practices, "in lieu of a numeric limit."

Kentucky in its draft permits does not make such a presumption, saying it "does not believe that a statewide or regional numerical interpretation of the narrative standard is appropriate" for conductivity. Instead, the state says site-specific determinations are more appropriate and says it plans to collect necessary data for such determinations by requiring conductivity monitoring on outfalls, monitoring specific chemical constituents and performing toxicity tests on representative outfalls and developing a stream assessment plan to evaluate the "physical, chemical and biological condition" of downstream waters.

The draft permits note that the "approach is consistent with the comments recently received from EPA regarding similar sites." But those earlier permits were issued prior to EPA's guidance, meaning the new draft permits that have been released for comment will mark a first-time test of how EPA plans to apply the parameters outlined in the guidance.

Narrative standards tend to be less precise and based on on descriptions of how waterbodies should function, as opposed to stricter numeric limits that do not allow discharges that would exceed a certain level.

An EPA spokeswoman says, "We will review each proposed permit to ensure that they are consistent with the law and the recent mining guidance. We have the discretion to object to any permits that are not consistent with the Clean Water Act."

While EPA Administrator Lisa Jackson has said that she does not want to block mining, just mining pollution, industry and state sources have raised numerous questions about the potential reach of the guidance. They argue that it could affect permitting decisions for an array of industries beyond just mountaintop mining and that its limits are so strict as to essentially outlaw any new surface mining in the region.

At the same time, stakeholders have complained that EPA is shielding itself from judicial review of the guidelines by issuing them in an “interim” guidance memo to regional administrators -- a move that is not considered a final agency action -- but implementing the new criteria immediately. EPA will be accepting public comment on the guidance until Dec. 1, as it also conducts peer review this summer of two new scientific reports it is using to justify the limits outlined in the guidance. Sources worry that in applying the new criteria immediately, even as it leaves open the possibility of revising the standards once it finalizes the guidance, EPA may be subjecting permittees to harsher standards in the interim months than would eventually be applied over the long term.

An expected objection by EPA to one or more Kentucky permits could provide an avenue for an industry lawsuit -- because the objection would be considered a final action -- or it could offer a more formal venue for the state to argue its case through the formal review process, sources say. Sources have suggested that industry could file a lawsuit challenging the guidance itself -- based on an argument that its implementation makes it a final agency action regardless of what EPA is calling it -- but other sources suggest industry may wait until the agency actually relies on the guidance to block a permit, to provide firmer legal footing for a court challenge.

“There’s a whole host of legal questions that need to be resolved and thought through in terms of delegated states and their authorities and their rights relative to what EPA is doing,” one state source says.

The lack of numeric conductivity limits in the Kentucky draft permits “will be the central rub” when EPA weighs in, “and everything else is probably okay,” the state source says.

Even before EPA issued the guidance, environmentalists petitioned the agency to withdraw Kentucky’s permitting authority and mandate the conductivity limits in any permit the agency issues. The activists March 15 petition calls on EPA to move forward with the conductivity triggers, citing an award-winning, but controversial EPA Region III study to argue that conductivity impairment could be harmful to streams. “There is overwhelming evidence in an EPA peer-reviewed study that mining operations are strongly associated with biological impairment due to high” total dissolved solids, which is strongly related to conductivity, the petition says (*Inside EPA*, March 19).

EPA has up to 90 days to comment on the draft permits, at which point it could either outline its concerns and ask state regulators to address them or formally object to the permits. If EPA objects, it triggers a process in which the agency could decide to issue the permit itself.

The state source also worries that an EPA objection and decision to issue the permit itself could dramatically slow permitting in the region, because EPA does not face any deadline by which it would have to issue a permit. The source says a previous permit objection took 10 years to resolve. “You’re kind of held hostage at that point in time, in the minds of some,” the source says. -- *Nick Juliano*

EDITORIAL / OP-ED / COMMENTARY / LETTERS

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Cleanup crucial for stream, lake (Albany Times Union)

First published: Friday, April 30, 2010

The U.S. Environmental Protection Agency has nominated the Dewey Loeffel landfill in Nassau for the federal Superfund National Priority List and is seeking public comment. Placing the site on the list could lead to the cleanup of PCBs that have leaked into the Valatie Kill, Valley Stream, Nassau Lake and Kinderhook Lake.

The state Department of Environmental Conservation's 2009 fish collection results show that fish in the Valatie Kill and Nassau Lake continue to have significant levels of PCBs and should not be eaten.

The only way to stop PCB contamination is to have full cleanups.

Comment by Monday at http://www.EPA.gov/superfund/sites/NPL/pubcom.htm or at http://www.regulations.gov (docket number: EPA-HQ-SFUND-2010-0075.)

Kelly Travers-Main Pam Lever

United Neighbors Concerned About General Electric & Dewey Loeffel Landfill (UNCAGED)

Schodack

AIR

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Hearing set for Lafarge air permit (*Albany Times Union*)

DEC's May 11 meeting to attract neighbors concerned about mercury

By BRIAN NEARING, Staff writer
Click byline for more stories by writer.
First published: Friday, April 30, 2010

RAVENA -- The state Department of Environmental Conservation is giving the public another chance to voice concerns about proposed air pollution permit for the Lafarge cement plant.

DEC Administrative Law Judge Richard A. Sherman plans a hearing on the permit at 6 p.m. Tuesday, May 11, at the Ravena-Coeymans-Selkirk High School on Route 9W, across from the plant.

A community group that has been urging DEC to impose stricter mercury emission limits in the proposed permit, which was issued last year, welcomed the hearing.

"We would like to see the DEC go as far as they can to control the toxics emitted into the air from this plant, as well as the fugitive dust that contaminates the local environment," said Elyse Griffin, co-founder of Community Advocates for Safe Emissions. "In the final air permit, the DEC should address the full range of toxins -- not just mercury -- and ensure that any cap on emissions results in a real and meaningful reduction that is protective of public health."

Last November, DEC proposed a permit that would limit mercury emissions to 176 pounds a year -- a level that still would keep the 48-year-old plant as the state's second-largest airborne mercury polluter, based on the most recent statewide figures.

Mercury causes developmental problems in fetuses and children, primarily entering the body through consumption of tainted fish. Mercury primarily enters the food chain through water, where it can be transformed into toxic methyl mercury.

A 2008 company study of smokestack mercury, completed at the request of DEC, estimated annual emissions at 146 pounds, which is below the proposed state limit.

The company had reported mercury emissions of between 380 and 400 pounds a year from 2003 to 2006 in submissions to the U.S. Environmental Protection Agency.

And last spring, DEC set the annual emissions at 167 pounds after reviewing the Lafarge report. At the time, DEC said setting the limit slightly above this figure would give Lafarge flexibility.

The DEC is also accepting written comments on the proposed permit through May 21 at NYS DEC -- Region 4 Headquarters, 1130 North Westcott Road, Schenectady, 12306, Attn: Sarah H. Evans.

Brian Nearing can be reached at 454-5094 or by e-mail at bnearing@timesunion.com.

EPA issues order against Tonawanda Coke (*Buffalo News*)

By Mark Sommer
NEWS STAFF REPORTER
Updated: April 29, 2010, 10:58 pm /
Published: April 29, 2010, 10:51 pm

The federal government is continuing to keep the heat on Tonawanda Coke Corp.

Thursday, the embattled coke plant in the Town of Tonawanda was ordered by the Environmental Protection Agency to correct deficient operating procedures and explain two releases of coke oven gas last month and in 2009 from equipment and power failures.

"We are paying attention to the entire operation at their facility," said EPA Western New York spokesman Michael Basile. "We continue to look at their operation from air level, from water, from disposal practices of hazardous waste on the site."

Basile said the company is giving Tonawanda Coke "an opportunity to correct these violations and show us they do have proper backup systems so this can be prevented in the future."

The coke plant also was cited in a separate action for violating the Clean Air Act.

"This provision of the Clean Air Act is only used when there is serious risk of accidental releases because a facility is poorly operated," EPA Regional Administrator Judith Enck said in a statement.

The EPA order requires that the plant investigate what caused the incidents and report its findings for review. The work must be carried out by an engineer first approved by the EPA, and the company must document that its recommendations, repairs and other improvements have been implemented.

Inspectors from the EPA regional office in New York City have been in and out of the coke foundry since last April, but enforcement activity has stepped up in the past several months.

Earlier this year, the EPA and state Department of Environmental Conservation issued several enforcement actions against Tonawanda Coke for environmental violations.

The head of an environmental organization that has waged a campaign for years to get governmental action against Tonawanda Coke lauded the EPA for taking action.

"The EPA has been relentless at Tonawanda Coke. This shows the agency is listening to what people in the community have been saying," said Erin Heaney, executive director of the Clean Air Coalition.

"It was just several weeks ago that we received calls that 20- or 30-foot flames could be seen coming from the tops of the coke oven batteries," she said.

The coke oven gas — whose contents include hydrogen sulfide and ammonia, which in excessive amounts can cause irritation to the eyes, nose or throat, and make breathing difficult — went up in the flares because equipment malfunctions didn't allow for its treatment in the facility.

msommer@buffnews.com

No health threats found in air samples (*Tampa Bay Newspapers)*

By SUZETTE PORTER
Thursday, April 29, 2010
Pinellas County officials released on April 29 results of lab analysis of air samples taken on April 26 and there is no indication that there is any danger from harmful pollutants in the air.

According to Tom Iovino, Pinellas County communications specialist, who helped translate the language in the report into layman's terms, "Nothing found in the analysis points to volatile organic compounds (stuff that comes from oil). We keep monitoring looking for any changes."

Iovino also said a wind shift forecast for the weekend might push anything like fumes or smoke to the north away from Pinellas County.

Some residents have been reporting an oily smell in the air since an April 20 explosion at an oil rig located in the Gulf of Mexico offshore the coast of Louisiana.

According to a press release, staff from Pinellas County Department of Environmental Management, Air Quality Division analyzed volatile organic compound/hydrocarbon canister samples using a method that looks for a set of hazardous air pollutants identified by the Environmental Protection Agency as pollutants of concern.

"The analysis does not sample for all hydrocarbons that may have gotten into the air from the large oil spill in the Gulf of Mexico," the press release said.

Officials said the results indicate that the hydrocarbon levels observed were at or below the averages for calendar year 2009.

"There are many other hydrocarbons that can have a low odor threshold and are not hazardous, but may be considered an irritant to sensitive individuals," officials said.

Staff with the county's air quality division said its fine particulate matter monitor does not show any impact from southern Mexico fires or last week's fire on the oil rig; however, the situation continues to be monitored on a daily basis.

The Department of Environmental Protection will take another VOC/hydrocarbon sample on Thursday and Sunday. The results will be expedited if the winds are from the west northwest. However, forecasts predict the wind will not be from that direction for the next several days.

Residents can see the current air quality index readings for Pinellas County by visiting

www.pinellascounty.org/environment/pagesHTML/airQuality/aq500.html

The Florida Department of Environmental Protection has asked that individuals with an air quality question or concern contact the Environmental Protection Agency Region 4 National Response Center at 800-424-8802.

The lead response agencies for the gulf oil spill are the U.S. Coast Guard, the Minerals Management Service and British Petroleum.

For more information, visit www.deepwaterhorizonresponse.com.

Article published on Thursday, April 29, 2010

Pollution monitor fails Poconos, along with most of Pa.(*Pocono Record*)

By ***HOWARD FRANK***
Pocono Record Writer
April 30, 2010 12:00 AM

The air in the Poconos just got an "F" — for filthy.

So did the air in most of the state. In fact, any county that received a C could be considered a star student in the latest annual State of the Air report from the American Lung Association.

The study looked at pollutants in the atmosphere across the United States in 2006, 2007 and 2008. Researchers measured levels of ozone and particle pollution to grade cities on air quality.

According to the report, air quality in many places has improved, but more than 175 million people — roughly 58 percent — still suffer pollution levels that are too often dangerous to breathe.

The study measured ozone and particle pollution in the air. Monroe, Luzerne and Northampton counties all received failing grades for ozone pollution. Only Northampton had the monitoring ability for particle pollution — which it passed on annual levels but failed for short-term pollution conditions.

Figures weren't reported for Pike and Wayne counties. The state and federal Environmental Protection Agency decide where to place monitors, and only 1,000 counties across the country have them.

According to the report, Monroe had 11 days researchers categorized as "unhealthy for at-risk groups," the middle ranking on a five-stage scale for ozone pollution.

Certain groups are at higher risk from air pollution, including those over the age of 65 or under the age of 18, people suffering from asthma, chronic bronchitis, emphysema, cardiovascular disease and diabetes.

The report showed that 14 of the 25 most ozone-polluted metropolitan areas had fewer average unhealthy days than in the previous report. Still, 167.3 million Americans remain exposed to unhealthy levels of the country's most widespread outdoor pollutant.

The cleanest cities? Cheyenne, Wyo.; Santa Fe-Espanola, N.M.; Honolulu; Anchorage, Alaska; Great Falls, Mont.; Bismarck, N.D.; Brownsville-Harlingen-Raymondville, Texas; Coeur d'Alene, Idaho; and Duluth, Minn.

The worst? Phoenix-Mesa-Scottsdale, Ariz.; Bakersfield, Calif.; Los Angeles-Long Beach-Riverside, Calif.; Visalia-Porterville, Calif.; Pittsburgh; Fresno-Madera, Calif.; and Sacramento-Arden-Arcade-Yuba City, Calif.-Nev.

According to the report's authors, the strongest improvement came in year-round particle pollution levels, but most of the cities with the highest ozone and short-term particle levels improved as well. But the report cites the need to clean up coal-fired power plants and existing diesel engines.

Air pollutants

Ozone comes from the production or burning of gasoline, oil, natural gas, diesel, coal or from using petroleum-based products such as paint.

Breathing in ozone is like having sunburn on your lungs. When ozone is inhaled, the body's lung tissues become inflamed or swollen. Breathing ozone can cause coughing and asthma attacks and send people to the emergency room or hospital. Ozone can even shorten your life.

Particle pollution comes from burning any type of fuel, including wood, as well as windblown dust and soil from agricultural areas.

Particle pollutions can penetrate the body's natural defense systems. When inhaled, these tiny particles get trapped in the deepest part of the lungs. Some are small enough to pass through the lungs into the blood.

DHH, DEQ, EPA Monitoring Air Quality (*WDSU*)

New Orleans
POSTED: 5:57 pm CDT April 29, 2010
UPDATED: 6:51 pm CDT April 29, 2010
NEW ORLEANS -- The oil is creeping closer and closer to the Louisiana coastline. While that's over 100 miles away from downtown new Orleans, some people said they can smell the oil in the Gulf of Mexico.
“It smells like oil -- strong sense of oil,” said one New Orleans resident to WDSU. “I smelled it when I came out the door.”
Some people in the Central Business District said it smelled like a chemical when they walked outside.
The Department of Health and Hospitals and the Department of Environmental Quality said they requested continuous air quality testing and monitoring from the Environmental Protection Agency.
The DHH and DEQ said it will let everyone know if and when an air quality issue exists and whether or not to take immediate action to protect the public health and safety.

GOP Sees Opening For Softened Utility Air Bill After Climate Effort Stalls (*Inside EPA*)

Key Republican senators are seizing on what they see as an opportunity to put fresh momentum behind a bipartisan bill to cut utilities’ emissions of multiple pollutants while

softening provisions on mercury pollution cuts, arguing that the bill's prospects for passage could get a boost from a legislative lull caused by stalled climate negotiations.

Republicans may seek to provide industry more flexibility in meeting the bill's mercury reduction mandates, among other options. However, sources familiar with the legislation say that while Sen. Tom Carper (D-DE), a co-sponsor of the bill and chair of the environment committee's clean air panel, wants to move it forward with bipartisan support, he is only interested in clarifying, not softening, the bill's language on toxic mercury emissions.

State air officials also say they would oppose any effort to weaken the bill, and are working with Carper to tighten provisions including mandates to cut nitrogen oxides (NOx) and air toxics.

Sen. James Inhofe (R-OK), ranking member on the Environment & Public Works Committee (EPW), wrote in an April 26 *Politico* editorial that the halt in climate legislative action creates an opening to pursue the multipollutant legislation, but cautioned that the GOP wants to see changes to the bill before it proceeds with its support.

"The Senate is wasting time on legislation that, even if passed would fail to achieve its stated goal of reducing global temperatures. There's an opportunity right now to make significant environmental progress -- while ensuring cleaner, more affordable and more reliable electricity for consumers," Inhofe says. Still, the senator said that while the bill is "a good start" he believes that the legislation "can be improved in several important respects."

The multipollutant bill, S. 2995, introduced Feb. 4, would create a cap-and-trade program to cut NOx and sulfur dioxide (SO2) emissions and set strict emission control technology requirements to cut mercury. The bill is designed to replace the Bush EPA's clean air interstate rule trading (CAIR) program for SO2 and NOx that a federal court remanded to EPA, and a separate mercury trading program that the same court vacated.

EPA is separately pursuing its own replacement for CAIR that is expected to set a so-called dual emissions cap, and is developing a maximum achievable control technology standard to cut mercury emissions from utilities. But the GOP could use S. 2995 as a vehicle to force a desired outcome on utility mercury controls (*see related story*).

A Republican EPW aide says that the GOP not necessarily concerned about the stringency of the mercury provisions in the Senate legislation -- which require a 90 percent reductions -- but it believes that utilities need more flexibility in meeting the requirements than the legislation currently offers.

GOP lawmakers plan to closely assess existing state-level rules to cut mercury from industrial facilities, many of which mandate 90 percent cuts, and see how states offer flexibility to utilities to meet those standards, the aide says.

Flexibility approaches include averaging, which would allow companies to average total mercury emissions across several boilers. Under this approach, some boilers could exceed the bill's mercury limit as long as other boilers were sufficiently below the emission limit and the average of all the boilers' emissions meets the 90 percent requirement.

Some stakeholders have already raised the possibility of amending the bill to allow mercury emissions averaging. At a March 4 EPW hearing on the multipollutant legislation, Michael Durham, the president and CEO of ADA-Environmental Solutions, which develops and sells emission control technology, floated the idea of averaging as a way to address concerns about the stringency on the mercury limit. He said that after some power plants hit an 80-85 percent ceiling for mercury cuts, further reductions can be expensive (*Inside EPA*, March 12).

Observers have raised concern in the past that differing mercury standards at different facilities would lead to localized hotspots with higher pollution, but Durham said that if the bill is altered to allow averaging, the overall stringency of the cap would not allow any facility to achieve less than 70 percent reductions. Averaging could be done at co-located facilities, or even at facilities in different counties, Durham said.

An alternative flexibility approach would be sub-categorizations, the aide says, without elaborating on the idea. Subcategorization generally allows different standards for different kinds of facilities within a source category.

Republicans also believe the bill should acknowledge the co-benefits that the stringent NOx, SO2 and mercury caps in the bill will have in cutting other toxic emissions, due to concerns that after the bill's enactment EPA could pursue new Clean Air Act rules to cut non-mercury toxic emissions from utilities, the aide says.

Carper, who co-sponsored the bill with Sen. Lamar Alexander (R-TN), is interested in winning more support for the bill, but is interested only in clarifying, not softening, the mercury requirements, sources say.

Carper is open to allowing co-located boilers to average emissions, but is not interested in regional averaging, says a source familiar with the bill. Under the bill, EPA already has authority to average emissions from different boilers at the same facility. While no changes have yet been made to the mercury provisions, Carper is open to clarifying that EPA has this authority but he would oppose averaging for boilers that are not co-located, the source says.

One state source says states would oppose any effort to win more flexibility in the mercury standard, including emissions trading and relaxed deadlines. States would also

oppose any language that would prevent state or federal agencies from setting more stringent limits on mercury or other toxic emissions from utilities, according to the source, who notes that states expect EPA's revised air toxics rule to be more stringent than the multipollutant bill. Republicans' efforts to soften the bill's requirements are "alarming, but not surprising," the source says.

In contrast, states are working with Carper to strengthen the bill, especially its NOx emission limits, the state source says. States would also like to see the bill set limits for non-mercury air toxics, including other heavy metals, and are concerned that the bill's current focus on mercury could send the message to EPA that Congress only intended for the agency to look at mercury and not other air toxics, the source says.

Carper has made some changes to SO2 credits under the bill, says the source familiar with the bill. The bill as it was introduced could allow a utility to re-sell a credit multiple times, because the government would re-issue stricter credits to the utility even if the previous credit had been sold to another entity, such as a financial institution. The bill has been altered so that more-stringent credits are issued to the entity, including as financial institutions, that may be holding the credit at the time.

The bill's sponsors are also awaiting EPA's economic analysis of the bill, the source says. EPA has in the past analyzed the impact of a range of possible multipollutant bills, but the agency is now assessing the impact of the bill as it was introduced in February, as well as a scenario with more stringent NOx cuts, the source says.

The committee is hoping EPA's analysis will be completed before a markup for the bill, which Carper is hoping to hold before Memorial Day, the source says. However, the modeling will be done by the same staff at EPA that will model the impact of the climate bill, which lawmakers sent to EPA April 28.

The issue of whether the multipollutant legislation should move as a stand-alone bill or as an attachment to other legislation, for example climate and energy bills, also remains contentious.

Carper is keeping his options open for moving the bill, including keeping it as a stand-alone bill or attaching it to future climate legislation, according to a second source familiar with the bill.

But the GOP EPW aide says that before Republicans move forward on a bipartisan agreement on the bill, they will want assurance that the bill will be a stand-alone measure and that it will not be attached to a climate bill. Carbon dioxide has never been part of the multipollutant conversation from Inhofe's perspective, and any effort to attach the bill to climate legislation would tarnish bipartisan agreement on the utility bill, the source says.

Inhofe in his *Politico* editorial said that the debate over the pending Senate climate legislation has diverted much-needed attention from multipollutant attention and that the

recent stall in climate legislation talks could provide an opening to move forward on the multipollutant bill as a stand-alone effort.

Sen. Lindsey Graham (R-SC) pulled out of climate bill talks out of concern that Senate Majority Leader Harry Reid (D-NV) was prioritizing immigration reform over climate and energy legislation. While the White House and Democrats vow climate legislation is still on the table, and lawmakers April 28 sent the draft bill to EPA for analysis with Graham's consent, Senate leadership's plan for the bill was still unclear at press time. -- *Kate Winston*

April 30, 2010

EPA Air Chief Highlights Major Research Barriers To Multipollutant Rules (*Inside EPA*)

EPA air chief Regina McCarthy says there are major gaps in research data -- including how to better assess different mixtures of pollutants -- that the agency must fill before it can achieve its oft-stated goal of pursuing a multipollutant approach to regulation, under which EPA develops rules to cut emissions of several pollutants at once.

McCarthy told the annual Health Effects Institute (HEI) conference in Alexandria, VA, April 26 that while a multipollutant strategy is essential to efficient and effective regulation, the agency still lacks much of the information it needs to implement the idea. EPA is already wrestling internally over how to define multipollutant regulation, and how to pursue the necessary research to support whatever approach it settles on (*Inside EPA*, April 16).

Among the major research gaps are lack of data on the cumulative and synergistic interactions between pollutants; how to better characterize health benefits associated with air pollutants impacting climate; new health indicators to measure progress in cleaning the air; and how to judge the effects of very low levels of criteria pollutants, said McCarthy -- a proponent of multipollutant regulation in her past role as Connecticut's top environmental official.

Other key areas that require more research include toxicity of different pollutant mixtures, the impact of pollutant mixtures on children, and how to improve the national air pollutant monitoring network, she added.

McCarthy told HEI that the term multipollutant regulation is a "buzz word" that could cover many different aspects, including pollution sources, controls and effects; atmospheric processes; and receptors such as health, ecosystems and climate. EPA must solicit fresh research from the scientific community on these issues and others in order to determine the best steps forward in developing a multipollutant approach to rules, she added.

However, McCarthy did not offer an opinion on whether EPA should focus its research efforts on the impact of real-world pollutant mixtures on individuals, or on the mixtures of pollutants being emitted by sources such as power plants or vehicles. EPA's air office staff continue to spar over which is the preferable option.

Experts agree that source-based regulation is easier, given the difficulty of tracing the origins of the actual pollutants people breathe in. Crafting multipollutant rules to reduce what people actually breathe would more directly address adverse health effects of air pollution, but would be more difficult from a regulatory standpoint, they say.

Still, McCarthy said the agency must tackle the research gaps in order to proceed with multipollutant rules so that it can avoid an overwhelming task of pursuing a slew of individual air rules in coming years.

She noted that without taking a new approach to air regulation, EPA faces a daunting task of completing individual reviews of the agency's six national ambient air quality standards (NAAQS); new regulations to cut greenhouse gas emissions from mobile and stationary sources; and some 310 pending rules to reduce air toxics emissions.

Trying to handle all those issues separately rather than through multipollutant regulation would mean "having the world running around in circles" rather than making progress, she argued.

"We have chosen as a bureaucracy to divide what we do in ways that make absolutely no sense from a science perspective," McCarthy said, arguing that tackling pollutants individually is irrational. Those comments echo remarks that McCarthy made at a Johns Hopkins University event in Washington, DC, earlier this month in which she said the agency needs to pursue "creative" approaches to regulating air emissions.

EPA is already pursuing a number of tentative steps to help inform the development of multipollutant rules, McCarthy said, including work on its first attempt to set a "real" secondary, welfare-based NAAQS for ozone.

EPA has previously set the secondary standards, which are supposed to protect the environment rather than human health, at the same levels as the primary [health-based] standards, but is now proposing a distinct secondary standard in the range of 7-15 parts per million-hours. Setting such standards based on ecosystem risk requires more research than previously, which must in turn feed into the multipollutant approach, McCarthy said.

EPA is separately conducting a pilot project dubbed the Air Quality Management Plan (AQMP) with state regulators in New York, North Carolina, Missouri and Illinois to study how to get improvements in multiple measures of air quality, including maintenance or attainment of NAAQS, and visibility.

The AQMP concept involves state authorities integrating air quality improvements into their urban planning, transportation and energy policies, McCarthy said. AQMPs could feasibly serve as more-comprehensive replacements for state implementation plans (SIPs), which are air quality blueprints that states craft to detail how they intend to come into attainment with EPA's NAAQS. States must craft separate SIPs for each NAAQS.

McCarthy praised another multipollutant pilot project the agency pursued recently in Detroit, where EPA has worked with local regulators to take a number of steps to reduce emissions of multiple pollutants at once, focusing on the most vulnerable communities. This approach has proven both effective and cost-efficient, she said, and "this is the kind of multipollutant approach I would like to see happen" elsewhere, she added.

Air quality experts on the HEI panel McCarthy addressed, including three former chairs of the Clean Air Science Advisory Committee (CASAC) and current Chairman Jonathan Samet, were lukewarm about the concept of multipollutant regulation, however. Samet said that looking at the world one pollutant at a time "is not how nature works," but has become EPA's standard way of thinking.

Morton Lippmann, a former CASAC chair now with New York University, questioned whether a new approach is really needed at all, given that any EPA regulations have the side effect of reducing co-pollutants in addition to the targeted substance. Joe Mauderly, a previous chair now with the Lovelace Respiratory Research Institute, disagreed, saying "it is absurd not to envision some sort of strategy that acknowledges we breathe this ever-changing mixture," although the science needs to be developed to implement such a strategy.

Roger McClellan, an independent toxicologist and former CASAC chair, said EPA should not focus so much on large scientific assessment documents for each pollutant as it has done until now.

"We don't need these huge volumes" to give EPA sound scientific advice, he argued, also saying that scientific research needs to take a step back from EPA's regulatory agenda in order to focus on multipollutant issues, not work driven by individual NAAQS reviews, McClellan said. -- *Stuart Parker*

April 30, 2010

EPA Eyes Dual Emissions Caps To Limit Trading In CAIR Replacement (*Inside EPA*)

EPA may pursue a dual approach in its pending cap-and-trade proposal to cut sulfur dioxide (SO2) and nitrogen oxide (NOx) emissions that would impose state-specific caps with few restrictions on intrastate trading, alongside regional caps that would impose stricter restrictions on interstate trading, a wide range of sources say.

However, the so-called dual emissions cap approach could create new legal headaches for EPA, after several federal court rulings raised fresh uncertainty over the agency's flexibility in establishing novel trading programs.

EPA April 26 sent for White House review its proposed replacement for the clean air interstate rule (CAIR), a Bush-era trading program to cut NOx and SO2 emissions in 28 Eastern states that a federal court remanded to EPA. Among the issues EPA must address from the court ruling are the legal authority to establish trading programs, effectively accounting for states' contribution to air quality problems in downwind states, and a number of other issues.

The U.S. Court of Appeals for the District of Columbia Circuit in July 2008 vacated and then in December 2008 remanded CAIR to EPA, after finding that CAIR's unrestricted trading of power plant NOx and SO2 emission credits was unlawful because it failed to account for the relative contribution of states to other states' nonattainment status. That ruling prompted suggestions EPA would struggle to legally defend any future trading program.

EPA is also crafting a mandatory emissions limit on power plant mercury emissions, after the D.C. Circuit vacated the Bush-era clean air mercury rule trading program designed to cut utility mercury pollution. The court rejected the agency's trading program for the air toxic as being at odds with Clean Air Act requirements.

Defending trading, EPA air chief Regina McCarthy in congressional testimony last summer touted a possible hybrid approach for the CAIR replacement -- known as the Transport Rule -- that would combine mandatory performance standards and emissions trading to achieve cuts in NOx and SO2.

While EPA declined to comment on the pending proposed replacement rule, sources say the package is unlikely to include source-specific emission caps or mandate controls on individual pollution sources.

Instead, the replacement proposal will likely seek to justify limited trading through a circumscribed plan designed to achieve results that would satisfy the D.C. Circuit decision in *North Carolina v. EPA*. According to the White House Office of Management & Budget's website, EPA's rule would "fulfill our obligation to develop a rule consistent with" the federal court's opinions. The website says the proposal is slated for release in June.

One environmentalist says the dual emissions cap said to be included in the proposal would set statewide emissions caps in addition to a regional cap-and-trade program "grafted on to that, with the delta between any given statewide cap and the regional cap available for limited trading combined with full fledged intrastate trading." The source downplays prospects that the proposal will seek to mandate strict caps on individual sources.

Under the dual emissions cap approach, the agency would set statewide caps on NOx and SO2 emissions, under which intrastate trading would be permitted relatively freely. Unrestricted trading would allow sources to meet their cap either by reducing pollution or purchasing credits in lieu of reducing pollution. The rule would then set a higher regional emissions cap, and emissions that exceed the state caps but are below the regional cap would be traded on a restricted basis -- although it is unclear what form those restrictions would take.

The source cautions, however, that due to the problems the D.C. Circuit found with CAIR's trading structure, EPA "needs to be especially mindful not to run imprudent legal risks" in its proposal.

McCarthy told EPA's Clean Air Act Advisory Committee Feb. 3 the she is "not going to make the mistakes of the past" and that the CAIR replacement will withstand legal scrutiny.

One industry attorney suggests the dual emissions cap approach would both reduce pollution and be legally defensible because it combines an efficient incentive for industry to cut pollution with more restricted trading that should not run afoul of the D.C. Circuit.

The attorney adds that the approach would, however, be less efficient and more expensive for industry than the original CAIR, because the impact of trading would be diluted. "The key question is, how much more expensive?", which cannot be determined until EPA releases its proposal, the attorney says.

State air officials are showing tentative support for the dual emissions cap approach, including the Ozone Transport Commissions (OTC) that represents Northeast and Mid-Atlantic state air officials. One OTC source says the group -- which develops regional plans to cut ozone transport -- supports state and regional caps.

The National Association of Clean Air Agencies (NACAA), which represents state and local air regulators, has no position on the state and regional cap approach but the group has previously said that any CAIR replacement should include some pollution control technology mandates, in addition to any trading. This approach would ensure that major pollution sources do not impair attainment in a downwind area, NACAA says.

One Midwestern state air regulator adds, "I know EPA has talked about state-regional caps with limited trading. Such trading would have to assure (perhaps through modeling of individual trading proposals) that it would not result in non-control of a particular source that is impacting a nonattainment area in an adjacent state."

Meanwhile, a source with the Edison Electric Institute (EEI), which represents shareholder-owned electric utilities, says EPA has been unwilling to share how it plans to proceed with the rule. EEI advocates the efficacy of cap-and-trade pollution control programs, the source says, and would like to see the broadest possible use of trading in

CAIR's successor. Intrastate trading is a concept that has been discussed by EPA often in the past, the source notes.

EEI also is concerned about a number of other major unknowns in the upcoming proposal, including the geographical reach of the program. CAIR applied to power plants in 28 Eastern states and the District of Columbia and it is unclear whether the new proposal will be expanded or reduced in scope.

Meanwhile, a source with the American Lung Association (ALA), warns that while ALA backs some form of trading, it would have to be restricted and hedged with other types of controls. "Trading for regional pollutants does not help people at the local level to have the cleanest air they could have," the source says. "We are hoping that if there is going to be trading, it is going to be a limited thing." -- *Stuart Parker*

ARSENIC

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Industry Ramps Up Hill Lobbying To Delay EPA Arsenic Risk Assessment (*Inside EPA*)

Industry groups are launching a new congressional lobbying push to win support for their effort to delay EPA's controversial draft cancer assessment of arsenic, which strengthens the agency's existing hazard assessment of the chemical by 17 times, in a bid to force EPA to include new data that industry hopes will soften the assessment.

One source familiar with the effort says industry representatives will begin contacting senators who have been sympathetic to the issue in the past, including Sens. James Inhofe (R-OK), ranking member of the Senate Environment & Public Works Committee, and Ben Nelson (D-NE).

The source says industry groups also plan to contact Democratic Leader Harry Reid (D-NV), because of the regulatory impact of EPA's assessment on the mining industry in Nevada. Reid's office did not respond to a request for comment.

The new lobbying push comes as EPA's science advisers are reviewing the agency's draft assessment, a review that industry charges is too narrowly focused to consider their concerns and could result in unattainable standards for water, waste and toxics regulations.

At an April 6-7 meeting in Washington, DC, a panel of EPA's Science Advisory Board (SAB) considered a narrow set of charge questions relating to whether the latest draft of EPA's arsenic assessment responded appropriately to recommendations from a 2007 SAB review of an earlier draft of the assessment. EPA has been working on its arsenic IRIS assessment since 2003.

Since the meeting, industry and consultants have sent the agency a number of letters, complaining about the scope of the peer review, the conduct of the chairwoman, Elaine Faustman, a University of Washington professor, and urging EPA to include an additional 200 studies that industry says the agency should include in the assessment.

A pair of letters from the Organic Arsenical Products Task Force (OAPTF) “point out pervasive flaws that throw into question the viability of the SAB review as a basis for EPA actions going forward,” according to one of the April 20 letters. *Relevant documents are available on InsideEPA.com.*

Though EPA research chief Paul Anastas assured industry representatives that the panelists were free to go beyond the charge questions, the letters complain that the panelists seemed unaware of this, stuck closely to the questions, and had too little time to consider the issues. “The Workgroup manifestly made no effort to articulate or understand the reasons that underlay the concerns expressed by the SAB in 2007, or to determine whether or how those concerns had been addressed,” writes OAPTF’s Michal Eldan. “It appeared as if the Workgroup viewed its role as the role of an editor with the purpose of strengthening the document rather than a role of an independent scientific reviewer.”

The letter also questions the qualifications of the 10 panelists, describing them as “extraordinarily incurious about what was really the right interpretation of the difficult issues presented,” and suggested that none had expertise in specific issues relating to the arsenic assessment. The letter also says that Faustman overstepped her role and was “markedly deferential to EPA.”

In an accompanying April 20 letter, OAPTF urges EPA to include studies published since 2007 in the assessment. “With arsenic science fast developing, it is wrong to make decisions in 2010 based on science from 2007, as if the relevant database were static instead of gaining in breadth and refinement,” Eldan writes.

An EPA spokeswoman says the agency is reviewing all of the comments, and will discuss its responses to public comment and the peer review in its final assessment. In an April 28 e-mail, the spokeswoman says that EPA is awaiting the SAB panel’s written report. “The Agency is committed to a transparent, scientifically sound process to determine the human health risks that exposure to this chemical may pose to the American people,” the spokeswoman says.

“While [EPA] has said all along that this would be a narrow charge, we didn’t realize it would be so one-sided,” the industry source says. “The arsenic [peer review] panel has broader implications. It brings into question the quality of” EPA peer reviews.

Industry sources say they are now reaching out to lawmakers who have helped them in the past. Inhofe, for example, pressed Anastas about the arsenic review during his confirmation hearing (*Inside EPA*, June 26). Inhofe later followed up on his concerns that the draft arsenic assessment indicates that “nearly all soils in the U.S. likely would

exceed EPA's target risk range" in an October 2009 letter to EPA Administrator Lisa Jackson. He urged her to conduct a complete scientific peer review of the assessment before it is finalized.

Nelson has in the past urged EPA to carve out exemptions from its drinking water standards for arsenic and other naturally-occurring contaminants for small water systems (*Inside EPA*, July 7, 2006). -- *Maria Hegstad*

BROWNFIELDS

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Article published Apr 30, 2010

EPA 'brownfield' awards give $3 million to 8 communities (*Times Argus*)

Times Argus Staff

The federal government has awarded eight Vermont communities nearly $3 million to clean up and redevelop abandoned or contaminated properties.

According to a press release from the Environmental Protection Agency, the so-called "Brownfields" grants will fund the reclamation of sites tainted by hazardous substances left by obsolete industrial and commercial enterprises.

"These grants will strengthen our communities while also building a stronger, green economy," Curt Spalding, regional administrator of EPA New England office, said in a statement. "Cleaning and revitalizing contaminated sites provides a solid foundation for a community to create new businesses and neighborhood centers, while making our environment cleaner and the community healthier."

The Rutland Regional Planning Commission will use its $200,000 appropriation to assess levels of hazardous substances around the community.

The Bennington County Regional Planning Commission received $356,000 for similar activities.

The Bellows Falls Historical Society will use a $200,000 grant to for a cleanup of its Riverfront Park and trail system.

The Southern Windsor Regional Planning Commission got $200,000 grant for a hazardous-materials assessment.

The Chittenden County Regional Planning Commission, Northwest Regional Planning

Commission, Two Rivers-Ottauquechee Regional Commission, and city of St. Johnsbury also won grants.

BUDGET

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April 30, 2010

Senate Budget Resolution Offers $400 Million Boost To EPA In FY11 (*Inside EPA*)

The Senate's budget resolution as introduced would open the door to a $400 million increase in EPA's budget in fiscal year 2011 over the $10 billion requested by the Obama administration, money that the budget writers assume will result in modest increases to key agency programs including Superfund, clean water and drinking water funds, and EPA's Great Lakes Restoration Initiative.

Senate Budget Committee Democrats in a summary of the chairman's mark of the resolution are also touting other energy and environmental provisions, including a reserve fund to accommodate climate change legislation that would cut greenhouse gases. *Relevant documents are available on InsideEPA.com.*

The fund would be designed to help communities, businesses and others "make the transition to a clean energy economy," but the resolution includes no specific assumptions on the policy details of a pending Senate climate legislative proposal.

The resolution, which the Senate Budget Committee marked up April 22, provides a blueprint for total federal revenues and spending. While non-binding, it generally provides an indication of how lawmakers intend appropriators to allocate EPA and other agencies' discretionary spending.

According to the summary document, Democrats assume EPA will receive $10.4 billion -- a slight increase over its FY10 enacted funding level of $10.3 billion and a boost over the president's requested $10 billion for EPA in FY11.

The resolution includes $3.5 billion for EPA's clean water and drinking water state revolving funds (SRF). EPA's water funds face proposed cuts under the president's FY11 outline, with the budget request seeking $2 billion for the clean water SRF in FY11, a drop from the FY10 level of $2.1 billion. The drinking water SRF would be cut from $1.39 billion in FY10 to $1.29 billion in FY11. Combined, the president is seeking roughly $3.29 billion for the two water funds in FY11, so the budget resolution represents a modest increase.

The resolution "could also accommodate increases for Superfund, allowing the EPA to clean up more sites, as well as the brownfields program, and a variety of other EPA

programs." Obama's budget would cut the Superfund program slightly, from $1.31 billion in FY10 to $1.29 billion in FY11.

The resolution would also reject the president's proposed cuts to the Great Lakes Restoration Initiative, an interagency effort to restore the Great Lakes by focusing on issues such as contaminated sediments and toxics, nonpoint source pollution, habitat degradation and loss, and invasive species. The president seeks $300 million for the initiative, a significant drop from the White House's request last year to fund the program at $450 million.

Bipartisan groups of House and Senate lawmakers last month introduced companion legislation to authorize funding for key EPA Great Lakes programs, including funding the Great Lakes Restoration Initiative at $475 million per year for FY11-15. The budget resolution would fund the initiative at $475 million in FY11.

Except for the EPA programs explicitly described in the chairman's mark of the Senate budget resolution, it does not make assumptions on funding levels for other agency programs, leaving that to appropriators to determine.

CLIMATE CHANGE / GLOBAL WARMING

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Plan B: California Braces for Climate Change (*Wired News*)

- By Ted Greenwald
- April 29, 2010 |
- 4:07 pm

When it comes to environmental regulation, California doesn't wait for the Feds to ride in and lay down the law. The Golden State led the way on mandating emissions-control equipment in motor vehicles in 1961. It pioneered tailpipe-emissions standards in 1967 and ratcheted them up into the 1990s, prompting the federal government to follow. When the Environmental Protection Agency proved reluctant to tighten fuel-economy standards, California outmaneuvered it in 2002 by limiting carbon dioxide from cars. That decision achieved the same end — and was the first move in the United States to control greenhouse gases.

And so it goes with climate change. By the mid-2000s, when the rest of the country was waking up to the challenge of global warming, California was already pursing an aggressive program to assess the likely damage. According to the state energy commission's climate research, the U.S. west coast faces sea-level rise of 12 to 18 inches by 2050, and as much as nearly six feet by the turn of the century. Precipitation is projected to fall increasingly as water rather than snow, draining into the sea rather than lying in cold storage until the long, dry summers. Higher-than-average

temperatures and more frequent extreme weather promise heat waves, wildfires, droughts and floods.

The sense of impending crisis sent California Governor Arnold Schwarzenegger into action-hero mode. In 2006, he signed the Global Warming Solutions Act, capping carbon emissions statewide throughout all activities and sectors. Then, last December, he stood on Treasure Island — an expanse of landfill in the San Francisco Bay that stands to be inundated by the upwelling of glacial melt — and unveiled the 2009 California Climate Adaptation Strategy, a plan to prepare for what many scientists regard as inevitable changes. "We have the responsibility to have a Plan B just in case we can't stop the global warming," he said, apparently missing the document's emphatic assertion that mitigation (making efforts to minimize the onset of climate change) and adaptation (learning to live with it) are equally necessary and inherently complementary undertakings.

The strategy document is 200 pages of meticulously footnoted, thoroughly bureaucratic prose that directs state agencies to take climate change into account. Individual chapters are devoted to seven critical sectors: agriculture, biodiversity, coastal resources, energy and transportation, forestry, public health, and water supply and flood protection. The plan outlines the range and severity of potential impacts — eroding coastlines, flooded freeways, extended wildfire seasons, devastating disease outbreaks. The executive summary lists a dozen action items and an appendix of 163 further recommendations.

Mostly, these directives call for better coordination between federal, state and local regulators; updating existing resource-management plans in light of the latest scientific findings; ongoing research to sharpen estimates of impending change; and funding to accomplish these aims and, presumably, the more concrete actions that would follow. Perhaps most interesting is the recommendation to create a website called CalAdapt that would mash up government data with Google maps, providing officials with up-to-date visualizations of rising waters, increasing temperatures and other risks.

Not all of this is new. California's coastal and water agencies have been planning for the impact of climate change since the mid-1980s. Until the turn of the century, though, adaptation was a dirty word in Sacramento. "You got slapped on the head if you mentioned it," says Anthony Brunello, who worked for the Pew Center for Global Climate Change from 1999 to 2001. "It equated to giving up."

But evidence began to mount that the effects were already being felt, particularly a 7-inch rise in sea level at the Golden Gate over the past century, which convinced even hard-core advocates of mitigation that it wasn't too early to consider, say, building sea walls. In late 2008, Schwarzenegger ordered the California Natural Resources Agency to look into what it would take to adapt to the changes wrought by global warming.

By then, Brunello had become California's Deputy Secretary for Climate Change and Energy — and the state was deep into a fiscal crisis. He directed state agencies to form

sector-specific working groups that invited business leaders, academics and NGOs to help hash out the strategy. The governor released the plan just in time for the Copenhagen climate summit — only to see it swept off the front pages when leaked e-mails from eminent climate scientists sparked the Climategate scandal.

That was a pity because — lack of bold proposals notwithstanding — the Climate Adaptation Strategy is a significant step forward in the U.S. response to climate change. "Of the dozen states published or working on plans that include adaptation measures, California stands out for the breadth and depth," says Terri Cruce, a climate researcher with the Pew Center for Global Climate Change and the Georgetown Climate Center. (Cruce maintains a website detailing climate-change adaptation initiatives on a state-by-state basis.) The report covers every state agency and reaches into every vital sector that's touched by climate change. Most important, it establishes a permanent task force to guide implementation, so the effort won't die when Schwarzenegger leaves office. And although it may seem trendy, the CalAdapt website looks like an especially smart move, creating a convenient, cost-effective way for officials see how latest projections play out in their jurisdiction.

Which is not to say the document is perfect. "It's a strategy, not a plan," Cruce notes — a set of general directions, not a detailed roadmap. Generally, action items are divided between politically low-cost/low-impact maneuvers (such as adding agricultural inspection stations to catch pests following warmer temperatures northward) and more ambitious goals (a host of measures to restore wetlands that would absorb storm surges) with no deadline, budget or process attached.

The milquetoast language of many recommendations ("Consider requiring applicants to address how sea-level rise will affect their project….") leaves officials with any number of ways to avoid taking action. Moreover, economic analysis is almost entirely absent. Given that both adaptation and mitigation will have a price tag, it's impossible to know which is more expensive in any given case. Is it more costly to cut emissions or relocate San Francisco International Airport on higher ground? And where will the money come from?

The strategy's harshest critics believe that such flaws render it ineffectual. Susanne Moser, a geographer who worked as a consultant on the project, dismisses the near-term goals as merely "best practices" and the long-term objectives as unattainable without a more forceful mandate. But she finds some good in the effort. The most important outcome, she says, isn't the document itself but a cultural shift in Sacramento: The disparate agencies, accustomed to competing for jurisdiction and funding, have discovered the value of cooperation. "They realized they needed to work together if they were going to get beyond business as usual," she says. "That's a huge shift — from 'I don't want to talk to these people' to 'let's work together.' It will make all the difference moving forward."

Despite weaknesses in the plan, most observers view it as an important first step. "There's a broad range of decision makers," says Matt Vander Sluis, who contributed to

the effort as global warming program manager at the Planning and Conservation League, an environmental lobbying group based in Sacramento. “Some get it, but others need this type of guidance to wrap their heads around the problem.” One immediate result, he points out, is that officials will think twice about approving proposed San Francisco Bay Area developments that would stand below sea level. “It’s a useful set of recommendations,” he says. “Now, state and federal decision makers need to make the investment in carrying them out, because without resources, it’s going to be like trying to put out a fire without a fire hose.”

The follow-up is already underway, starting with the top-line directive: formation of a task force to establish future priorities. William Reilly, who served as the first President Bush’s head of the Environmental Protection Agency, leads the group, which is due to report its recommendations to the governor by summer. Meanwhile, the strategy will be updated every two years. By the time the first biennial review rolls around in late 2011, the short-term goals should be complete and presumably the roadmap to the more politically challenging recommendations will have been sketched in. That is, unless California finds that adapting to the new politics of climate change even harder than responding to the change itself.

This report was produced by the Climate Desk collaboration.

April 29, 2010

EIA to Assess Senate Climate Bill's Impacts on Energy Supply, Demand (*New York Times*)

By DARREN SAMUELSOHN of Greenwire

Sens. John Kerry (D-Mass.), Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.) submitted key details of their climate bill yesterday to the Energy Information Administration as part of preparations for a floor debate later this spring or summer.

EIA will take a minimum of six to eight weeks to run the numbers on what the senators' legislation means through 2035 for energy supply, demand, prices and greenhouse gas emissions.

But Jonathan Cogan, a spokesman for the Energy Department's main analytical unit, said the schedule won't be fixed in stone. "This depends on also how many things get changed and we have to redo things, and so forth," he said of the six- to eight-week "ballpark" estimate.

Kerry, Graham and Lieberman also sent details of their bill yesterday to U.S. EPA for a study of the bill's economic and environmental effects. A Congressional Budget Office study won't be started until the legislation is officially introduced, though Senate aides say they are in regular contact with the nonpartisan office.

EIA, EPA and CBO all studied the House-passed climate bill (**H.R. 2454** (pdf)) last year. On average, EIA found that the House bill would curb household consumption by $83 a year between 2012 and 2030 under a "basic case" scenario in which low-emission technology is developed on schedule and critical offsets are not constrained. EIA's findings were along the same lines as CBO, which projected a cost of $175 per year (2010 dollars), and EPA, which expected a cost of $80 to $111 per year (2005 dollars).

The Senate proposal from Kerry, Graham and Lieberman is likely to call for similar emission restrictions -- 17 percent below 2005 levels by 2020 -- though with different mechanisms to control emissions from across the economy.

Majority Leader Harry Reid (D-Nev.) has said he plans to schedule floor debate on the energy and climate bill ahead of any action on immigration, but he has not been more specific about the timing. Given the EPA and EIA studies, several sources tracking the climate issue do not expect the legislation to reach the floor until at least early June, after lawmakers return from the Memorial Day recess.

Pressing for public release

Kerry, Graham and Lieberman have no plans to publicly unveil their bill after scrapping a press conference that had been scheduled for Monday. Graham has left the negotiations over Reid's decision to put immigration on the agenda this year, and he has given no indication since that he is ready to come back.

EPA officials did not respond yesterday to requests to disclose the materials they got from the senators' offices. And Cogan said he did not expect EIA would release any information about the Senate bill until its analysis is finished.

The free-market energy group American Energy Alliance filed a Freedom of Information Act **request** (pdf) yesterday to EPA seeking to gain access to the senators' legislative details. In its request, the group cited President Obama's FOIA directive that the law "be administered with a clear presumption: In the face of doubt, openness prevails" and that a "presumption of disclosure should be applied to all decisions involving FOIA."

"This presidential directive is especially applicable in this case," the group wrote. "There are no FOIA exemptions which would prohibit the disclosure of the legislation sent to EPA. This is public information and should be made available to the public."

The American Energy Alliance has been an outspoken opponent of the Senate climate bill, airing a series of television ads last fall questioning Graham's decision to participate in the negotiations with Kerry and Lieberman (*E&ENews PM*, Oct. 21, 2009).

E&E also filed a FOIA request yesterday to EPA seeking details of the climate bill shared by the senators' offices.

Click here (pdf) to read the American Energy Alliance's FOIA request.

Narrower Climate Bill Alternatives Attract Attention After Stalled Roll-Out (*Inside EPA)*

Narrower legislative proposals for addressing key climate and energy concerns are attracting renewed attention from labor and environmental activists who nevertheless remain committed to a comprehensive plan despite the postponement of a much-anticipated April 26 bipartisan bill roll-out.

Environmentalists say they are hopeful that the comprehensive climate push can be revived and are pledging to resist moving an energy-only bill that passed committee last year as it stands now.

In addition, a proposal that has emerged as a possible alternative is a multipollutant utility bill by Sen. Thomas Carper (D-DE) that does not include carbon dioxide (CO2) controls, but could show progress in spurring a clean-energy economy. Sen. James Inhofe (R-OK), the ranking member of the Senate environment committee and a vocal critic of CO2 regulations, has pounced on the stalled climate negotiation to argue that it could open the door for Congress to pass the Carper plan for reducing nitrogen oxides, sulfur dioxide and mercury emissions from power plants.

But environmentalists continue to hold out hope that a trio of senators drafting bipartisan legislation can salvage their effort. Speaking to members of the Utility Workers Union of America April 26, Sierra Club campaign director Debbie Sease said there is “some hope” that the trio will roll out their bill later this week.

“But let’s put aside for a moment what happens on that particular piece of legislation. There are a plethora of bills on energy and climate out there,” Sease said, pointing to cap-and-dividend legislation introduced by Sens. Maria Cantwell (D-WA) and Susan Collins (R-ME), a clean energy bill offered by Sen. Richard Lugar (R-IN), the energy-only bill that passed through the Senate Energy & Natural Resources Committee last year and the “Homestar” energy efficiency bill she said seemed likely to pass this year. “So what exactly will happen on these bills -- what combination will get 60 votes and make it across the finish line -- we don’t know. But what we do know is that our elected representatives can read the pulse of Americans. They know that people don’t want ‘no action’” on energy and climate.

Sens. John Kerry (D-MA), Lindsey Graham (R-SC) and Joseph Lieberman (I-CT) had been scheduled to unveil their long-awaited climate bill April 26, but they indefinitely postponed the introduction after Graham outlined his objections to putting immigration before energy in a letter circulated over the weekend. However, the lawmakers April 28 sent the legislation to EPA for analysis.

An environmentalist stresses that activists will not give up on the Kerry-Graham-Lieberman talks as their primary focus “until and unless” it becomes crystal clear that effort is dead, and “we’re not there yet.” The source expresses some optimism the bipartisan process can be revived and notes the number of times health care reform legislation was pronounced dead before it finally passed as another reason to be hopeful.

CORRECTION

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April 30, 2010

Correction (*Inside EPA*)

An article in the April 23 issue of Inside EPA, “Activists Eye Gains On Standing Even If They Lose High Court NEPA Suit” incorrectly identified the status of Judge Charles Breyer. He is a federal district court judge in California, not an appellate court judge on the U.S. Court of Appeals for the 9th Circuit.

Another article in the same issue, “OIG Report Could Complicate Boxer’s Push For EPA To Regulate Perchlorate,” quoted outdated data from the OIG report asserting that EPA’s preliminary remediation goal (PRG) for perchlorate is 24.5 parts per billion (ppb). EPA’s PRG is 15 ppb.

INSIDEEPA-31-17-16

ENERGY

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Crystal River Elementary School (Carbondale, Colo.) selected as contestant in EPA National Building Competition (*Ethiopian Review*)

EthiopianReview.com | April 29th, 2010 at 11:45 am

Crystal River Elementary School, part of the Roaring Fork School District in Garfield County, Colo., has been selected to participate in the U.S. Environmental Protection Agency’s (EPA’s) first national competition among commercial buildings to save energy and fight climate change.

In the spirit of popular weight-loss competitions, students from Carbondale’s Crystal River Elementary School will compete against 13 other buildings across the country to “work off the waste” through improvements in energy efficiency with help from EPA’s Energy Star program. The building that sheds the most energy waste on a percentage

basis will be recognized as the winner of EPA's National Building Competition in October 2010.

"Every dollar we save in energy can be turned into classroom dollars for teachers, books and computers. Energy Star makes this simple to do and Roaring Fork School District is honored to be a part of the EPA National Building Competition," said Shannon Pelland, the school district's assistant superintendent. "This Energy Star project is part of the Garfield New Energy Communities Initiative, which is committed to improving energy efficiency across the county. We look forward to seeing how we measure up against other buildings across the nation."

"Carbondale Middle School Energy Champions will be working with the younger students and staff at Crystal River Elementary to help the school save energy and save money," Pelland said.

Nearly 200 buildings applied to participate in the National Building Competition, which will judge the energy performance of the 14 finalists from September 1, 2009 to August 31, 2010. The energy use of each building is being monitored with EPA's online measurement and tracking tool, Portfolio Manager. Contestants will receive technical assistance from EPA as well as energy fitness advice from celebrity trainer Bob Harper. Each building will participate in a mid-point weigh-in and post its results online at the competition website. Twitter updates by contestants will also be available at www.twitter.com/EnergyStarBldgs/contestants

"Buildings of all shapes and sizes are saving money and energy with help from EPA and Energy Star," said Jean Lupinacci, director of EPA's Energy Star Commercial Buildings program. "We applaud the contestants of EPA's National Building Competition for taking action to protect the environment and fight climate change."

According to EPA, energy use in commercial buildings accounts for 17 percent of total U.S. greenhouse gas emissions at a cost of more than $100 billion per year. On average, 30% of the energy used in commercial buildings is wasted. Thousands of businesses and organizations work with the EPA's Energy Star program and are saving billions of dollars and preventing millions of tons of greenhouse gas emissions from entering our atmosphere each year.

Roaring Fork School District serves 14 schools in Glenwood Springs, Carbondale and Basalt, Colorado.

ENFORCEMENT

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EPA Bid To Strengthen Accident Enforcement May Set Broad Precedent (Inside EPA)

EPA is working to strengthen its enforcement policies governing facilities' Clean Air Act duty to minimize risks from chemical and industrial accidents by more strictly penalizing companies for economic benefits from noncompliance and other measures, which could set a broad precedent for other environmental laws that require industry to reduce risks from accidental releases.

One environmental legal source says that the move to better capture economic benefits from non-compliant facilities, in particular, could have major consequences under a variety of statutes because the policy is "sort of a core philosophical area surrounding the recoupment of penalties corresponding to the extent of the noncompliance" under the Federal Insecticide, Fungicide & Rodenticide Act, Clean Water Act (CWA) and other laws.

While an EPA spokesman denies that recent industrial accidents have affected the policy revisions, a spate of recent industrial disasters this month -- including the April 22 sinking of a Gulf Coast oil drilling rig and an April 2 refinery fire in Washington -- have increased focus from Congress and others on industry's plans for responding to emergencies.

Lawmakers are already vowing to take action to ensure industry minimizes future risk from disasters, with key House Democrats launching an investigations into the "adequacy" of the oil rig owners' response plans, and lawmaker resolutions on the refinery fire noting that EPA and other agencies are investigating the fire to ensure that the risks of similar incidents are minimized in the future.

EPA is working to reform several major aspects of its enforcement program under the air act's section 112(r), which requires companies to identify and minimize the risks of hazards from accidental releases. Violations can lead to administrative penalty orders or compliance orders, as well as civil or criminal judicial actions.

EPA is reviewing its 2001 joint penalty and enforcement policy for the Clean Air Act section 112(r), targeting general duty requirements as part of a "more aggressive response policy" to such releases, Michael Bellot of EPA's Waste & Chemical Enforcement Division said on an April 21 American Bar Association teleconference. The agency expects to release the combined policy this summer, according to Bellot.

An environmentalist adds that although general duty requirements are generally set in isolation under the different statutes, revising the policy to be more aggressive under the air act would have "a potentially positive ripple effect" of enhancing industrial safety in general, even before an enforcement action has been taken.

One EPA official says that enforcing Clean Air Act risk management plans (RMPs) more aggressively could serve as a model to force better compliance with similar requirements in other environmental laws. The source says the strategy could spur better compliance with Spill Prevention, Control & Countermeasure Plans for reducing water pollution under the CWA, as well as Resource Conservation & Recovery Act

(RCRA) provisions “for managing wastes from their generation to the final ultimate disposal. And if those regulations are followed then people are protected from the hazards of exposure.”

Bellot said that the agency wants to more stringently penalize non-compliant companies by recouping economic benefits that they may accrue from violating the air act’s general duty provisions. Such an approach “can result in some pretty large penalties, depending on the impacts” of an accidental release, said Bellot.

The EPA spokesman says the agency is not changing the underlying general duty requirements established by the air act, which the EPA website says includes a “very broad” definition of processes covered and does not govern a specific list of chemicals. But the revised 112(r) “Combined Enforcement Policy will now include a more detailed methodology for calculating penalties associated with violations of the General Duty Clause,” the spokesman says.

EPA is not revising its methodology to calculate economic benefits, the agency spokesman says, but EPA will continue to “pursue the collection of avoided and delayed cost” and is considering adding a “wrongful profits component” that would levy new penalties on companies that profit from increased productivity tied to noncompliance.

The spokesman cites as an example a company that increases production capacity without addressing general duty requirements related to how the increased production affects the system or the mandate to craft an adequate RMP. “If EPA believes that the increase has lead to a violation of underlying requirements, then the profit gained from the increase in production would be another economic benefit of noncompliance,” the spokesman says.

A former U.S. Chemical Safety & Hazard Investigation Board (CSB) member says the issue is timely, because decreased capacity from an accident like the Washington refinery explosion can increase industry-wide risk. “The danger that you also want to think about in tracking the petroleum industry is that we have almost all facilities operating at a maximum capacity, so every time one goes down there is the urgency for everyone else to keep on producing or maybe increase their production and those are systems that can stress the overall system for safety,” the source says.

The environmentalist claims that the Bush administration viewed economic benefits from noncompliance in a “very narrow” way that did not factor in the wide variety of benefits stemming from compliance delays. “That’s an area that is ripe for improvement by a more environmentally committed administration,” says the source.

One industry lawyer generally supports the revisions, saying they would protect companies who comply with the law from having to compete with non-compliant companies that gain an economic benefit. “I support having a level playing field because my clients spend an enormous amount of money on compliance and on meeting the

regulations, and it's really not at all fair to have companies that are scofflaws and don't have any sanctions against them for noncompliance," the source says.

Bellot affirmed that the revisions are in part prompted by complaints from facilities in compliance with the general duty requirements. "We get a lot of pressure from companies who are following the rules to make sure that others who are not following the rules do not capture an economic benefit," he said.

EPA is also adopting Office of Inspector General recommendations to move toward more risk-based section 112(r) enforcement, Bellot said. For example, he expects the policy revisions to increase the number of site inspections and compliance information requests for facilities deemed "high risk" of releases.

Industry sources meanwhile are urging EPA to seek their input in revising the policies. "I think it winds up being a smoother enforcement process in the sense that you don't have so much litigation around companies resisting if they feel that they had a fair warning," says a second industry lawyer.

The EPA spokesman says the agency is not seeking public input on the enforcement policy revisions "because this document is used in the development of enforcement cases and to calculate penalties."

Bellot also said that EPA, by the end of the year, is set to finalize draft guidance that instructs agency staff conducting site inspections of RMPs to offer facility employees to take part in such evaluations -- a role that unions have previously urged the agency to formalize. Bellot said that large industrial facilities may have multiple unions, adding, "They'll be at those interviews and they'll have a role to provide guidance."

The former CSB official says that worker involvement in risk inspections could go a long way to prevent accidents like those that have recently occurred across the country. "The more people we have knowledgeable and involved in accident prevention programs . . . the stronger the system of safety will be at that facility, and should something go awry it's likely to be caught at a much less catastrophic stage." -- *Molly Davis*

April 30, 2010

Industry Sees Ruling Opening Door To Court Review Of Data Quality Suits (*Inside EPA*)

Industry groups say a recent appellate ruling could open the door to courts for the first time reviewing suits against EPA and other agencies under the Data Quality Act (DQA), though activists question whether the decision will outweigh a different appeals court's earlier precedent-setting decision that found agencies' DQA decisions are not reviewable.

The DQA requires EPA and other federal agencies to accept and respond to petitions to correct allegedly flawed data used in rulemakings and other decisions, but is silent on whether agency responses can be challenged in court. Industry officials say judicial review is critical in helping them force agencies to follow the law's mandates, but have so far failed to win a favorable court ruling.

Now, the Center for Regulatory Effectiveness (CRE), a think tank with links to industry, says a March 26 ruling by the U.S. Court of Appeals for the District of Columbia Circuit may open the door to DQA lawsuits because it finds that DQA guidelines issued by the White House Office of Management & Budget (OMB) are "binding." *The decision is available on InsideEPA.com.*

CRE says the ruling in *Prime Time Int'l Co. v. Vilsack*, when read with a Supreme Court decision cited in the ruling *United States v. Mead*, which established when the legal test for agency deference is applicable, means "you could readily conclude that the DQA is judicially reviewable."

However, the D.C. Circuit still dismissed the industry challenge of the U.S. Department of Agriculture's (USDA's) failure to respond to its DQA petition challenging tobacco tax assessments, but for different reasons than the lower court, which cited the earlier precedent-setting decision by the 4th Circuit in *Salt Institute & U.S. Chamber of Commerce v. Michael Leavitt* finding that plaintiffs lacked standing to sue under the act.

Instead, the D.C. Circuit dismisses the challenge because it finds the USDA decision not to respond to the petition was an "adjudication" specifically exempt under the OMB guidelines. "Prime Time's contention that USDA violated the [DQA] when it did not respond to a request to disclose and correct certain information underlying the tobacco assessments thus fails," the court ruled.

CRE says the ruling shows "the D.C. Circuit ignored the district court opinion's reasoning and embraced a new government argument that the substantive USDA action at issue was an 'adjudication,' and therefore specifically exempt from the [DQA] under the OMB guidelines," meaning other agency actions that are not adjudications could potentially be challenged and invalidate the 4th Circuit precedent, the group says in an April 14 post on its Web site.

The *Salt Institute* ruling, issued in 2006, was a major blow to industry efforts to use the courts to challenge EPA and other federal agencies' DQA decisions. The DQA "creates no legal rights in any third parties," the decision found. "Instead, it orders [OMB] to draft guidelines concerning information quality and specifies what those guidelines should contain."

CRE further argues that the *Prime Time* decision could also impact a pending 9th Circuit appeal, *Americans for Safe Access v. Department of Health & Human Services* (HHS). In that case, medical marijuana advocacy group Americans for Safe Access filed a lawsuit against HHS and the Food & Drug Administration arguing that the agencies

violated the DQA for failing to rely on sound science in determining that marijuana has no medicinal value.

“The D.C. Circuit’s opinion is definitive and puts to rest the 4th Circuit’s unexplained [DQA] decision in the *Salt Institute* case and will presumably have to be taken into account by the 9th Circuit,” CRE says in its Web post.

But a source with the Center for Progressive Reform (CPR), a think tank that supports greater regulatory protections for human health and the environment, says the D.C. Circuit’s decision on the DQA is a “convoluted and creative argument at best” for justifying that DQA petitions are reviewable.

The source questions the impact of the D.C. Circuit’s decision in light of the *Salt Institute* precedent and the fact that the appellants lost the overall case, including the DQA challenge. “Courts do not go back and consider these [decisions . . .] as if it were a blank slate,” the source says. “There are precedents.”

Groups such as CPR say making the DQA judicially reviewable “could tie the agencies in knots” with challenges from industry on agency decisions and activists on the application of cost-benefit analysis, the source says. -- *Aaron Lovell*

April 30, 2010

EPA Offers Enforcement Flexibility For Lead Paint Renovation Rule (*Inside EPA*)

Despite widespread concerns that builders may not have enough time to comply with EPA’s lead renovation, repair and painting rule, EPA moved forward with implementing the rule as planned April 22 but is offering some enforcement flexibility to make sure it is implemented smoothly, top agency officials say.

“EPA is doing everything we can to make the implementation of these rules as straightforward as possible,” according to an April 20 memo from toxics chief Steve Owens and enforcement chief Cynthia Giles, which was sent to the agency’s regional division directors for the offices of Prevention, Pollution & Toxic Substances and Enforcement. *The memo is available on InsideEPA.com.*

EPA’s rule, issued a year ago, requires contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 to be certified to follow specific work practices to prevent lead contamination.

Some lawmakers and industry groups had asked EPA and the White House Office of Management & Budget to delay implementation of the rule because of a dearth of certified contractors.

The April 20 memo says implementation is going ahead as planned but offers to limit enforcement against contractors that applied for EPA certification prior to the deadline but have not yet received responses from the agency.

“EPA does not intend to take enforcement actions against firms who applied for firm certification before April 22 and are just waiting for their paperwork. . . . EPA does not wish to disrupt ongoing renovations for those firms that submitted applications on time,” Owens and Giles say. “We will of course still enforce rules about work practices and training requirements to make sure that the rules protecting the health of people are observed and firms that comply with the rules are not put at a competitive disadvantage,” the memo says.

GENERAL

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Federal Career Intern Program blasted by some as undermining open market hiring (*Washington Post*)

By Joe Davidson
Friday, April 30, 2010; B03
If you think the word "intern" refers just to the legions of eager young folks who descend on Washington each summer, providing cheap labor by day and guzzling beer at night, think again.

When Uncle Sam talks about interns, he might mean the college students who get a few months of valuable on-the-job experience, but he also could be referring to the permanent federal workers who bypassed the regular competitive hiring process and got a full-time job through the Federal Career Intern Program.

Union officials blasted this "intern" program at a Senate hearing Thursday. Although much of the session concerned the training and mentoring of federal employees, the National Treasury Employees Union and the American Federation of Government Employees took the opportunity to tell the two senators who attended that some government agencies use the program to avoid fair and open competition for federal jobs.

Coincidentally, the inspector general of the Environmental Protection Agency issued a report this week about EPA officials who "engaged in a prohibited personnel practice by giving four FCIP job fair participants improper advantages not provided to others attending the job fair."

The IG noted that "the FCIP has few eligibility and procedural requirements." Agencies using the program are obligated, however, to follow the government's Merit System Principles, which call for a hiring process that is open, fair and free of bias.

After the hearing, John Palguta, a vice president of the nonprofit Partnership for Public Service, said the EPA violations were attributable to individuals and not to a program many hiring managers find useful.

But NTEU, citing what it called "rampant abuse," challenged the program's legality in an ongoing lawsuit filed two years ago. In her testimony to the Homeland Security and Governmental Affairs subcommittee on oversight of government management, the federal work force and the District of Columbia, NTEU President Colleen M. Kelley said, "FCIP turns the whole concept of an 'internship' on its head." She was floored when she saw the program listed on an Office of Personnel Management Web site for student jobs.

J. David Cox, AFGE's secretary-treasurer, told the panel his union "strongly objects to the federal government's continued use of the FCIP because agencies have embraced it to such a degree that it has nearly superseded the competitive service and because it has become a preferred vehicle for favoritism."

The unions have urged the Obama administration to eliminate the program, and Cox said that at a minimum there should be a limit on the number of people hired under it each year.

Currently, more than 22,000 workers are hired through it annually, Sen. Daniel K. Akaka (D-Hawaii), chairman of the subcommittee, said in his opening statement. He added that he is concerned about the broad use of the program, though he did not take a position on whether it should be cut or killed.

He said, "Labeling a hiring authority used for a wide range of positions as an internship program may weaken agencies' commitment to investing in real internships for focused employee development."

The top Republican on the panel, Sen. George V. Voinovich of Ohio, said Congress doesn't have enough information to determine whether FCIP is ready for the trash can. "In the absence of detailed information on how agencies employ the FCIP, we are left with anecdotal instances of potential agency abuse of this tool. We in Congress need to drill down further on this issue before deciding to modify or terminate this hiring authority."

Insuring dependents

Although several health insurance companies said they would cover adult children on their parents' policies by June 1, the Office of Personnel Management says existing federal law prohibits that coverage for those in the Federal Employees Health Benefits Program until a new health insurance law takes effect in January.

In a notice to federal agency benefit officers Thursday, OPM said: "We are working diligently with the Congress to address this matter. In the meantime, children turning 22

are automatically covered for an additional 31 days under the parent's coverage policy. During this time, families can decide to continue FEHB coverage for their adult child for up to 36 months through the Temporary Continuation of Coverage (TCC) program."

Caution: OPM said "there is no federal contribution toward the premium" of the temporary coverage. That coverage, however, is not subject to exclusions such as those for preexisting condition.

Staff writer Eric Yoder contributed to this report.

HAZARDOUS WASTE

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White House closely watching oil spill (*MSNBC*)

Posted: Thursday, April 29, 2010 3:21 PM by Mark Murray
Filed Under: White House, Barack Obama
From NBC's Athena Jones and Mark Murray
President Obama opened his remarks at a Rose Garden ceremony honoring teachers by updating the public on the White House efforts to help monitor and contain a potentially disastrous oil spill in the Gulf of Mexico

He said he had ordered the EPA administrator and Interior and Homeland Security secretaries to visit the site of the incident tomorrow.

"My administration will continue to use every single available resource at our disposal, " Obama said. "I've been in contact with all the governors of the states that may be affected by this accident. Earlier this week, Secs. **Napolitano** and **Salazar** laid out the next steps for a thorough investigation into what precipitated this event."

The Department of Homeland Security has designated the incident at British Petroleum's breached well "a spill of national significance," DHS Secretary Janet Napolitano told reporters at a briefing at the White House Thursday, before the president's Rose Garden remarks.

BP estimated the breach at its exploratory well was releasing some 1,000 barrels a day of light to medium crude into the Gulf, but new estimates from the government suggest the amount could be five times that. One possible method to staunch the flow of oil, a relief well, could take 90 days or more to enter operation. In the meantime, the company is using chemical dispersants, controlled burns, and booms to try to limit the damage and the Department of Defense has been asked to look into any special expertise or technologies it might be able to contribute to the efforts.

Officials project the oil could make landfall in the Mississippi Delta region some time tomorrow, and the White House is closely watching the events as they unfold. The president began his daily intelligence briefing in the Oval Office this morning with an update on the oil spill and he was also briefed on the issue last night on Air Force One on the way back from a tour of the Midwest.

One question is whether the incident will lead the administration to rethink plans to expand offshore oil drilling in the Gulf of Mexico and other areas, an announcement the president made in March. While dodging direct questions about the impact this spill would have on those plans, White House officials said the president's March speech was not the final word on drilling, but merely the beginning of a process.

Florida Sen. **Bill Nelson** (D) released a letter he wrote to President Obama, saying that he is filing legislation that would prevent the administration's actions on expanding offshore drilling.

EPA: City responsible for landfill cleanup (*Middletown Press*)

Published: Friday, April 30, 2010
By HANNAH VAHL, Press Staff
MIDDLETOWN — The U.S. Environmental Protection Agency has identified the city as a party responsible for contaminating an area where Omo Manufacturing Co. once stood and is requiring it to pay for remediation that could cost millions.

The EPA sent city officials a letter on March 3 notifying them of potential liability under a 1980 federal law, which allows the EPA to clean up contaminated sites and seek reimbursement or compel responsible parties to clean up such sites.

The Common Council will be holding a workshop in the coming weeks to decide whether to have the EPA perform the cleanup and reimburse the agency or whether it should put the job out to bid itself, city Planning Director Bill Warner said. He said the EPA itself is budgeting $2 million for the work and has already spent $400,000 on assessing the site — money the city will have to repay.

The contaminated area lies between River Road, Route 9 and Walnut Street. The city used four of the approximately 10.4 acres as a landfill for at least 20 years, according to an EPA memo dated February 2010 on file with the city. The site housed the Omo Manufacturing rubber and artificial leather factory from the late 1800s to 1934. The city dumped municipal and incinerator waste on the site between the 1930s and 1955, the EPA memo states.

Warner said Omo Manufacturing deeded the city 12 acres, which included the parcel in 1935, and the city deeded a portion of the land back to Omo in 1957 — on the condition that the city could continue to use the area as a dumping ground.

The state Department of Environmental Protection first learned about the waste-disposal issue in 1983 from former Omo Manufacturing employees, according to the EPA memo.

The property, which consists of two buildings, an open yard and a vacant lot and parking area, is currently owned by Salvatore "JR" Marino, who leases the buildings and the yard. The yard is used as a staging area, and landscaping and auto body repair businesses, among others, lease space in the buildings, according to the EPA memo.

Warner said that if the EPA takes the lead on the likely-complicated cleanup, the city could probably negotiate a payment schedule over time and could work with lobbyists and Congressional representatives to lessen the cost to the city. But he said the EPA does not use a competitive bidding process and the cost could be much higher.

He said that, if the city takes the lead, the work could be competitively bid to contractors and the city could seek other potentially-responsible parties with whom to share the expense, while the EPA would be unlikely to do so. Warner said that when the EPA pursued remediation of the old Southington Landfill, the town of Southington was able to find more than 300 other responsible parties for the dumping.

Other potentially-responsible parties for the site could include former occupants Stiles Parker Press, I.K. Penfield Shirt Factory and Middlesex Rubber Works Co., among others, Warner said.

A call to an EPA spokesman Thursday afternoon seeking comment was not immediately returned.

Hannah Vahl can be reached by e-mail at hvahl@middletownpress.com.

MINING

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April 29, 2010

EPA sets public hearing on Spruce Mine permit (*Charleston Gazette*)

Federal regulators have scheduled a public hearing for next month on their proposal to veto the largest mountaintop removal mining permit in West Virginia history.

By Ken Ward Jr.

Staff writer

CHARLESTON, W.Va. -- Federal regulators have scheduled a public hearing for next month on their proposal to veto the largest mountaintop removal mining permit in West Virginia history.

The U.S. Environmental Protection Agency scheduled the hearing for May 18 at the Charleston Civic Center.

The EPA scheduled the hearing to start at 7 p.m., but said anyone who wants to speak must register ahead of time.

On-site registration will start at 5 p.m., but the public can also register online by visiting http://sprucehearing.eventbrite.com.

EPA officials are taking the extremely rare step of trying to veto the U.S. Army Corps of Engineers' approval of the permit for Arch Coal's Spruce No. 1 Mine in Logan County, as part of the Obama administration's crackdown on mountaintop removal in Appalachia.

Under the law, the corps generally reviews "dredge-and-fill" permits for strip-mining valley fills. But the law gives the EPA broad authority to veto corps' permit approvals if the EPA believes serious environmental damage would result.

The Spruce Mine has been a the heart of the mountaintop removal battle since that fight began more than a decade ago, and all sides have been watching it closely for an indication of how strongly the Obama administration wants to force changes in the practice.

The EPA has consistently raised significant questions about the Spruce Mine for years, but only last fall under the Obama administration actually took the unprecedented step of trying to veto a corps' dredge-and-fill permit that had already been issued.

Environmental groups have been trying to stop the Spruce Mine since 1998, when it was proposed as a 3,113-acre extension of Arch's Dal-Tex Mine that would have buried more than 10 miles of streams in the Pigeonroost Hollow area near Blair.

U.S. District Judge Charles H. Haden II blocked the permit, putting more than 300 United Mine Workers members at Dal-Tex out of their jobs. Since then, Arch has transferred the permit to its non-union arm and the Spruce Mine has undergone a much more detailed environmental impact study.

In January 2007, the corps issued a scaled-back version of the Spruce Mine that would bury more than 7 miles of streams. Since then, the permit has been tied up in court, with Arch Coal operating on a limited scale with a few dozen workers.

In late March, the EPA issued a "proposed determination" that the mine would cause "unacceptable adverse impacts." That notice continued a formal process -- including public comment and a hearing -- that could lead to the ultimate veto of the permit by the EPA.

Reach Ken Ward Jr. at kw...@wvgazette.com or 304-348-1702.

PESTICIDES

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Court forces reregistration of pesticide (*Capital Press*)

California
Updated: Thursday, April 29, 2010 11:52 AM
Spirotetramat can still be used, but supplies low
By DAN WHEAT
Capital Press
The Environmental Protection Agency will allow continued use of a new pesticide while it is being reregistered to comply with a court ruling, but supplies likely will run out before that happens.

A national environmental group, the Natural Resource Defense Council, brought the lawsuit that caused the shortage.

That's ironic because it will force growers to use more of older, less environmentally friendly products to combat pests, said Del Vanderhoff, manager of Chamberlain Distributing Co. in Wenatchee, Wash.

"These people don't know what they're doing," he said in reference to the council.

Kevin Adam, manager of the product, spirotetramat, for manufacturer Bayer CropSciences in Research Triangle Park, N.C., agreed it is ironic and said he's not sure what the council's motivation is.

The NRDC has said spirotetramat could be toxic to bees, but the EPA has said there is no data showing that. The NRDC did not return calls for comment.

Spirotetramat was sold as Ultor to combat tree fruit and hops pests in Washington, Oregon, Idaho and Utah for the first time last season and was sold as Movento to combat grape, citrus, vegetable and nut pests in California, Adam said.

A U.S. District Court in New York invalidated the EPA's registration of spirotetramat on Dec. 23 because the agency failed to publish notice of receipt of registration applications and thereby didn't allow for public comment before registering the pesticide in 2008.

"It's important to note there's been no human health or safety issues with the product. It's simply an issue of process," said Mike Willett, vice president for scientific affairs of the Northwest Horticultural Council in Yakima, Wash.

The horticultural council and the California Citrus Quality Council urged the EPA to allow continued use to spirotetramat while it was being registered. EPA first said it would ban the sale and distribution of existing supplies but reversed itself April 5.

In the April 5 order, the EPA said spirotetramat poses less risk to human health and the environment than its alternatives. The EPA said Bayer sold 34,000 gallons of the product to U.S. distributors in 2009 and that distributors still had approximately 7,600 gallons as of Dec. 10.

Dan Flick, Washington tree fruit business development manager for Wilbur Ellis Co. in Wenatchee, said Ultor works well on pear psylla, a leading pear pest. Wilbur Ellis ran out of Ultor in mid-April and won't be able to meet 25 percent of its demand, Flick said.

"The 25 percent will have to use other products and because they're not as effective they will have to use more than one spray," Flick said. "It's amazing this spring how low the overwinter of pear psylla is, and I attribute that to Ultor last season."

Vanderhoff said Chamberlain will probably run out of supply.

Nate Squires, field staff manager of Wenatchee-based Northwest Wholesale Inc., said Northwest bought extra product, which covered its customers for this year, but has little left.

Ed Murray, general manager of Orange Belt Supply Co. in Lindsay, Calif., said he hasn't ordered any Movento yet for this year but that it was very effective last year on citrus red scale and against nematodes in oranges.

Rick Wescott, a Bayer salesman in Tulare and Fresno counties, said he doubts distributors have enough Movento. He said usage will really increase when Japan accepts minimum residue levels of the product.

Adam said demand is high and supply is tight. He said it may be six months before it's reregistered and Bayer makes more.

EPA Faces Host Of Queries Over Looming Draft Chemical Spraying Permit (*Inside EPA*)

As EPA prepares to send its draft pesticide spray permit to the White House for review, the agency is facing a host of questions from states concerned about its enforceability, who will be covered and who will be liable for spills, and whether they will have enough time to create state permits after EPA finalizes it general permit in December.

EPA officials April 26 told a group of state pesticide regulators that while the agency is running behind on creating its court-mandated Clean Water Act (CWA) general permit

for pesticides sprayed over or near water, the draft permit, a fact sheet, and a proposed *Federal Register* notice have been circulated to agency headquarters and regional offices and will be sent this week to the White House Office of Management & Budget (OMB) for review.

The agency "expect[s] a relatively quick review" from OMB, an EPA official at the meeting said. "They know the schedule."

The U.S. Court of Appeals for the 6th Circuit in *National Cotton Council, et al. v. EPA* vacated EPA's 2006 rule exempting agricultural pesticide users, state pest controllers and others from spraying pesticides "on or near" waters from needing to obtain a CWA National Pollutant Discharge Elimination System (NPDES) permit. The Supreme Court last month declined an industry request to review the appellate ruling, clearing the way for EPA to issue its permit.

The ruling means that some applications are now considered discharges under the water act, requiring a permit to avoid liability for unregulated discharges.

The 6th Circuit gave EPA until April 9, 2011, to develop a general permit for states and tribal lands that do not have delegated NPDES permitting authority -- though the agency's permit will also provide a model to those states with delegated programs. EPA has said in the past that the general permit will cover about 365,000 applicators in an estimated 506 million applications every year.

EPA hopes to publicly propose the permit by May 26 and hold a series of public meetings and webcast during a 30-day comment period, an EPA official said at the April 26 meeting in Arlington, VA.

The upcoming permit will cover spraying for four categories of nuisances: aquatic weeds and algae; aquatic animals; forest canopy; and mosquitoes and other flying insects, an expanded category that previously included only mosquitoes in the larval stage, after concerns raised by stakeholders, the official told the April 26 meeting.

But states and some EPA staff are raising questions about how the general permit will be enforced and who will be liable for spills in various pesticide spray situations. While some pesticide applicators will need to submit a notice of intent (NOI) to be covered by the general permit, as with most general permits, the upcoming pesticide spray permit will also automatically cover many pesticide applicators without their needing to submit an NOI, EPA sources say.

"We've rarely used that concept in the NDPES program. It . . . was added to the regulations about 10 years ago, and we've used it a couple of times in certain instances," the EPA official said. "Most applicators will basically be covered automatically without having to submit a notice of intent. So that's one of the areas that's for us . . . a relatively new concept, and so we're questioning the enforceability," the source says.

It is unclear whether everyone who is covered by the permits even knows that they are covered, though those under the threshold for submitting a NOI, have “relatively basic requirements,” the EPA official said.

One state regulator from the Mid-Atlantic region, however, noted that it seems like an “applicator has an incentive not to report . . . an incident” that would violate the terms of the permit.

The EPA official acknowledged that “lots of times there’s an incentive for folks not to report problems,” which “truthfully is probably a challenge with various aspects of this permit.”

“General permits are always a problem for enforcement,” the EPA official said. “General permits typically don’t have numeric effluent limits,” which are easier to require than “good housekeeping,” the official said. But “we’ve tried to be as clear as possible. We’ve had our enforcement folks reading through the permit. They’ve made a lot of tweaks to the language to try to strengthen that as best we could.”

State regulators also raised questions about liability, such as who would be held liable when a homeowner hires a pesticide applicator. The EPA official said both the home owner and the applicator meet the CWA definition of “operator” and thus both would need an NPDES permit.

The official said stakeholders’ views tend to fall into two categories for how the permit should address this situation, with one camp hoping for a very prescriptive permit, and another looking for one that just makes sure someone completes the requirements of the permit. Agency enforcement staff say who will be liable if permit requirements are not met will depend on the situation, the official said.

Nevertheless, the official said, “we really envision nominal, nominal record-keeping for those below the threshold.” But a state source said that still would not keep an applicator from being subject to a citizen enforcement suit.

Because of questions over who should be covered by the general permit, the *Federal Register* notice proposing the permit will describe the use patterns EPA is planning to cover and ask whether there are other types of pesticide applications that warrant general permit coverage, the EPA official said.

“We’ve heard from states and others their concern that there may be a use pattern that they end up having to write a lot of individual permits for to cover,” the official said. If there are other activities that have a lot of discharges, “you’ll probably end up getting included in this general permit,” the official said.

Another unfinished aspect of the permit is how to handle Endangered Species Act (ESA) requirements. The agency has been working with the Fish & Wildlife Service and other agencies -- as they are required to by law -- to deal with biological evaluations and

effects on discharge in the permit, the EPA official said, but not come to any final results. Therefore, the draft permit will only contain passing mention of the ESA requirements in the permit.

Some states are also concerned that the EPA permit will not be available in time for states with delegated NPDES authority to issue their own permits. One participant at the April 26 meeting noted, “I’ve talked to some of the states in my region and they had some concerns for you. . . . Both Wyoming and Colorado were really concerned about the timing. Especially Wyoming -- how much of this two years is being taken up by EPA and how little there is left for the states to come up with their permits,” the source said.

“EPA should ask for a court extension,” the source said, particularly since states have not yet seen some portions of the permit, such as the ESA section. But the EPA official said the agency did not yet know if that would be necessary or possible.

SOLID WASTE

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April 30, 2010

Industry Backs EPA Coal Ash Enforcement Under Weaker Waste Rules (*Inside EPA*)

Industry groups pushing for EPA to issue scaled-back waste rules to regulate coal ash disposal at power plants have presented administration officials with an 11th-hour proposal that seeks to provide a mechanism to ensure that EPA can retain federal enforcement authority if the agency pursues the “solid waste” designation that industry and states favor.

Environmentalists and some EPA officials oppose use of the less-stringent solid waste approach, saying provisions in subtitle D of the Resource Conservation & Recovery Act (RCRA) for addressing solid waste are not stringent enough and does not provide the agency with adequate authority to oversee state waste rules. As a result, environmentalists and some EPA officials have instead called for a more stringent “hazardous waste” approach under RCRA subtitle C, which also provides EPA with a stronger federal role.

At a meeting earlier this month, the Edison Electric Institute (EEI) and the Utility Solid Waste Activities Group (USWAG) met with EPA and White House regulatory review officials where they detailed a plan that would allow EPA to retain oversight of coal ash regulated under subtitle D.

According to documents presented at the meeting, the agency would retain authority under section 4010(c) of RCRA to oversee state rules regulating solid wastes, much as

the agency already does with municipal solid waste landfills (MSWLs) and non-municipal solid waste landfills that may receive conditionally exempt small quantity generator (CESQG) hazardous waste. *Relevant documents are available on InsideEPA.com.*

The industry push to give EPA a mechanism to retain authority using a subtitle D option comes as several industry sources say EPA within the last 10 days sent a revised coal waste proposal to the White House Office of Information & Regulatory Affairs (OIRA) and has asked the White House to complete its final review prior to the close of business April 30. That would allow EPA Administrator Lisa Jackson -- who has called for a federal “backstop” in any coal ash plan -- to sign the proposal before the end of the month, in line with the agency’s plan to issue the proposal in April after delaying the original date from last December.

“The EPA objective is apparently to sign the proposal before the end of April,” one industry source says.

Both EPA and OIRA officials declined to comment on the timeframe for the proposal. An OIRA spokesman says the “complicated” rule remains under interagency review. “All parties are working hard to resolve the remaining issues.” An EPA spokeswoman adds the agency expects “to issue a proposed rule in the near future.”

The revised proposal -- which EPA first sent to OIRA last October -- is expected to no longer include regulation of the ash as a hazardous waste as EPA’s preferred option and instead is expected to offer several options, including hazardous subtitle C and nonhazardous subtitle D approaches, on a level playing field.

Under one subtitle D approach EPA may consider, the agency would seek to impose performance criteria that a state would have to meet within a certain deadline in order to continue to run the program. That option would include a trigger for a federal takeover of state programs if a state is unable to meet the criteria, sources said.

Additionally, the proposal is expected to include a revised cost-benefit analysis showing significant impacts on beneficial reuse under a RCRA hazardous listing, compared to the original analysis which showed zero impacts, sources added.

EPA had wanted to list some forms of coal combustion waste -- including ash stored in wet impoundments such as one that failed at a Tennessee Valley Authority plant, causing a massive spill and the impetus for the current regulatory effort -- as hazardous while declaring waste that is beneficially reused in concrete as nonhazardous. However, the hybrid approach was met with stiff industry opposition over concerns that any hazardous declaration would decimate the recycling industry.

Now, EEI and USWAG are pushing the subtitle D approach using MSWLF and CESQG as the model, according to documents from their April 2 meeting with OIRA and EPA officials.

“EPA’s current view is that RCRA does not provide the agency with permitting and enforcement authority for subtitle D [coal waste] rules; we believe, however, that RCRA subtitle D already provides EPA with this authority under section 4010(c),” the industry presentation says.

RCRA section 4010(c) requires the EPA administrator to issue rules for facilities that may receive hazardous household waste or hazardous waste from small quantity generators. “At a minimum such revisions for facilities potentially receiving such wastes should require groundwater monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate,” the section says.

EEI and USWAG note that EPA limited the scope of municipal landfill rules to subtitle D facilities that actually received CESQG waste, after taking the position that the term “may” in section 4010(c) “did not compel it to include in the rulemaking any subtitle D facilities -- such as [coal waste] disposal units -- that could receive CESQG hazardous waste. This narrow reading of 4010(c) is not compelled by the statute and there is nothing to prevent EPA from revisiting its interpretation of this provision of RCRA.”

The groups add that EPA could use the same discretion to apply the language to coal waste disposal units “as they are solid waste management units that, under RCRA’s statutory scheme, may receive CESQG hazardous wastes. Nothing in this language requires EPA to limit the scope of this provision to only those units that actually receive CESQG. EPA should revisit the question of whether it has the discretion under 4010(c) to promulgate federally enforceable subtitle D rules for a specified subset of subtitle D facilities -- i.e. [coal waste] management units -- that ‘may receive’ CESQG hazardous wastes,” the presentation adds.

An USWAG source says the argument is “somewhat new” and came about because the industry wanted to reinforce its support for a subtitle D approach. So it took a careful look at RCRA and found that in section 4010(c), “EPA has enforcement authority, if states aren’t implementing the subtitle D rules that EPA puts out” for municipal solid waste landfills. “And we believe that the same logic and rationale” can apply to coal ash. “So EPA could issue D rules and states could implement them and in cases where that is not adequate, EPA could then step in with much greater federal enforcement authority,” the source explains.

Also at the meeting, industry raised concern about “collateral impacts” of hazardous rules on power plant operations far beyond disposal issues. “There has been much debate and discussion on the impact on beneficial reuse, but impacts from subtitle C rules can affect utility operations not dealing with disposal, upstream to disposal, and handling and collection at the plant. We wanted to make sure [this issue] was not lost,” the USWAG source says.

Meanwhile, industry sources say a new EPA Region III report investigating alleged groundwater contamination from a coal ash-lined golf course that finds no leaching and

recommends the site not be included on the Superfund National Priorities List lends credence to their push for nonhazardous rules.

“There isn’t contamination, so people, as it turns out, are jumping to conclusions,” the USWAG source says of the report, released April 22. “This report should put their minds at ease . . . and it doesn’t provide rationale for regulation as a hazardous waste.”

However, environmentalists say the study of residential wells near the Batttlefield Golf Club in Chesapeake, VA, should not impact the pending rulemaking. “The good news is that there is not yet any evidence of groundwater contamination,” one activist says. “The bad news is that the site will have to be monitored for the foreseeable future to ensure there is no migration or leaching. It is not questioned that if this coal ash reaches local water sources, those sources would become unusable. . . . In short, this report should have no bearing on the basic regulatory decision that these wastes are hazardous.” -- *Dawn Reeves*

SUPERFUND

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Byerly questions county's spending on homeless center (*Gainesville Sun*)

He said the county is expected to pay while having little say about the project.
By Chad Smith
Staff writer
Published: Friday, April 30, 2010 at 6:01 a.m.

With groundbreaking on the long-awaited and much-discussed one-stop center for the homeless scheduled for August, an Alachua County commissioner is questioning whether the county should be spending money on the project when the County Commission hasn't had any power over the center.

At a joint meeting of the County Commission and City Commission on Thursday, County Commissioner Mike Byerly said the $154,000 being asked of the county per year is a tough sell because county leaders have not been a part of the discussion about where the facility would be located or how it would be managed.

The $154,000, which would be matched by the city, would go toward the annual operation of the center.

"It's been very frustrating as a county commissioner kind of standing on the sidelines and watching this process go along," Byerly said.

"We just keep getting occasional updates, but we're now apparently going to be asked to provide up to half of the operational funding, and I don't feel I can do my job as a representative of the people in the unincorporated county as well as the people in the city of Gainesville if I can't be a part of the decision-making process for how the facility is going to be operated."

Gainesville Mayor Pegeen Hanrahan said the county has been included in discussions and that she was open to having a joint board direct the facility, which will be built on Northwest 53rd Avenue.

"Commissioner Byerly, you can be the chairman of the board as far as I'm concerned," Hanrahan said.

The two sides agreed to having a six-member panel, made up of three commissioners from each board, oversee the management policies.

But questions remained about how residents at the facility, roughly five miles north of downtown, will be transported back and forth.

Assistant City Attorney Fred Murry said he is trying to coordinate with volunteers and nonprofit organizations to run a shuttle service that would ferry homeless people from the center of town to the one-stop center on Northwest 53rd Avenue.

City Commissioner Jack Donovan said that while the plan for the facility might not be bulletproof, there's at least something in place.

"Whether we have missed the perfect solution, I don't know, but we do have a solution," Donovan said.

The commissions also got updates on the cleanup at the Cabot-Koppers Superfund site.

Scott Miller, site manager for the U.S. Environmental Protection Agency, said the agency's study on the cleanup will be ready in May.

Fourteen residents spoke during public comment, chiding the commissions, the EPA and the companies responsible for polluting the site. Joe Prager, for instance, said he was concerned about the impact on nearby schools, let alone the folks who have lived there for decades.

"We've had our head in the sand for years," Prager said.

The commissioners also discussed a potential half-cent sales tax that would go toward increasing bus routes and potential streetcars and road improvements.

The tax would replace the Wild Spaces-Public Places tax, which expires at the end of this year, and could be placed on the ballot in November either by petition or by the County Commission.

The commissioners seemed to favor the surtax.

"I have no desire to see worsening congestion and the negative consequences of growth," City Commissioner Thomas Hawkins said.

County Commissioner Paula Delaney said she wanted to get smaller municipalities on board, adding, "I never saw a sales tax I didn't like."

Contact Chad Smith at 338-3104 or chad.smith@<0x000A>gvillesun.com.

TOXICS

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US EPA launches public database containing toxicity test results for chemicals (*Chemical Watch*)

30-Apr-2010

The US Environmental Protection Agency (EPA) has set up a database which allows scientists and the public to access toxicity test results for several hundred chemicals. The database, called Toxicity Reference Database (ToxRefDB), captures 30 years and $2 billion worth of test results, says the agency.

ToxRefDB is a part of the Aggregated Computational Toxicology Resource (ACToR), an online data warehouse that collects data from about 500 public sources on tens of thousands of environmentally relevant chemicals. The new database also connects to the EPA’s chemical screening tool, ToxCast, which uses advanced tools to help understand biological processes impacted by chemicals that may lead to adverse health effects.

TSCA Reform Bill Could Target Broad List Of Manufacturers, Industry Fears (*Inside EPA*)

Recently introduced legislation reforming the Toxic Substances Control Act (TSCA) could expand the reach of the statute beyond the chemical manufacturing sector the law currently targets to require reporting down the supply chain to chemical processors and

distributors, as well as chemical end-users in the aerospace, automotive, electronics and other sectors, say industry sources and one key GOP lawmaker.

The industry sources are concerned that requiring disclosure of product data could result in deselection of some chemicals, impose burdensome new data requirements and lead to new labeling requirements on products containing chemicals of concern.

Companies will need to develop “huge information collection systems” to even know if they are using a product covered by the reformed law -- even before providing the data that would be required under the statute, says one aerospace industry source.

Some industry sources also say they may need confidential business information (CBI) protections to avoid sharing information about the chemicals they are using with competitors.

If the industry’s concerns are not addressed, sources warn it could make the manufacturing sector a vocal opponent of the legislation, a fear already being raised by Rep. Edward Whitfield (R-KY), ranking member of the House Energy committee panel overseeing the bill. “TSCA applies to such an enormous universe and this bill could have enormous implications for the entire U.S. manufacturing sector,” he told *Inside EPA* in an April 21 statement. “I think it is essential we take the time to fully deliberate this bill and ensure we understand its implications,” he said.

He added that any bill needs “a process to know which chemicals present risks, based on their exposures, and then to prioritize those risks and deal with them, if necessary, in a way that makes the most sense.”

Sen. Frank Lautenberg (D-NJ) unveiled the Safe Chemicals Act of 2010 April 15, while House Energy & Commerce Committee Chairman Henry Waxman (D-CA) and commerce subcommittee Chairman Bobby Rush (D-IL) the same day released a discussion draft of Toxic Chemicals Safety Act of 2010.

House committee staff are currently in the midst of a multi-week stakeholder process, while Senate Republicans are working with Lautenberg’s staff on future hearings on the bill.

Activists have called for additional information on all chemicals, including use data. “Manufacturers should be required to provide basic information on the health hazards associated with their chemicals, how they are used, and the ways that the public or workers could be exposed,” according to the platform of the Safer Chemicals, Healthy Families coalition, a key group of environmental and public health organizations.

A source with the sEnvironmental Working Group (EWG) says the bills are focused on getting more information on “how chemicals flow through the product universe” in an attempt to better protect the public, rather than simply burden industry with more

reporting requirements. The source also says TSCA currently applies to chemical mixtures.

“It is information [EPA] needs and cannot get right now,” the EWG source says of the use and exposure data, adding that the bills focus on collecting information on chemicals of concern rather than all chemicals.

Of particular concern to industry is language in the House bill that some in industry say could expand EPA authority to seek data on “articles,” which are usually defined as a manufactured object with a specific shape and an end-use function, like a bolt. Stainless steel or plastic pellets would not be considered articles.

While TSCA currently gives the agency authority over articles, sources say, EPA has largely not opted to use the authority and exempted articles from some provisions under TSCA. There also is no current requirement that compels the submission of data for all chemical substances and mixtures.

But language in the bills requires new testing for existing chemical substances or mixtures for their effects and submission of a minimum data set, while the House version also redefines a mixture to include “any mixture contained in or formed into an article,” according to an analysis of the bills conducted by the law firm Bergeson & Campbell. This suggests that “article mixtures would be subject to the minimum data set requirement,” the analysis says.

An industry source says the House bill seems to “make the articles authority more explicit, but also seems to conflate articles and mixtures,” which would have to be clarified as the draft is revised.

But another industry source says an increased focus on articles could be a way to push deselection of certain chemical substances, and would result in product manufacturers having to start keeping records and reporting information on the chemicals in the products they are making, which could be burdensome.

An automotive industry source says the new language could require the sector to provide additional information if a product maker is using a chemical of concern. Under an expanded TSCA, “use information is going to have to come from manufacturers of the articles,” a source in the automotive industry says. “It will have to trickle up the supply chain.”

The source adds that car and parts makers could see some benefit from improved access to information under a reformed TSCA, while limits on CBI claims further up the supply chain could also help end-users receive more information on the chemicals in parts they are using.

But automakers also will want CBI protections to avoid sharing information about the chemicals they are using, a concern echoed by the aerospace source, who said

companies often had “strategic considerations” when it comes to CBI, as certain coatings or treatments could offer a competitive advantage.

Many in industry are also raising questions about how language in the legislation could expand EPA’s authority to oversee chemical blenders, processors, distributors and transporters. A chemical distribution industry source says the industry concedes providing more information on chemicals “may be appropriate,” but stresses that companies currently only deal with TSCA if they are importing substances. If reporting and testing were expanded further downstream under a reformed TSCA, the source says there would be questions about the scope of testing requirements, and how the testing is paid for, the source says.

For example, the industry source points to language in section 8 of the House discussion draft, which would require “manufacturers and processors” of the “chemical substance[s] or mixture[s]” that appear on a special concern list in the draft bill to file declarations with EPA including basic information about the chemical.

The source says the draft seems to require blenders and distributors of chemicals -- who buy bulk chemicals from chemical makers and then sell them on to users -- to file “binding declarations” with the agency. Declarations would have to be updated if the production process changes, the source adds.

Based on the current language, downstream users of chemicals, like processors and distributors, “will be asked more regularly and routinely to participate in defending uses of chemicals in specialty markets,” says one legal source. “Different demographics are going to be brought into the mix,” and more industry groups are tracking TSCA reform than in previous legislative sessions, the source says.

There are also outstanding questions about what constitutes a “mixture” under the draft, according to the first industry source. For example, whether a mixture consists only of certain chemicals being combined or whether different proportions of the same chemicals would be considered different mixtures under the draft language.

In an analogous provision in the Senate bill, the term “mixtures” is omitted, though it requires both manufacturers and processors to submit information.

New constituents providing data could have profound effects on how TSCA works, according to the legal source. “The data will have to be generated and the usual suspects may not be generating that data,” the source says. “How do you ensure that the data can be relied upon . . . and [companies] can be compensated” for it? -- *Aaron Lovell*

WATER

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April 30, 2010

Citing Faulty Data, SBA Petitions EPA To Soften Strict Construction ELG (*Inside EPA*)

The Small Business Administration's (SBA) Office of Advocacy is petitioning EPA to soften the strict stormwater discharge limits EPA set in its controversial effluent limitations guideline (ELG) for the construction and development sector, arguing the limits are too low, based on faulty data and would cost more than 10 times as much as EPA estimates.

The office filed an April 20 petition asking EPA to promulgate a new proposed rule, rather than simply revising the rule's strict numeric turbidity standard -- a measure of water clarity -- that the agency included in its final rule issued last December. *The petition is available on InsideEPA.com.*

EPA's ELG for construction phases in a 280 nephelometric turbidity units (NTU) standard and requires "passive" filtering technologies to meet the standard.

But SBA is calling for EPA to set a 793-NTU standard and instead employ an "action level approach," in which exceeding a particular benchmark triggers requirements for facilities to re-evaluate their best management practices to limit discharges.

SBA is also calling for EPA to exempt smaller construction sites -- those that disturb 10 acres or more -- from the requirements and instead return to its original proposal that only those sites that disturb 30 acres or more be subject to the rule's threshhold.

SBA says EPA should restore the 30 acre theshhold to prevent it from touching the smallest construction firms. And SBA says that a stricter standard increases the risk that residual polymers from treatment systems could harm aquatic life because small firms that would be subject to regulation under a 10-acre standard are less likely to be equiped "to handle the complex protocols designed to avoid toxicity issues" from the treatment systems.

An EPA spokeswoman says the agency is in the process of reviewing the SBA petition, which she notes "is lengthy and contains much data and analysis." The spokeswoman says EPA "will give the petition serious consideration."

EPA's rule has drawn widespread concerns from industry and states who charged the standard is too strict, unlawful and costly to implement. Several industry groups have also sued EPA over the rule. The industry lawsuits have been consolidated in the U.S. Court of Appeals for the 7th Circuit, after industry groups filed in the 5th, 7th and DC Circuits challenging the rule. Briefing in the case has been suspended since February to allow time for filing administrative petitions.

April 30, 2010

EPA Extends Strict Federal Stormwater Control Approach To Municipalities (*Inside EPA*)

EPA is requiring municipalities to use some of the same approaches for controlling post-construction stormwater runoff that are contained in recent congressionally mandated guidance for federal facilities -- backing calls from activists to apply the federal standards, which are stricter than most used in the private sector, to municipal separate storm sewer system (MS4) permits.

EPA recently issued new guidance for permit writers emphasizing the need for similar performance standards as those included in the federal facilities guidance and included similar stringent new requirements in a proposed permit for Washington, DC, that Region III issued April 21. *Relevant documents are available on InsideEPA.com.*

The two new measures borrow approaches contained in EPA guidance for ensuring that new or modified federal facilities are constructed in such a way that they control stormwater runoff even after construction is complete. The guidance stems from language in the 2007 energy law that required the agency to issue guidance on how federal facilities could maintain or restore, to the maximum extent technically feasible, the pre-development hydrology of a property.

The agency's 2009 implementation guidance provides two options for meeting the requirement -- either containing stormwater onsite equal to the 95th percentile rainfall event or using site-specific conditions and modeling techniques to determine the pre-development hydrology of the site.

Environmentalists late last year expressed hope that the stormwater control standards in the federal facility guidance could be applied to MS4 permits. But industry groups are concerned that broader application of the federal requirements will drive up construction costs.

EPA Region III's draft MS4 permit for the District of Columbia, released April 21, includes enforceable requirements for using green infrastructure techniques to control stormwater and performance standards to limit runoff from newly developed or redeveloped land that are nearly identical to those contained in the federal facility guidance.

"The innovations in this new permit are vital to restoring and protecting the health of local waterways in the District, as well as the Chesapeake Bay," Region III Administrator Shawn Garvin said in an April 21 statement. "We all need to do our part, and this permit can serve as a model to other municipalities for preventing runoff from washing harmful pollutants into streams and rivers in the Bay watershed."

A fact sheet accompanying the draft permit explains, “The fundamental difference between today’s draft Permit and previous generation permits is the imposition of measurable requirements for green technology practices, sometimes referred to as ‘low-impact development’ or ‘green infrastructure.’” These include planting at least 4,150 trees annually, installing 120,000 square feet of green roofs annually, and decreasing impervious surfaces by 13.5 million square feet over the five-year term of the permit, according to an EPA comparison of existing and proposed requirements in the permit.

Additionally, the proposed permit includes numeric performance standards for stormwater retention that are nearly identical to those contained in the federal facility guidance -- a push that EPA officials are also emphasizing in guidance for state regulators on improving MS4 permits issued in April.

“Permits should contain a performance standard for post-construction that is based on the objective of maintaining or restoring stable hydrology to protect water quality of receiving waters or another mechanism as effective,” Linda Boornazian, director of the Water Permits Division within the Office of Water, writes in a cover letter to the April 2010 MS4 guidance.

The 2007 energy law requires federal facilities to maintain or restore, to the maximum extent technically feasible, the pre-development hydrology of a property. And EPA’s 2009 implementation guidance provides two options for meeting the requirement -- either containing stormwater onsite equal to the 95th percentile rainfall event or using site-specific conditions and modeling techniques to determine the pre-development hydrology of the site.

But the agency says in the MS4 guidance that most MS4 permits only require permittees to adopt a post-construction program with enforceable requirements designed to reduce stormwater impacts from new development and redevelopment, without specifying a performance standard. The MS4 guidance includes minimum recommended permit provisions that reflect the principles behind the federal facility requirements but allows permit writers flexibility to include even more stringent requirements or slightly different performance standards that can be used, such a specifying the minimum storm volume to be retained on site rather than the minimum storm size, as in the federal facility guidance.

The proposed D.C. MS4 permit says non-federal facilities need to contain stormwater on-site equal to a 90th percentile rainfall event, a slightly less stringent standard than for federal facilities because most construction in the district involves redevelopment rather than new sites.

April 30, 2010

Mining Officials Warn New EPA Water Guide May Affect Other Industries (*Inside EPA*)

Mining industry officials are warning that EPA's recently issued water quality guidance for mountaintop mining operations in Appalachia could hand activists new tools to challenge permits and other actions that could affect scores of other sectors, including construction, wastewater treatment, road building or projects in other sectors that disturb land or harm water quality.

While EPA has sought to limit its guidance to apply solely to mountaintop mining in central Appalachian states -- Kentucky, West Virginia, Virginia, Ohio, Tennessee and Pennsylvania -- industry sources say the strict water quality and permit measures it calls for could provide activists with ammunition to challenge any other project that would have similar effects on water quality in that region or beyond.

Mining industry sources say among the most worrisome aspects of the guidance are its strict numerical limits for conductivity, a measure of salinity; its presumption that mitigation efforts could not be used to avoid preparing comprehensive environmental reviews; and its new environmental justice considerations in permits -- any of which could be used in legal challenges to mining and other industry permits. *The guidance is available on InsideEPA.com.*

For example, an industry source says, activists may point to EPA's numerical conductivity standards in actions unrelated to mountaintop mining by arguing that if the standard was used as a scientifically sound measure in one instance, it should be applied elsewhere.

At a minimum, a source says, EPA's conductivity standard likely will shift the burden of proof to potential permitees, forcing them to undertake expensive tests to show that their projects would not cause concern in the context of conductivity. At a maximum, the guidance opens up litigation opportunities in all contexts based on the conductivity number in the guidance.

Industry is similarly concerned that EPA's first-time environmental justice requirements -- which mandate consideration of harm that will result to subsistence communities as a result of discharge permits issued under section 402 of the water law and so-called "dredge and fill" permits issued by the Army Corps of Engineers under section 404 -- could also be applied to other sectors.

The new EPA requirements are contained in the agency's April 1 guidelines detailing water quality requirements for mountaintop mining operations in Appalachia. EPA says the new requirements -- which are being implemented immediately even though the guidance is still in "interim" form -- will virtually eliminate mine operators' ability to construct "valley fills," which mountaintop mine operators use to dispose of excess rock blown away from mountains, burying nearby streams.

Industry and state sources say the effect will be much broader, worrying that the guidance will eliminate any new surface mining activities and could apply to other projects that disturb land and affect water quality, such as construction, wastewater treatment, road building or projects in other sectors.

Industry's key concern is EPA requirements that projects that would cause conductivity levels to rise above 500 microsiemens per centimenter (uS/cm) would likely not be approved, while a 300 uS/cm-standard triggers requirements to step up water-protection efforts. Industry and state regulators have criticized those limits as too strict and questioned the validity of the scientific studies EPA is using to justify the limits.

That concern is part of the reason industry has aggressively challenged the science EPA is using to set its standards. EPA's Science Advisory Board is convening a peer-review panel that is expected to meet this summer; the agency also is accepting public comments on two recently issued science reports until June 11 and on the guidance itself until Dec. 1.

A source with the National Mining Association (NMA) says EPA has so far refused to release the data sets it used in conducting the scientific analyses. The source says NMA may ask EPA to extend the comment deadline until it releases the data sets, so stakeholders have time to evaluate them before weighing in.

The NMA source suggests EPA is using the guidance to achieve its broader goal of forcing environmental impact statements (EIS) to be performed for all surface mine permits, which the Army Corps of Engineers and Office of Surface Mining (OSM) have argued is not required by the National Environmental Policy Act (NEPA) because such assessments were done on a programmatic basis under the Surface Mining Control and Reclamation Act (SMCRA), an argument the source says courts have upheld.

Sources also are concerned about a section of the guidance in which EPA targets mitigation efforts that the Army Corps of Engineers has previously told mining companies to use to justify findings of no significant impact (FONSI), without which the Corps would be required to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) before authorizing a permit.

An industry source says EPA's move also conflicts with case law, saying mitigated FONSIs were upheld by the U.S. Court of Appeals for the 4th Circuit Court in *Ohio Valley Environmental Coalition [OVEC] v. Aracoma Coal Company*, a ruling that environmentalists are asking the Supreme Court to overturn.

More concerning, the source says, is the prospect that EPA's presumption that companies cannot mitigate their way to a FONSI would apply to other industries that have relied on mitigation measures to support such a finding.

According to industry and state sources, the new guidance includes a host of presumptions that mining projects will necessarily result in water quality harms,

prompting close EPA scrutiny. For example, one source says the guidance includes a presumption that “in many, if not most,” cases, the available science will demonstrate that there is a reasonable potential for discharges from mining projects to cause or contribute to a violation of numeric or narrative water quality standards, making water-quality based effluent limits necessary.

EPA hinted at such an approach when it issued its guidance, suggesting it would object to permits that allowed valley fills. “We expect that, generally, it will be easier for projects with no or few valley fills to demonstrate that they comply” with the Clean Water Act (CWA) and the guidance, EPA said in a summary of the guidance. “Conversely, projects with multiple valley fills will generally raise serious questions about their compliance with CWA requirements and may require permit objection under [section] 402 or . . . possible veto under [section] 404.”

Sources also point to environmental justice requirements EPA implements in the guidance, some stemming from a Clinton-era executive order on the subject. “Not that we didn’t know environmental justice was out there, but it was interesting to see how they were looping that in there,” one source says.

April 30, 2010

Water Utilities Urge EPA To Quickly Require Industry Monitoring For Atrazine (*Inside EPA*)

Drinking water utilities are urging EPA pesticide officials to quickly take action to require pesticide manufacturers and users to bear the burden of monitoring for the presence of atrazine and similar chemicals in drinking water, saying in a recent letter that utilities and their customers need a resolution to addressing atrazine’s risks “once and for all.”

The American Water Works Association (AWWA) has raised concerns over atrazine and other triazine herbicides due to the potential for groundwater and surface water contamination, and the resulting water treatment costs for utilities.

In April 7 comments, the drinking water utility group says it “believes that additional regulatory actions (sooner rather than later) are necessary so that drinking water utilities (and their customers) are not continued to be saddled with the additional costs of” granular activated carbon or powdered activated carbon treatment technology. “EPA’s regulatory actions should be geared towards moving the costs from the utilities’ customers to the atrazine registrants and users,” AWWA says. *The comments are available on InsideEPA.com.*

AWWA “recommends that EPA develop the appropriate drinking water risk management option as soon as possible as the atrazine issue has dragged on since the special review started in the ‘90s. The media continues to publish stories about weed-

killer in drinking water, and utilities and their customers need a resolution to this issue once and for all."

The appropriate risk management option could include either revisions to the atrazine drinking water standard, changes in compliance monitoring frequency or the creation of a new total triazine standard, AWWA says, noting that the group "relies on EPA's toxicological, epidemiological, and cost-benefit expertise" to develop the proper option.

April 30, 2010

Industrial Disasters Drive Activist Push For Stricter Environmental Controls (*Inside EPA*)

Environmentalists are citing recent industrial disasters -- including a mine explosion in West Virginia and a massive oil spill off the Gulf Coast -- in a fresh push for stronger environmental controls on a range of energy extraction practices, while key lawmakers are pursuing efforts to assess environmental damage from the accidents.

One environmentalist says that the disasters also add weight to activists' opposition to the use of fossil fuels to meet the country's energy needs. "Both of these accidents highlight the dangers of relying on coal and oil," the source says. "it tends to reiterate our position that there are substantial [drawbacks] to coal mining and oil drilling."

Investigations are underway into the coal mine disaster earlier this month in Montcoal, WV, and the April 20 oil spill related to the drilling rig explosion off the coast of Louisiana, and environmentalists say the outcome of those studies could help activists achieve key legislative goals. For example, Sierra Club argues that the oil spill shows the need to pass a climate bill to transition to a "clean energy" economy less reliant on offshore oil drilling.

In an April 26 statement, Sierra Club Executive Director Michael Brune said the two disasters offer a clear illustration of why the nation needs to move away from fossil fuel dependency and toward renewable energy technology. "These human and environmental disasters put our desperate need for a new clean energy economy in stark relief," Brune said. "We need to move away from dirty, dangerous and deadly energy sources."

Sens. John Kerry (D-MA), Joseph Lieberman (I-CT) and Lindsey Graham (R-SC) had been working on compromise climate legislation that stalled April 26. The bill is expected to include provisions promoting offshore drilling in order to win support for the bill from energy security hawks and moderates.

But the oil spill and potential congressional investigations into that issue could complicate that effort, and boost environmentalists in their long-running opposition to

offshore drilling and stricter controls on the practice. A second activist who works on offshore environmental issues says that offshore drilling provisions that could have secured the bill's passage prior to the Gulf Coast accident may now be a reason why the Kerry-Graham-Lieberman effort may ultimately fail.

"This is a game changer," according to the environmentalist. "It has national political consequences, and one of the casualties of this disaster may well be the [Kerry-Graham-Lieberman] bill."

A group of 10 Democratic senators had previously sent a letter to Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) saying any offshore provisions would come at the expense of their votes, the source says, now that the drawbacks to offshore drilling have a real and well-publicized illustration in the Deepwater Horizon disaster, the line of Senators opposing the bill "is going to be out the door."

Meanwhile, environmentalists have sued Massey Energy Corporation for thousands of alleged Clean Water Act (CWA) violations even as the company continues to face criticism for its safety record that critics say contributed to the fatal mine disaster at its Upper Big Branch mine in Montcoal, WV, earlier this month.

The activists' lawsuit, filed April 27 in the U.S. District Court for the Southern District of West Virginia, alleges that five Massey subsidiaries discharged and continue to discharge aluminum, pH, suspended solids and iron at as many as 16 mines in violation of CWA permits issued by West Virginia. Additionally, the environmentalists say the discharges violate performance standards under the Surface Mining Control & Reclamation Act.

Lawmakers are also asking questions about the disasters that could have an impact on future environmental regulation of energy extraction practices, including companies' mandates under environmental and other laws to develop plans to reduce the risk of environmental and human harm linked to accidents.

For example, Sen. Frank Lautenberg (D-NJ) April 28 sent a letter to EPA air chief Regina McCarthy urging immediate, comprehensive monitoring of air pollution levels across the region affected by the Gulf Coast oil spill. Lautenberg fears that a plan to burn portions of the oil slick could lead to dangerous levels of particulate matter and hazardous air pollution. He also asked McCarthy to work with state and local governments "to ensure that the health effects of this unfortunate disaster are minimized," according to his letter.

House Energy & Commerce Committee Chairman Henry Waxman (D-CA) and oversight subcommittee Chairman Bart Stupak (D-MI) also recently sent letters to BP America and Transocean -- the two companies involved with the oil rig that exploded April 20 off the coast of Louisiana -- requesting information "about the risks of drilling at

the site and the adequacy of the companies' response plans" for dealing with those risks.

The letters called for information on the companies' Oil-Spill Contingency Plans (OSCP) and Environmental Protection & Response Plans (EPCP) for the Deepwater Horizon oil rig -- which exploded on April 20 and sank on April 22, which incidentally was the 40th anniversary of Earth Day -- and other oil rigs those companies operate on the Outer Continental Shelf.

The second activist says that the letter from the House Democrats indicates that the energy committee -- whose jurisdiction on offshore energy extraction is limited to those emergency contingency plans -- may be beginning the process of calling for revisions to the OSCP and EPCP regulations. "There's a lot of urgent assessment" that the committee may be undertaking, the source says.

In a related development, EPA is revising and strengthening its policies for enforcing a Clean Air Act duty to minimize risks from chemical accidents by more strictly penalizing companies for economic benefits from noncompliance and other measures, though an agency spokesman says that while EPA views the oil rig and mining incidents "very seriously, they have not affected the current policy revisions," (*see related story*).

Meanwhile, Sens. Lautenberg, Bill Nelson (D-FL) and Robert Menendez (D-NJ) in an April 26 letter to the chairmen and ranking members of the Senate Energy and Commerce committees are calling for a review of the federal government's response to the accident, which could affect the shorelines of Mississippi, Florida, Louisiana and Alabama. Sen. Mary Landrieu (D-LA) April 22 also called for a thorough investigation by the U.S. Coast Guard and Interior Department's Minerals Management Service into the oil spill.

Senator Maria Cantwell (D-WA), who chairs the Senate Energy & Natural Resources Committee's energy panel, authored a bipartisan letter to the appropriations committee asking for a reallocation of $15 million from the Coast Guard's Oil Spill Liability Trust Fund to the National Oceanic & Atmospheric Administration's Office of Response & Restoration, saying the office, which provides technical and scientific expertise for oil spill emergency responses, has been chronically underfunded and the Deepwater Horizon disaster illustrates the need for more funding at that office. Senate Energy Committee Chairman Jeff Bingaman (D-NM) has scheduled a hearing on the oil rig disaster for May 6.

April 30, 2010

EPA Eyes New Perchlorate Safety Method, Complicating Regulatory Push (*Inside EPA*)

EPA's Office of Water (OW) is considering an alternative approach -- recommended by its Office of Inspector General (OIG) -- for limiting the risks of perchlorate exposure, a move that complicates efforts by activists and Senate environment committee Chair Barbara Boxer (D-CA) to push EPA to craft drinking water rules for the chemical.

Several sources say EPA water chief Peter Silva told industry representatives at a brown bag meeting recently that the agency is considering alternative ways to limit iodine deficiency -- a harm that results from exposure to perchlorate and other so-called sodium iodide symporters (NIS) -- than the narrow drinking water rules that Boxer and environmentalists have long pushed. Silva told attendees that the agency is "taking a close look at the issue of iodine deficiency," says one industry source familiar with the meeting.

Industry groups and the OIG say the alternative approaches -- which seek to boost iodine levels in those facing harm by increasing their intake of the micronutrient -- is a more effective way of addressing risks posed by exposure to NISs than regulating perchlorate, which accounts for a relatively small impact on iodine levels.

In a 2008 draft report made final April 20, the OIG reiterated that risks posed by perchlorate and other NISs are better reduced by increasing maternal iodide intake and "correcting moderate and mild iodide deficiency occurring in about 29 percent of the U.S. pregnant and nursing population is the most effective approach for reducing risk." Such actions, however, are not under EPA's jurisdiction -- and they are opposed by activists. *Relevant documents are available on InsideEPA.com.*

The report -- *Office of Inspector General Scientific Analysis of Perchlorate* -- also reiterates its original arguments that the agency needs to conduct a cumulative assessment of perchlorate and other compounds that have similar harmful effects on the human thyroid -- an approach the OIG suggests EPA should apply to all chemical risk assessments.

Using this approach, the OIG found that reducing the risk of perchlorate beyond EPA's safety standard and related cleanup target of 15 parts per billion (ppb) -- as would likely result from a Safe Drinking Water Act rule that Boxer and others are seeking -- "does not effectively reduce risk." The OIG suggests other approaches would be more effective at lowering risk, such as boosting consumption of substances that would counteract perchlorate and the other compounds' harmful effects.

"The [OIG] independently confirmed that EPA's [non-enforceable cleanup target] is conservative and protects human health, but limiting perchlorate exposure does not effectively address this public health issue. Potentially lowering the perchlorate drinking water limit . . . to 6 ppb [as California requires] does not provide a meaningful opportunity to lower the public's risk," the report concludes.

An EPA spokeswoman says the water office is “considering” the OIG’s report “and all other information as we move ahead in making a . . . determination [whether to regulate the chemical under SDWA].”

The spokeswoman said the agency plans to decide whether to regulate perchlorate “in 2010,” a response that suggests the agency may have delayed its earlier commitment to make a decision by June.

Boxer’s staff did not return calls seeking comment but a source with the environmental group Clean Water Action strongly reiterated calls for EPA to regulate the chemical. “We utterly oppose a strategy of putting the onus on the public to take something to” protect against the harmful effects of a water contaminant, says a source with Clean Water Action. “Holding polluters accountable is the way to go.” The source argues that EPA should set a national drinking water standard no weaker than 1 ppb, significantly stricter than EPA’s cleanup target of 15 ppb.

Perchlorate -- which is present in drinking water sources in dozens of states -- is one of several substances that inhibits the thyroid’s uptake of iodine, a deficiency that can lead to goiter, or swollen neck, and developmental delays and reduced IQ among the children of women who were iodine deficient during pregnancy.

EPA is under pressure from Boxer and environmentalists to regulate the chemical under SDWA, which would create an enforceable cleanup limit and would likely result in stricter cleanup requirements than EPA’s current cleanup target.

Boxer and her supporters have long sought to strictly regulate the chemical under the drinking water law in part due to its prevalence in California drinking water systems. Together with Sen. Dianne Feinstein (D-CA), she introduced bills in the last Congress requiring EPA to set a drinking water standard and perform monitoring.

More recently, the Senate Environment & Public Works Committee requested a Government Accountability Office (GAO) study updating the office’s 2005 report identifying national occurrences of perchlorate. It should be released this fall, a GAO source said last month.

But EPA’s water office has been struggling to determine whether it will regulate the chemical, a common groundwater contaminant at dozens of waste sites and in drinking water.

Under the Bush administration, OW indicated that it would not regulate perchlorate. But last August, OW released a document based on the research office’s single chemical risk assessment approach and indicated risks to infants and children from perchlorate exposure in drinking water that suggested the agency may seek to set enforceable drinking water cleanup rules. But a utility industry source says the science on perchlorate risks is now overtaking efforts to regulate the chemical. OW staff have “found themselves in a predicament because the science doesn’t jibe with the politics

on the Hill," says one water utility source, who argues that OW's analyses do not show public health benefit from regulating perchlorate in drinking water nationally. "We can regulate . . . perchlorate, but it's not going to change iodine deficiency."

The dichotomy is one of the reasons that the utility source finds the newly finalized OIG report "intriguing." The Obama administration, "clearly not of the Bush mold, is concurring with the Bush EPA's assessment," the source says. "They could have totally buried it." -- *Maria Hegstad*

Article published Apr 30, 2010

In court, EPA seeks Lake Champlain pollution curbs (*Barre Montpelier Times Argus)*

By Louis Porter Vermont Press Bureau
MONTPELIER – The Environmental Protection Agency has formally asked a federal court to allow the agency to reconsider its approval of the rules governing phosphorous pollution of Lake Champlain, thereby settling a lawsuit brought by the Conservation Law Foundation.

If that request by the EPA is granted by the court, it could result in the feds rejecting the 2002 Total Maximum Daily Load (or TMDL)system now on the books, in turn requiring that a new plan be created to regulate how much phosphorous can go into the lake from a variety of sources. That could pit the federal agency and the environmental group against the state's Agency of Natural Resources and those who discharge phosphorous into the lake, including municipalities, businesses and the trade groups and associations that represent them.

The state agency and the environmental law foundation have clashed for years over how much those rules need to be tightened and how soon. But the matter is more than procedural wrangling by environmental lawyers.

Phosphorous, which contributes to algae blooms that choke parts of the lake, comes from sewage plants, from farm fields and parking lots. That means that the regulation of the pollutant can touch the lives of many, if not all, Vermonters who live in the Lake Champlain watershed, which stretches the length of the state and includes many of its largest cities from Rutland to Montpelier to Burlington.

Whatever the decision by the court, the EPA's willingness to enter into the settlement with Conservation Law Foundation seems to indicate the federal agency is not happy with the progress made on cleaning up Lake Champlain.

"Regardless of the outcome of EPA's reconsideration of the 2002 TMDL, it is clear that we need to accelerate our efforts on many fronts," agency officials wrote in a statement.

Anthony Iarrapino, a lawyer for Conservation Law Foundation, said that technical details

of the lawsuit and settlement aside, the condition of the lake is not acceptable. That is not only true from an environmental standpoint, but because of its effect on the value of lakeside property and the state's tourism industry, he added.

"What we know is that the status quo is not working for Lake Champlain and it is not working for the state's economy," Iarrapino said.

But Jonathan Wood, the head of Vermont's Agency of Natural Resources, disagreed.

"We are disappointed about this, we are surprised and we are concerned that EPA is ducking their obligation to defend the TMDL and placing the burden on Vermont and on small Vermont municipalities who have operated in good faith for many years," Wood said.

The final result of the settlement and the motion to reconsider the phosphorous pollution limits by EPA won't be known until the judge and the federal agency make their decisions, Wood said.

But "it could open up many, many municipalities with sewage wastewater treatment plants to lawsuits," he said. "It puts them on a lot shakier ground."

Several years ago the state's environmental agency – in part by arguing it would cost municipalities and others too much to reduce their phosphorous pollution – successfully asked lawmakers to reconsider their decision to demand a new phosphorous pollution plan sooner than would otherwise have been required.

But in making that kind of argument state officials don't take into consideration the cost of lower water quality in the lake, Iarrapino said.

"There is a cost associated with inaction as well," he said.

Wood said the phosphorous rules are slated to be rewritten in 2013 in any case, so he does not understand why the feds, or anyone else, would want to redraw the rules now.

But Iarrapino said the state might again decide to delay that re-examination. And if those rules are now failing to result in a cleaner lake, reconsidering them should not be delayed, he added.

Also included in the settlement with EPA is an agreement to pay just under $39,000 in legal fees and costs by the Conservation Law Foundation. The money will come from a federal fund for groups that win such environmental or civil rights cases, not from the EPA's operations money.

Posted on Thursday, April 29, 2010

EPA demands Toppenish gas station clean up spill (*Yakima Herald-Republic*)

by Phil Ferolito
TOPPENISH -- A fueling station near downtown Toppenish has been ordered by the U.S. Environmental Protection Agency to clean up a petroleum spill.

The station at the corner of East Toppenish and Asotin avenues near downtown had three underground tanks removed in November 2009, and two other tanks were discovered and removed.

During excavation to remove the 40-year-old tanks, contaminated soil was found and roughly 1,500 tons were removed. Water was also struck and digging stopped, according to an EPA news release.

One of the tanks had oil sludge in it, and oil could be seen floating in the groundwater. Nearby residents use groundwater as their main source of water, the release said.

Toppenish is on the Yakama reservation, which is under EPA authority.

The gas station, formerly known as Spirit, was last operating as a Smitty's Conoco under the ownership of R.H. Smith Distributing Company Inc. The company has entered an agreement with EPA to clean up the spill, devise a plan to address groundwater contamination and set a strict schedule for cleanup that includes up to $10,000 per day in fines if it fails to meet the order, the release said.

Petroleum leaks can percolate into groundwater, contaminate drinking water and increase the risk of cancer and other health problems.

For more information about leaking underground storage tanks, visit www.epa.gov/r10earth/ust.htm

Posted on Thursday, April 29, 2010

NEW EPA orders petroleum cleanup at Toppenish gas station (*Yakima Herald Republic*)

YAKIMA HERALD-REPUBLIC
TOPPENISH, Wash. — A fueling station near downtown Toppenish has been ordered by the U.S. Environmental Protection Agency to clean up a petroleum spill.
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EPA: Magellen to pay $418,000 fine for gas spill (*BusinessWeek*)

OKLAHOMA CITY

The Environmental Protection Agency has announced that Tulsa-based Magellan Pipeline Co. L.P. has agreed to pay a $418,000 fine for a gasoline spill.

The EPA said Thursday that Magellan agreed to the fine for violating the federal Clean Water Act when about 45,150 gallons of gasoline spilled into Four Mile Creek in January 2008. The creek is a tributary of the Verdigris River -- which flows into Lake Oologah.

Magellan spokesman Bruce Heine said the company has cooperated with the EPA and is pleased the matter is now resolved.

The EPA says the leak in a 12-inch distribution pipeline was caused by a failed weld at a coupling point.

Sullivan joins pro-oil group against EPA (*Water World*)

By JIM MYERS

WASHINGTON -- U.S. Rep. John Sullivan joined with other lawmakers Tuesday in discouraging any effort to regulate hydraulic fracturing, an important process to the energy industry, through the Safe Drinking Water Act.

The Oklahoma Republican said nearly 1 million wells have been hydraulically fractured in the U.S. in the past six decades with no known harm to water supplies.

Sullivan said the U.S. Environmental Protection Agency concluded that the process poses no threat to groundwater.

"I firmly believe that putting hydraulic fracturing under the grip of the EPA, as some in Congress seek to do, would be a mistake and a bureaucratic nightmare that would lead to delays in recoverable domestic natural gas extraction and would hurt job growth in Oklahoma," he said.

"Keeping the hydraulic fracturing exemption intact from onerous EPA regulation is critical to increasing the supply of American energy."

Sullivan said he was part of a bipartisan group of lawmakers that sent a letter on the issue to Rep. Henry Waxman, D-Calif., chairman of the House Energy and Commerce Committee, and Rep. Edward Markey, D-Mass., chairman of a key subcommittee.

Waxman's office declined to comment.

Waxman and Markey launched an investigation this year into potential effects of hydraulic fracturing.

They wrote to several oil and gas companies that use the process, requesting information about the chemicals the companies use and the potential impact on the environment and public health.

The EPA announced last month that it would conduct its own investigation into the potential harm of hydraulic fracturing on water quality.

Sullivan is a member of the House committee.

According to his office, nothing specific triggered the letter to Waxman and Markey outside of an attempt to show bipartisan support for maintaining the current exemption of hydraulic fracturing from the Safe Drinking Water Act.

Hydraulic fracturing involves vertical and horizontal drilling and injecting fluids and sands to help withdraw oil or gas.

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Originally published by JIM MYERS World Washington Bureau.

EPA will reconsider Lake Champlain cleanup plan (*Burling Free Press*)

The U.S. Environmental Protection Agency formally agreed this week to reconsider its 2002
approval of the Lake Champlain cleanup goals, an action that could lead eventually to tougher
controls on lake pollution.

The EPA's decision came in response to a 2008 lawsuit filed in U.S. District Court in Burlington by
the Conservation Law Foundation. CLF alleges the pollution-reduction goals set for the lake are
deeply flawed, and the EPA erred in approving them.

Vermont has been struggling to make progress to reduce phosphorus pollution of the lake but
has been unable to demonstrate any pollution reductions or to halt periodic algae blooms.

"In light of allegations in (CLF's) complaint, including allegations related to wasteload allocations ... EPA has determined that reconsideration of the 2002 approval decision is warranted," the agency wrote in a motion filed late Wednesday with the court.

Reconsideration of the cleanup goals does not necessarily mean the federal agency will reject
them or require them to be rewritten, although that could happen.

The plan is known formally as the Lake Champlain TMDL, or total maximum daily load. The document establishes a pollution budget — a calculation of how much phosphorus the lake
can absorb while still providing good water quality.

Among other things, the TMDL set a cap on the amount of pollution that can be contributed by
sewage-treatment plants. CLF maintains that cap was set too high, and the sewer plants
should be required to reduce further the amount of phosphorus they discharge.

With CLF's concurrence, the EPA asked the court to stay the legal case for 180 days while it
reconsiders its 2002 decision.

CLF and EPA also agreed the nonprofit advocacy group will withdraw its lawsuit after the EPA
completes its reconsideration — whatever the EPA decides. The EPA agreed to pay CLF's legal
fees of $38,826 at that time.

The state of Vermont has intervened in the case, defending the TMDL and asking that the case be
dismissed. The state is not a party to the EPA-CLF agreement filed in court this week.

"This is a milestone, a step in a process toward what we hope will be a much overhauled effort
to clean up Lake Champlain," CLF lawyer Anthony Iarrapino said of EPA's reconsideration decision.

Contact Candace Page at 660-1865 or
cpage@bfp.burlingtonfreepress.com. Read her

EPA fines Magellan for leak (*Tulsa World*)

By ROD WALTON World Staff Writer
Published: 4/30/2010 2:24 AM
Last Modified: 4/30/2010 2:24 AM

The U.S. Environmental Protection Agency has levied a $418,000 fine against a subsidiary of Magellan Midstream Partners LP for a pipeline leak that allowed up to 45,150 gallons of gasoline to enter a creek near Oologah, EPA officials said Thursday.

A failed weld at a coupling point on the 12-inch Magellan pipeline caused the leak on Jan. 5, 2008, the EPA reported. The gasoline reached Four Mile Creek, a tributary of the Verdigris River that flows into Lake Oologah.

"Pipeline owners and operators must ensure necessary steps are taken to minimize the potential of fuel spills," EPA Regional Administrator Al Armendariz said in a statement.

The penalty against Magellan Pipeline Co. is for a violation of the federal Clean Waters Act, officials said.

Tulsa-based Magellan performs regular integrity testing on its pipelines but did not anticipate the failed weld on this line, company spokesman Bruce Heine said.

The line transports gasoline from Magellan's terminals in west Tulsa to customers in Missouri, he said.

The company cooperated with the EPA and will fully comply with the consent decree, Heine said.

"Magellan takes safety and environmental stewardship very seriously, and our policies and procedures meet or exceed state and federal requirements," he said.

"We are pleased that this matter has been resolved."

Magellan Midstream Partners is a publicly traded refined petroleum storage and transport company.

Its assets include a 9,500 mile pipeline system through 13 states.

Two years ago, Magellan agreed to pay $5.3 million in civil penalties related to 11 spills or discharges over the previous 10 years, EPA records show.

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EPA orders action on pollution control (*Patriot News*)

Friday, April 30, 2010
BY LARA BRENCKLE
%%par%%lbrenckle@patriot-news.com
Since early April, engineers and work crews in East Pennsboro Twp. have been mapping the more than 300 places that rainwater goes after it runs off local streets and surfaces.

Once all the sources are located, the township will test a number of the sites to comply with the federal Environmental Protection Agency's mandates for stormwater management and a wide-reaching Chesapeake Bay strategy.

"This has the potential to be an expensive proposition," said Robert Gill, East Pennsboro's township manager. He hoped only 40 or 50 outfalls would need regular testing. The cost could range from $8,000 to $10,000, he said.

East Pennsboro is one of more than two dozen midstate municipalities recently cited by the EPA for administrative failures in their stormwater management programs.

The programs are crucial to preserving the bay's delicate ecosystem, federal officials said. The citations amount to being warned to do the things they should have been doing all along, the agency said.

Stormwater, which can carry sediment and chemicals leaching off roads, industrial sites and homes, is just as much a threat to the bay as the nitrogen and phosphate that can be discharged by municipal sewer plants, EPA officials said.

"If you're not paying attention from an administrative standpoint, you won't be prepared to implement the strategies," said Martin Harrell, the acting branch chief for the EPA's permitting enforcement unit.

Municipalities have 120 days from the day citations were received to make the necessary changes.

While the EPA is not levying fines now, officials said it will be conducting surprise inspections before the 120 days are up.

Those inspections could reveal places where municipalities need to spend money on upgrades, said David McGuigan, the head of permits enforcement.

Perchlorate limits to be set for water (*North Jersey com*)

Friday, April 30, 2010
BY JAMES M. O'NEILL
The Record
STAFF WRITER

Just weeks after refusing to sign a proposed rule to regulate perchlorate levels in drinking water, state environmental commissioner Bob Martin indicated Thursday that he will implement restrictions for the chemical, which is harmful to pregnant women and fetuses.

"The commissioner does plan to institute a perchlorate regulation as quickly as possible," Larry agonese, a spokesman for Martin, said Thursday.

Perchlorate, a chemical ingredient of fertilizer and rocket fuel, has been found in some private and public drinking water wells in North Jersey.

EPA opinion sought

Environmentalists were angry recently when Martin, Governor Christie's new Department of Environmental Protection commissioner, did not sign a proposed rule that would have
set a limit on perchlorate in drinking water.

At the time, Martin said he wanted the benefit of better science from the Environmental Protection Agency, which will take up the issue this summer.

Environmentalists argued that waiting for the EPA to move could expose New Jersey

residents to high levels of perchlorate for up to six years, since it could take that long to get a rule in place.

A long delay

To reinforce that argument, the Public Employees for Environmental Responsibility this week released several e-mails it obtained through a Freedom of Information Act request, in which EPA officials tell Martin it could be years before the EPA sets a standard.

In the e-mails, Eric Burneson, a chief in the EPA's Office of Ground Water and Drinking Water, says the EPA's decision on whether to regulate for perchlorate would likely be made
this summer, but that there was no guarantee the decision would come with a specific recommendation.

In addition, Burneson tells Martin that the regulatory process gives the agency up to 6 1/2 years to implement a new rule.

DEP changes its mind

Last updated April 29, 2010 4:35 p.m. PT

Judge sets aside Wash. standards for salmon farms (*Associated Press*)

Story also appeared: *Seattle Post Intelligencer*

THE ASSOCIATED PRESS

SEATTLE -- A federal judge has set aside Washington's water quality standards for salmon farms, saying federal regulators didn't use the best available science in approving them.

U.S. District Judge John C. Coughenour ruled that the Environmental Protection Agency and National Marine Fisheries Service ignored the government's own recovery plans for endangered salmon and orcas when they found that a formal environmental review of the state's standards was not necessary.

Under the ruling Wednesday, the agencies must reconsider whether the farms are likely to harm wild salmon. If they do pose a threat - such as by the transmission of sea lice from penned fish to wild ones - the EPA could require stricter controls on aquaculture in Puget Sound.

Wild Fish Conservancy filed the lawsuit that led to the ruling.

American Gold Seafoods operates all eight salmon farms in the sound. The company did not immediately return a call seeking comment Thursday.

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