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ADMINISTRATOR JACKSON

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U.S. NEWS
APRIL 2, 2010

EPA Toughens Mining Permits (*Wall Street Journal*)

Agency Sets Limits in Mountaintop Operations; Industry Calls Change Unfair
By KRIS MAHER And SIOBHAN HUGHES
The Environmental Protection Agency tightened water-quality standards that could severely limit future surface coal-mining operations throughout Appalachia, while mining-industry officials said the change was unfair and endangers jobs in the region. The action is a significant step in the EPA's push under the Obama administration to limit the practice of mountaintop coal mining and its environmental effects. For the first time, the agency is setting limits on the electrical conductivity, or salinity, of streams, which can be impacted by such mining.

Mountaintop mining, which is common in West Virginia, Kentucky and parts of Virginia, involves blasting off the tops of mountains and dumping unused rock and dirt into valleys. As water runs through the porous valley fill, it often picks up metals and minerals increasing conductivity in streams, which has been shown to adversely affect fish and plant life.

"The underpinning of the guidance is a growing body of science demonstrating that devastation of ecosystems in Appalachian states is being caused by mountaintop mining," said EPA Administrator Lisa P. Jackson in a conference call with reporters Thursday.

The new guidance on mining permits issued under the Clean Water Act takes effect immediately and requires companies to show their operations won't increase stream conductivity beyond new limits.

Ms. Jackson said the new standard was about ending pollution rather than ending coal mining. However she said that "very few valley fills could actually meet these standards."

Industry officials said the "sweeping" change could make it difficult to develop new surface coal-mining projects. "If her intention with this is to strictly limit valley fills, that is tantamount to strictly limiting the mining industry in Appalachia," said Luke Popovich, a spokesman for the National Mining Association. He questioned the science behind the new EPA guidelines and said coal operators in the region had been unfairly singled out by the agency.

"To painstakingly try to limit the impacts to one kind of mining operation, to a single industry and to future operations is frankly disingenuous," he said.

The mining association said the new standard could put at risk the jobs of many of the 27,000 people employed at surface coal mines in Appalachia, mostly in West Virginia and Kentucky. It noted that roughly 145 million tons, or 11% of total U.S. coal production, comes from surface mines in the region.

Environmentalists have long sought to halt mountaintop mining in West Virginia and other parts of Appalachia, and some said they think the new EPA rules would eventually shift more mining to higher-cost underground operations that are more labor intensive.

"We are thrilled. This will definitely impact new mines and mine renewals and improve water quality," said Judy Bond, co-director of Coal River Mountain Watch, which opposes mountaintop mining.

The EPA has long had oversight authority over permits that relate to mining's impact on waterways but has challenged few of them until last year as the agency began to step up enforcement of mountaintop mining.

Ms. Jackson cited Arch Coal Inc.'s Spruce No. 1 mine, the biggest surface mine in West Virginia, as an example of a project that didn't meet the new standard and would "degrade water quality in streams adjacent to the mine."

Though the guidelines are mainly expected to affect permits for new projects, last week, the EPA proposed vetoing the permit for the mine. The National Mining Association said the move was an unprecedented attempt to revoke a previously issued permit at an active mine. The veto is subject to a 60-day comment period. Kim Link, a spokeswoman for Arch Coal, declined to comment.

A spokesman for Massey Energy Co., the nation's sixth biggest mining company by production, which has the most surface-mining operations in Appalachia, said it was reviewing the EPA announcement. In September, the EPA held up more than 70 permits for surface coal-mining projects in Central Appalachia due to concerns the projects would damage water quality in nearby streams.

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Friday, April 2, 2010

White House sets stricter gas-mileage rules (*Washington Times*)

Ken Thomas ASSOCIATED PRESS

The Obama administration set tougher gas-mileage standards for new cars and trucks Thursday, spurring the next generation of fuel-sipping gas-electric hybrids, efficient engines and electric cars.

The heads of the Transportation Department and the Environmental Protection Agency signed final rules setting fuel efficiency standards for model years 2012 to 2016, with a goal of achieving by 2016 the equivalent of 35.5 miles per gallon combined for cars and trucks, an increase of nearly 10 mpg over current standards set by the National Highway Traffic Safety Administration.

The EPA set a tailpipe emissions standard of 250 grams (8.75 ounces) of carbon dioxide per mile for vehicles sold in 2016, equal to what would be emitted by vehicles meeting the mileage standard. The EPA issued its first rules ever on vehicle greenhouse gas emissions after a 2007 Supreme Court decision.

"These historic new standards set ambitious, but achievable, fuel economy requirements for the automotive industry that will also encourage new and emerging technologies," Transportation Secretary Ray LaHood said in a statement. "We will be helping American motorists save money at the pump, while putting less pollution in the air."

Each auto company will have a different fuel-efficiency target, based on its mix of vehicles. Automakers that build more small cars will have a higher target than car companies that manufacture a broad range of cars and trucks. The standard could be as low as 34.1 mpg by 2016 because automakers are expected to receive credits for reducing greenhouse gas emissions in other ways, including preventing the leaking of coolant from air conditioners.

"This is a significant step towards cleaner air and energy efficiency, and an important example of how our economic and environmental priorities go hand in hand," EPA Administrator Lisa P. Jackson said in a statement.

Dave McCurdy, a former congressman from Oklahoma who leads the Alliance of Automobile Manufacturers, a trade group representing 11 automakers, said the industry supports a single national standard for future vehicles, saying the program "makes sense for consumers, for government policymakers and for automakers."

Mr. LaHood and Ms. Jackson said the new requirements will save 1.8 billion barrels of oil over the life of the program. The new standards move up goals set in a 2007 energy law, which required the auto industry to meet a 35 mpg average by 2020.

The rules should add costs to new cars and trucks. The government said the requirements would add an estimated $434 per vehicle in the 2012 model year and $926 per vehicle by 2016 but would save more than $3,000 over the life of the vehicle through better gas mileage.

EPA and the Transportation Department said the requirements would reduce carbon dioxide emissions by about 960 million metric tons over the lifetime of the vehicles regulated, or the equivalent of taking 50 million cars and light trucks off the road in 2030.

Environmental groups have sought curbs on greenhouse gas emissions, blamed for global warming, and challenged the Bush administration for blocking a waiver request from California to pursue more stringent air pollution rules than required by the federal government. The request was granted by the Obama administration last year.

"The standards forthcoming under the 'clean car peace treaty' are a good deal for consumers, for companies, for the country and for the planet," said David Doniger, climate policy director for the Natural Resources Defense Council.

Automakers have been working on an assortment of fuel-efficient technologies, including hybrids, electric cars and technologies that shut off an engine's cylinders when full power isn't needed.

Nissan is releasing its electric car, the Leaf, later this year, while General Motors is introducing the Chevrolet Volt, which can go 40 miles on battery power before an engine kicks in to generate power. Ford is bringing its "EcoBoost" line of direct-injection turbocharged engines, which provide a 20 percent increase in fuel efficiency, to 90 percent of its models by 2013.

Limits Set On Pollution From Autos (*New York Times*)

April 2, 2010 Friday
Late Edition - Final
Section B; Column 0; Business/Financial Desk; Pg. 1
By JOHN M. BRODER
WASHINGTON -- The federal government took its first formal step to regulate global warming pollution on Thursday by issuing final rules for greenhouse gas emissions for automobiles and light trucks.

The move ends a 30-year battle between regulators and automakers but sets the stage for what may be a bigger fight over climate-altering emissions from stationary sources like power plants, steel mills and refineries.

The new tailpipe rules, jointly written by the Transportation Department and the Environmental Protection Agency**,** set emissions and mileage standards that would translate to a combined fuel economy average for new vehicles of 35.5 miles per gallon by 2016. Most drivers will see lower mileage figures in actual driving.

The rules are expected to cut emissions of carbon dioxide and other heat-trapping

gases about 30 percent from 2012 to 2016.

Officials said the program would save the owner of an average 2016 car about $3,000 in fuel over the life of the vehicle and eliminate emissions of nearly a billion tons of greenhouse gases over the lives of all regulated vehicles.

Reaching the new efficiency figure will add about $1,000 to the cost of the average new car by 2016, according to industry and government estimates.

The tailpipe rule reflects a truce between the auto industry and state and federal governments, which have been feuding over emissions and mileage standards since the 1970s. It is the first time the federal Clean Air Act has been applied to carbon dioxide and other global warming pollutants.

The E.P.A. is now writing greenhouse gas standards for stationary sources, a much larger effort whose impact will be felt across the entire economy. Officials have said those regulations would not go into effect before next year at the earliest, but they are already being fiercely challenged by lawmakers, state governments and an array of industry groups.

Lisa P. Jackson, the E.P.A. administrator, said the new vehicle rules would save consumers money and provide an incentive for the development of new automotive technology.

"This is a significant step toward cleaner air and energy efficiency and an important example of how our economic and environmental priorities go hand in hand," she said.

The vehicle emissions program traveled a tortuous path through state regulatory agencies, the courts, Congress and the federal government before a groundbreaking agreement announced in May by President Obama, auto executives, labor leaders and environmental advocates.

The car companies, particularly the domestic makers, had little choice but to accept the deal. Two of the Detroit Big Three, Chrysler and General Motors, were facing bankruptcy and taking federal bailout money. Ford said it was already moving to clean up its fleet and welcomed the certainty of a five-year plan.

The accord produced a single national standard based on California's tough auto emissions law, enacted in 2004. The automakers have complained of the cost of compliance but welcomed a national plan that does not require them to build different vehicles for different markets to comply with varying state laws.

"This is an example of where the federal government has actually done something right," said Gloria Bergquist, a vice president of the Alliance of Automobile Manufacturers. "A year ago, we were facing piecemeal policies set out by E.P.A., D.O.T. and groups of different states. Our auto engineers cannot design vehicles to

different standards."

But Ms. Bergquist said car companies would need to know what their fuel economy rules would be after 2016, when the program announced Thursday ends. She said California regulators were already working on tough new standards for 2017.

Cars, minivans, sport utility vehicles and light trucks will not look or feel markedly different because of the new regulations. Automakers are already improving mileage and reducing emissions with existing technology like smaller, cleaner-burning engines, lighter-weight components, more efficient air-conditioners and seven- and eight-speed automatic transmissions.

The rule sets different mileage and emissions standards for different sizes of vehicles, and major manufacturers will have to meet increasingly stringent standards over the 2012-16 period. Vehicles that run exclusively on electricity, like the new Nissan Leaf and the forthcoming Chevrolet Volt for short trips, will be classed as zero-emissions vehicles, although there is a cap on the number of electric vehicles carmakers can claim credit for.

Small-volume automakers like Porsche, Jaguar, Aston Martin and Lamborghini will not have to meet the new standards immediately but must buy credits from large-volume carmakers who exceed the targets. By 2017, all car companies will have to come into compliance.

The rule estimates the cost of compliance for the industry at $52 billion over the five years of the program and calculates benefits at $240 billion. Those benefits include fuel savings, pollution reduction and reduced oil imports.

The government of Canada said Thursday that it was adopting similar regulations for cars and light trucks sold there.

Representative Edward J. Markey, Democrat of Massachusetts, has pressed for stricter fuel economy standards for years and was a co-author of global warming legislation that passed the House in June.

"After three decades of stagnant fuel economy policy and rising gas prices," Mr. Markey said, "these new standards finally put America on the path to making our vehicles more fuel efficient and reducing our dependence on imported oil."

Environmental regulations to curtail mountaintop mining (*Washington Post*)

By David A. Fahrenthold
Washington Post Staff Writer
Friday, April 2, 2010; A04

The Obama administration on Thursday imposed strict new environmental guidelines that are expected to sharply curtail "mountaintop" coal mining, a controversial practice that has enriched Appalachia's economy while rearranging its topography.

The announcement by the Environmental Protection Agency ended months of bureaucratic limbo on the issue. It was hailed by environmentalists but condemned by coal industry officials, who said it would render a technique that generates about 10 percent of U.S. coal largely impractical.

At "mountaintop removal" mines, which are unique to Appalachian states, miners blast the peaks off mountains to reach coal seams inside and then pile vast quantities of rubble in surrounding valleys. Under the Clinton and George W. Bush administrations, hundreds of such sites received federal permits.

But on Thursday, EPA Administrator Lisa P. Jackson said those "valley fills" will be curtailed. She cited new scientific evidence showing that when rainwater is filtered through the jumbles of rock, it emerges imbued with toxins, poisoning small mountain streams.

"You're talking about no, or very few, valley fills that are going to meet this standard," Jackson said.

The guidelines were announced at a time when the administration is making clear how it plans to proceed on key elements of its environmental agenda. Also on Thursday, the EPA and the Transportation Department finalized new fuel efficiency standards for cars. And on Wednesday, President Obama announced plans to open large areas for offshore drilling, a concession intended to build Senate support for a climate change bill.

The new mining guidelines bar operations that would exceed pollution limits of salt and specified toxins. Experts said few of the region's existing valley fills could have met the new standards.

"It could mean the end of an era," said Luke Popovich of the National Mining Association. "That is tantamount to saying the intent is to strictly limit coal mining in Appalachia."

The Washington region is connected to mountaintop mining through its power lines: many local power plants buy coal from areas where the mines are dominant. Earlier Thursday, in fact, a "guerrilla" environmental group distributed fake letters from Pepco around the District and Maryland, saying that the utility would stop using coal from mountaintop mines.

The closest previous parallel to the EPA's announcement Thursday was a set of guidelines announced at the end of the Clinton administration, then erased by the Bush White House before they had any real effect, said Joe Lovett of the Appalachian Center for the Economy and the Environment.

"The administration is doing its job," he said.

Coal companies say mountaintop mines are necessary to reach coal seams that are too thin, or too close to the surface, for traditional tunnel mining. Instead, they take the mountain off the top of the coal.

Afterward, rock is often piled up to form a mountain shape. But there is usually excess rock, which goes into surrounding valleys. Between 2000 and 2008, companies received permits for 511 valley fills. These often look like giant plugs, filling Appalachian ravines to the brim: in all, government data show, the plugs -- placed end to end -- would span 176 miles.

Mountaintop mining plays an outsize role in places such as southern West Virginia and eastern Kentucky, where many jobs depend on the coal industry -- and satellite maps show flat, brown mine sites spreading among green mountains.

"Coal mining is the broad-shouldered Atlas of West Virginia's economy," said Jason Bostic of the West Virginia Coal Association.

He said Thursday's move will have huge economic implications, and might be interpreted to limit other kinds of mining or highway construction that involves filling in stream valleys. "It really represents a grim, crippling picture," he said.

In March 2009, the EPA announced a review of pending mine permits. But in the months since, the agency has approved some permits and denied others, leaving people on both sides of the issue unclear about the administration's policy and rationale.

Jackson said the EPA will now instruct its local offices not to approve new valley-fill permits that are likely to produce a certain level of pollution in waters downstream. To mitigate those effects, mines could take measures such as storing rock away from streambeds.

"The intent here is to tell people what the science is telling us, which is that it would be untrue to say that you could have numbers of valley fills, anything other than minimal valley fills, and not expect to see irreversible damage to stream health," Jackson said.

The EPA said it will seek public comment on the new guidelines, but that they will take effect immediately. The new rules will apply only to future permits, not to existing operations.

So, despite the celebration by environmentalists over Thursday's announcement, it meant little to Frankie Mooney, 61, a resident of Twilight, W.Va. He said there are mountaintop mining sites on several sides of his home and that valley fills upstream taint the water.

"We had a rain the other day and the river run gray," Mooney said in a telephone interview. "Before the valley fill, it was clear."

Emissions limits, greater fuel efficiency for cars, light trucks made official (*Washington Post*)

By Juliet Eilperin
Washington Post Staff Writer
Friday, April 2, 2010; A01
Consumers will pay more for cars upfront but may save money in the long term under new rules finalized Thursday by the Obama administration that will increase fuel efficiency and for the first time set greenhouse gas emissions standards for cars and light trucks.

The new fuel efficiency standards, issued by the Transportation Department and the Environmental Protection Agency as the result of a May 2009 deal with the auto industry, represent a peaceful end to a contentious legal battle over how to regulate tailpipe emissions. At a time when it is unclear whether Congress will pass climate legislation this year, the new rules also mark the White House's most significant achievement yet in addressing global warming.

By model year 2016 vehicles must get an average of 35.5 miles per gallon. The requirements will add as much as $985 to a vehicle's initial cost, according to EPA estimates, but buyers will save about $4,000 on fuel over the life of the car, administration officials said.

Transportation Secretary Ray LaHood and EPA Administrator Lisa P. Jackson estimated that the tougher Corporate Average Fuel Economy (CAFE) requirements will save 1.8 billion barrels of oil over the life of cars and trucks sold between the 2012-16 model years with those vehicles' improved efficiency.

"These historic new standards set ambitious but achievable fuel economy requirements for the automotive industry that will also encourage new and emerging technologies," LaHood said. "We will be helping American motorists save money at the pump while putting less pollution in the air."

Environmentalists hailed the move, saying it will transform the U.S. auto market.

The fuel economy standards move up goals set in a 2007 energy law, which mandated a 35 mpg average by 2020. Passenger cars and light trucks now are required to get an average of 27.5 mpg. As a result of the new rules, greenhouse gas emissions from cars should be reduced 21 percent by 2030.

"These standards are good for consumers, the companies, the country and the planet," said David Doniger, policy director of the Natural Resources Defense Council's climate center.

Gloria Bergquist, vice president at the Alliance of Automobile Manufacturers, said the new requirement "gives us a clear road map for future fuel economy increases. We have a hill to climb, and it's steep, so we will need consumers to buy our fuel-efficient technologies in large numbers to meet this new national standard."

Some critics worried about the cost. Rep. Darrell Issa (R-Calif.) called it "the result of backroom deals and an ideological agenda that will cause more Americans to lose their jobs. Even though unemployment is at nearly 10 percent, this administration continues to press expensive regulations as if the economic recession never happened."

The NRDC, by contrast, estimated that in 2020, the standards will save consumers $65 billion in fuel costs by cutting oil consumption by 1.3 million barrels a day while also cutting carbon dioxide emissions by more than 220 million metric tons in that year.

The rules cover four types of pollutants -- carbon dioxide, methane, nitrous oxide and hydrofluorocarbons -- so automakers can meet the standards through an array of measures.

Many will probably substitute a new refrigerant called HFO-1234yf, which the EPA could approve in months, that releases a far less potent greenhouse gas than the one now used in air-conditioning units. Auto companies will probably add hybrid and electric cars as well as produce vehicles with smaller turbocharged engines and with engines that do not have to idle at stop signs or in traffic.

California pioneered the idea of greenhouse gas limits for vehicles, setting standards in 2004 that were adopted by 13 other states and the District. Automakers challenged the rules in court, and the Bush administration refused to grant California a waiver from the Clean Air Act, effectively blocking the standards from taking effect.

Once President Obama took office, the alliance, which represents 11 U.S. and foreign automakers, pressed for a deal with the states, labor groups and environmental organizations.

Canada adopted identical emissions standards for its vehicles Thursday, broadening the impact of the regulations. Canada's environment minister, Jim Prentice, said his government was "pleased to be taking this step to further harmonize our climate change action with the Obama administration -- a step that will protect our environment and ensure a level playing field for the automotive industry."

Fuel-Economy Rules Set EPA Climate-Change Standard (*BusinessWeek*)

(Update2)
April 01, 2010, 2:17 PM EDT
By John Hughes

April 1 (Bloomberg) -- The Obama administration set the first national regulations targeting climate change, boosting U.S. automobile fuel-economy standards by about 30 percent.

The requirements were raised to an average of 35.5 miles per gallon for 2016 model-year cars and light trucks from 27.3 mpg in 2011. The final rule issued today will cost automakers $52 billion to comply and add $926 to the cost of buying a car within five years, according to government estimates.

“This is a significant step,” Environmental Protection Agency Administrator Lisa Jackson said in a joint statement with Transportation Secretary Ray LaHood. “Our economic and environmental priorities go hand-in-hand.”

The partnership with the Transportation Department in controlling carbon pollution from cars and trucks sets a precedent for the EPA’s plans to restrict greenhouse-gas emissions throughout the economy, the American Petroleum Institute said today in a statement.

“The rule is not just about vehicle efficiency,” the Washington-based trade group for oil and natural-gas companies said. “It’s about EPA overreaching to create an opportunity for regulating greenhouse gas emissions from virtually every firm and business in America, no matter how unwieldy, intrusive and burdensome such regulation might be.”

‘Sensible’ Regulations

The EPA has said it plans to require permits for emissions that may contribute to global warming from industrial polluters including power plants and oil refineries. The agency said March 29 it will take “sensible” steps toward such regulation no sooner than January.

Senators including Jay Rockefeller, a West Virginia Democrat, have said EPA rules could hurt the economy and has proposed a “two-year suspension” in EPA action. Republicans including Senator Lisa Murkowski of Alaska have been seeking legislation to bar the EPA from acting.

President Barack Obama, automakers, union leaders, state officials and environmentalists agreed on the fuel economy goals in May. The rules were formally proposed in September.

Automobile makers will likely meet the new standards by using existing technologies including more efficient engines, transmissions, aerodynamics and air conditioning systems, the EPA and National Highway Traffic Safety Administration said. Hybrid vehicles, diesel engines and electric cars may also contribute to better fuel economy, the agencies said.

‘Doomsday Scenarios’

Jackson told reporters that today’s action shows greenhouse-gas regulation “can be done in a thoughtful way, that doesn’t turn the economy on its ear, that doesn’t cause the sky to fall, and really puts to rest these sort of doomsday scenarios about how we couldn’t do this thoughtfully.”

Most or all of the $52 billion cost to automakers for 2012- through-2016 models will be recovered through higher prices for their vehicles, according to the rule. The increased cost to consumers will be eclipsed by more than $3,000 in reduced fuel costs over the life of each vehicle, the agencies estimated.

Canada said today it will harmonize its automobile emissions regulations with the U.S. for the 2011 model year. The change “will protect our environment and ensure a level playing field for the automotive industry,” Environment Minister Jim Prentice said in a statement from Ottawa.

2016 Targets

The EPA’s 2016 target of 35.5 mpg would be reached if all emission reduction standards came from fuel-economy improvements. The agency will let automakers receive credit toward the goal for improvements in air-conditioning systems.

The highway-safety agency, which doesn’t allow air- conditioner credits, estimates the 2016 standard at 34.1 mpg.

Passenger cars will have to meet a target of 37.8 mpg by the 2016 model year, while pickups, sport utility vehicles and minivans will need to average 28.8 mpg, according to an Obama administration fact sheet.

The 5 percent annual increase in fuel mileage in the next five years would save 1.8 billion barrels of oil and reduce 960 million metric tons of greenhouse gas emissions by 2016, the administration said.

--With assistance from Greg Quinn in Ottawa. Editors: Romaine Bostick, Larry Liebert.

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EPA: New mining policy would protect water quality (*Associated Press*)

Story also appeared: *Washington Post*

By TIM HUBER
The Associated Press
Thursday, April 1, 2010; 4:26 PM

CHARLESTON, W.Va. -- The Obama administration Thursday spelled out tighter water quality standards for surface coal mines in Appalachia in a move that could curtail mountaintop removal mining.

The policy will sharply reduce the practice of filling valleys with waste from mountaintop removal and other types of surface mines in a six-state region, U.S. Environmental Protection Agency Administrator Lisa Jackson said.

The policy met with immediate praise from opponents who consider mountaintop mining too destructive and disappointment from mine operators who say the new approach will eliminate many valuable jobs.

The agency also released two reports discussing watershed damage in the region from surface mining. Burying streams with mine wastes increases salt levels in waterways downstream, hurting fish and other aquatic life, the EPA said. Jackson said the new policy should protect 95 percent of aquatic life.

"You're talking about either no or very few valley fills," Jackson said. "That's just the truth, that's the science of it."

The lone major permit approved by federal regulators since Jackson began cracking down on Appalachian surface mining a year ago includes no valley fills.

"These new guidelines will reduce the destruction caused by mountaintop removal, and communities will be able to focus on building a clean energy economy," Sierra Club Executive Director Michael Brune said in a statement.

Virginia-based Massey Energy, one of the largest producers in the affected region, provided a chart showing San Pellegrino and Perrier mineral waters exceed the EPA standard, as did water from a pond at a southern West Virginia mine.

"We're deeply concerned by the impact this policy will have on employment and economic activity throughout the Appalachian region," National Mining Association spokesman Luke Popovich said.

The organization's figures show surface mines in the six states covered by the policy produced more than 150 million tons of coal and employed nearly 20,500 people in 2008. U.S. production totaled more than 1.17 billion that year.

"To painstakingly try to limit the impacts to one kind of mining operation, to a single industry and to future operations is frankly disingenuous," Popovich said.

The EPA is applying the policy in West Virginia, Kentucky, Pennsylvania, Ohio, Virginia and Tennessee. "All the science here and all the data, much of it comes from the state of West Virginia," Jackson said.

She said it may be applied to underground mining as well, though that practice typically is more palatable to environmental groups. "Please don't think we won't look at and use this same science in evaluating other types of operations," she said.

West Virginia's Department of Environmental Protection Secretary Randy Huffman questioned EPA's approach, saying the agency was changing the permitting process through a guidance document rather than regulations. "They put the standards they want on the mining industry without going through any legal framework," he said.

Moreover, Huffman said EPA's new standard is lower than what his agency had determined was protective of water quality and aquatic life.

"The geology and other characteristics of a stream impact are what causes adverse impacts or doesn't," he said. "There is not a one-size fits all for dissolved solids. That's one of the concerns of the approach EPA is taking here."

Associated Press Writer Brian Farkas contributed to this story.

EPA unveils new pollution limits that could curtail 'mountaintop' mining (*Washington Post*)

By David A. Fahrenthold
Washington Post Staff Writer
Thursday, April 1, 2010; 4:15 PM
The Environmental Protection Agency on Thursday announced new pollution limits that could sharply curtail "mountaintop" mining, the lucrative and controversial practice that is unique to Appalachia.

The decision, announced Thursday afternoon by EPA Administrator Lisa P. Jackson, is expected to end or significantly cut the use of "valley fills." At these sites, mining companies fill valleys to the brim with rock and rubble left over when peaks are sheared off to reach coal seams inside.

"Minimizing the number of valley fills is a very, very key factor," Jackson said. "You're talking about no, or very few, valley fills that are going to meet this standard."

Both supporters and opponents of the practice said that, because large valley fills are such a common part of mountaintop mines, the move could curtail the mines in general. Mountaintop mining provides only about 10 percent of U.S. coal, but it is a much larger part of the economy in some sections of southern West Virginia and eastern Kentucky.

"It could mean the end of an era," said Luke Popovich of the National Mining Association. He said that to limit valley fills "is tantamount to saying the intent is to strictly limit coal mining in Appalachia," with serious economic consequences for regions dependent on the mines.

Joe Lovett of the Appalachian Center for the Economy and the Environment applauded the move -- saying it was in line with federal law like the Clean Water Act.

"Mountaintop mining, by its nature, destroys water," Lovett. Of this decision, he said, "I hope it means the beginning of the end."

"It could be, if implemented and enforced, the most significant enforcement to date," said Joan Mulhern, of the group Earthjustice. "The federal government has pretty much to date done nothing on this issue. . . . It's new, on mountaintop removal, that EPA is doing its job."

Jackson said the EPA would issue "guidance" to its local offices, which help review permits for new mountaintop mines. In that guidance, she said, the EPA sets an upper limit on one kind of pollution permitted downstream from valley-fill sites.

The pollutant -- odd as it sounds -- is salt. Scientists say that, when rainwater trickles through the jumbled rock inside a valley fill, it is imbued with salt and toxic chemicals that had previously been buried in rocks deep inside mountains.

The water can then poison small Appalachian streams and kill wildlife.

"The intent here is to tell people what the science is telling us, which is that it would be untrue to say that you could have numbers of valley fills, anything other than minimal valley fills, and not expect to see irreversible damage to stream health," Jackson said.

The rule would apply only to new permits, not mines currently operating. The mines would have to show that they had taken steps like storing excess rock away from streams.

EPA sets first U.S. limits on tailpipe gases (*Houston Chronicle*)

New rules tied to increased fuel efficiency on cars and light trucks
By MATTHEW TRESAUGUE
HOUSTON CHRONICLE
April 1, 2010, 11:37PM
The federal government imposed the first national limits on greenhouse gas emissions Thursday with the tightening of fuel efficiency standards for cars and light-duty trucks.

The new rules, finalized by the Environmental Protection Agency and Transportation Department, require a fleet average of 35.5 miles a gallon by 2016 — up from an average 27.5 miles per gallon today.

Officials said the tougher tailpipe standards would save consumers money at the gas pump, reduce the nation's reliance on foreign oil and lower emissions of carbon dioxide and other climate-altering gases.

In Texas, by one estimate, the new rules will have the same effect on greenhouse gas emissions as removing 1.7 million of today's cars from the road.

EPA Administrator Lisa Jackson said in a statement that the move “is a significant step towards cleaner air and energy efficiency, and an important example of how our economic and environmental priorities go hand-in-hand.”

The new rules signify the first federal limits on climate-altering emissions, with more to follow.

The EPA is writing rules for refineries, power plants and other industrial facilities, but those will not take effect before next year, Jackson said.

The tailpipe rules also bring to an end decades of rough-and-tumble debate between regulators and automakers.

The companies had sued to block similar restrictions on greenhouse gas emissions from tailpipes in California. But with their industry in crisis, carmakers set aside concerns over the cost of compliance and accepted a national standard that did not force them to build different cars and trucks for different states.

Dave McCurdy, president and CEO of the Alliance of Automobile Manufacturers, said a national plan — rather than a piecemeal approach — to fuel efficiency made sense because “when our engineers struggle with changing or conflicting laws, it derails efforts to introduce new technologies with long-term research and development time frames.”

Starts with 2012 models

Environmentalists praised the federal action, saying it would usher in a new era of fuel-saving technologies after years of bulkier and more powerful cars and trucks.

“This is the biggest step the federal government will have ever taken to save oil, cut greenhouse emissions and save consumers money,” said David Friedman, research director of the clean vehicles program at the Union of Concerned Scientists.

The government projects the regulations, which begin with 2012 models and end in 2016, will raise the price of new cars and trucks by an average of nearly $1,000, but that drivers will save $3,000 in fuel bills over the lifetime of the vehicle. Even tougher rules may come into play in 2017, but officials haven't started working on them.

Federal officials said the new rules would not prevent automakers from producing enough light-duty trucks, a favorite among Texans, to satisfy consumer demand.

Instead, consumers will get a range of cars and trucks that use fuel more frugally, considering greenhouse gas emissions are tied directly to efficiency. The new rules call for 250 grams of carbon dioxide per mile, reducing the U.S. fleet's greenhouse gas emissions 21 percent by 2030, according federal regulators.

More smog?

The move troubled some industry groups, who said the regulation of carbon dioxide would be overly complex and impose huge costs across the economy.

The tailpipe rule “is like a starting pistol — the sound of which starts the race toward economywide regulation,” said Scott Segal, a lobbyist for refineries and chemical manufacturers at the law firm Bracewell & Giuliani.

“And, unlike with mobile sources,” he said, “there is little consensus on fundamental technological and timing issues when it comes to the regulation of the great majority of American industry.”

Texas officials also found fault with the new tailpipe standards, saying they would likely lead to more smog-forming pollution in traffic-choked places like Houston and Dallas.

That's because the new rules don't modify current standards for the nitrogen oxides and volatile organic compounds that cause smog, or ozone.

Improved fuel efficiency will likely result in increased vehicle use and thus more smog-forming emissions, said Terry Clawson, a spokesman for the Texas Commission on Environmental Quality.

“Unlike greenhouse gas emissions, increases in criteria pollutant emissions could result in direct health impacts on the citizens of Texas,” Clawson said.

State's position criticized

Chronic exposure to ozone, which has been a stubborn problem for Houston, can cause asthma attacks, chest pain and premature death. Last month, Texas sued the EPA over its finding that greenhouse gases endangered public health and welfare.

Matthew Tejada, executive director of the Galveston-Houston Association for Smog Prevention, criticized the state's position on the new standard, arguing that Houston and other smog-bound places need tougher tailpipe standards to meet national limits for ozone.

“If there was any area where the state of Texas could have offered to meet EPA at least halfway, then this could have been it,” Tejada said. “But instead, just as the EPA starts doing the job that we have all been asking it to do for decades, the TCEQ finds a way to be unhappy about it.”

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White House mandates new fuel efficiency standards (*Washington Post*)

By Juliet Eilperin
Washington Post Staff Writer
Thursday, April 1, 2010; 3:26 PM

The Obama administration finalized the first national rules curbing greenhouse gas emissions Thursday, mandating that the U.S. car and light-truck fleet reach an average fuel efficiency of 35.5 miles per gallon by 2016.

The new fuel efficiency standards, issued by the Transportation Department and the Environmental Protection Agency as the result of a May 2009 deal with the auto industry, represent a peaceful end to a contentious legal battle over how to regulate tailpipe emissions. At a time when it remains unclear whether Congress can pass climate legislation this year, the new rules also mark the White House's most significant achievement yet in addressing global warming.

In a joint statement issued Thursday, Transportation Secretary Ray LaHood and EPA Administrator Lisa P. Jackson estimated that the tougher Corporate Average Fuel Economy (CAFE) requirements will save 1.8 billion barrels of oil over the life of vehicles sold under the program covering the 2012-16 model years.

"These historic new standards set ambitious, but achievable, fuel economy requirements for the automotive industry that will also encourage new and emerging technologies," LaHood said. "We will be helping American motorists save money at the pump, while putting less pollution in the air."

Environmentalists hailed the move, saying it will transform the American auto market in the years to come.

The new CAFE standards move up goals set in a 2007 energy law, which mandated a 35-mpg average by 2020. Passenger cars and light trucks now are required to get an average of 27.5 mpg. As a result of the new rules, the U.S. vehicle fleet is projected to cut its greenhouse gas emissions 21 percent by 2030.

"These standards are good for consumers, the companies, the country and the planet," said David Doniger, policy director of the Natural Resources Defense Council's climate center.

Gloria Bergquist, vice president at the Alliance of Automobile Manufacturers, said the new requirement "gives us a clear roadmap for future fuel economy increases. We have a hill to climb, and it's steep, so we will need consumers to buy our fuel-efficient technologies in large numbers to meet this new national standard."

She added that since automakers are already designing vehicles "for 2017 and beyond," they hoped the federal government would take the lead in setting the next set of standards, which will take effect once the 2012-16 program ends. "The federal government has gotten a lot of criticism lately, but this is one case where federal leadership has worked by avoiding piecemeal, fragmented policies for autos. That's why we support it."

Canada adopted identical emission standards for its vehicles Thursday. Canada's environment minister, Jim Prentice, said his government was "pleased to be taking this step to further harmonize our climate change action with the Obama administration -- a step that will protect our environment and ensure a level playing field for the automotive industry."

California pioneered the idea of greenhouse gas limits for vehicles, setting standards in 2004 that were subsequently adopted by 13 other states and the District of Columbia. Automakers challenged the rules in court, and the Bush administration refused to grant California a waiver from the Clean Air Act, effectively blocking the standards from taking effect.

Once President Obama took office, the Alliance of Automobile Manufacturers, an advocacy group representing 11 U.S. and foreign automakers, pressed for a deal with the states, labor groups and environmental organizations.

An administration official estimated that the new requirements may increase the average cost of a vehicle by about $1,000, but that the consumer would recoup that payment in three years, largely through fuel savings. Over the life of the vehicle, a vehicle owner would reap a net savings of $3,000.

While tailpipe emissions represent the largest source of greenhouse gas emissions in a car or truck, the coolant in air conditioning also contributes to a vehicle's carbon output.

The Natural Resources Defense Council estimates that in 2020, the new standards will save consumers $65 billion in fuel costs by cutting oil consumption by 1.3 million barrels a day, while also cutting carbon dioxide emissions by more than 220 million metric tons that year.

April 1, 2010

E.P.A. Rules to Limit Water Pollution From Mining (*New York Times*)

By TOM ZELLER Jr.

The Environmental Protection Agency issued tough new water quality guidelines on Thursday that could curtail some of the most contentious coal mining techniques used across Appalachia.

In announcing the guidelines, Lisa P. Jackson, the agency's administrator, cited evolving science on the effects of mountaintop removal mining, an aggressive form of coal extraction that uses explosives and vast machinery to tear off hilltops to expose coal seams, dumping the resulting rubble into streams and valleys below. The goal of the new rules, Ms. Jackson said, is to prevent "significant and irreversible damage" to Appalachian watersheds.

"Let me be clear," Ms. Jackson said during a phone call with reporters. "This is not about ending coal mining. This is about ending coal mining pollution."

The most substantial effect of the new guidelines — which the agency will promulgate to regional offices that issue permits — will be to benchmark the permissible levels of mining runoff likely to be introduced into the waterways surrounding a proposed project. Operations that would result in levels roughly five times above normal would be considered too damaging.

Ms. Jackson suggested that one practical result of the guidelines would be to make it far more difficult for so-called valley fill operations, where layers of soil and rock are removed from mountaintops and piled in nearby valleys and streams, to receive permits.

The E.P.A. also on Thursday published a pair of scientific reports that supported the new guidelines and announced plans for a new Web-based clearinghouse that will track mining permits under review.

Environmental groups hailed the guidelines as long overdue and an important step in bringing science to bear on environmental policy.

“I think it’s a very good day for people in Appalachia,” said Jon Devine, a senior attorney with the Natural Resources Defense Council. “E.P.A. is making clear that it is intending to follow the science when it issues permits.”

Mining industry representatives, however, said the guidelines threatened jobs in the region.

“America’s coal mining communities are deeply concerned by the impact of policy announced today by E.P.A. on coal mining permits, employment and economic activity throughout Appalachia,” Bruce Watzman, senior vice president for regulatory affairs at the National Mining Association, said in an e-mailed statement.

“The policy was announced without the required transparency and opportunity for public comment that is afforded to policies of this magnitude,” Mr. Watzman added.

New fuel standards to pump up car prices (*Dallas Morning News*)

12:00 AM CDT on Friday, April 2, 2010
By DAVE MICHAELS / The Dallas Morning News
dmichaels@dallasnews.com / The Dallas Morning News
Terry Box in Dallas contributed to this report.
WASHINGTON – New cars and trucks will cost more under a new federal requirement to improve the fuel economy of vehicles, a move taken by the Obama administration to reduce greenhouse gas emissions.

The rule, finalized Thursday, requires that U.S. cars and light trucks meet an average fuel-economy standard of 35.5 miles per gallon by 2016.

Administration officials say manufacturers can meet the targets mostly with existing technology and without drastically altering consumers' choices of vehicles, although small cars will get a boost.

The required changes will increase costs, with average new-vehicle prices rising about $926 per car in 2016, according to the Environmental Protection Agency and the National Highway Traffic Safety Administration, which jointly developed the rule. But administration officials say customers will benefit from spending less at the pump.

Administration officials stressed the rule is supported by automakers, which otherwise faced a patchwork of different fuel standards promulgated by states such as California.

Transportation Secretary Ray LaHood said the administration was in effect giving consumers more ways to deal with volatile gas prices, which he said were bound to rise.

LaHood's agency said a person who bought a new car with cash would save enough money on fuel over three years to offset the higher purchase price. The rules apply to vehicles produced for model years 2012 through 2016.

"It's not going to go down," LaHood said of gasoline prices. "It's going to go up. ... Are people going to be willing to buy these cars? If they are more fuel-efficient and they get better gas mileage, the answer is yes."

Effect on emissions

Environmental groups hailed the rule as evidence of the administration's progress on limiting emissions they say cause global warming. The transportation sector is responsible for about 33 percent of U.S. carbon dioxide emissions, and passenger car fuel-economy standards haven't changed since the 1980s.

The EPA said the rule would reduce greenhouse emissions by about 960 million metric tons over the lifetime of the vehicles covered by the rule, or the equivalent of taking 50 million cars and light trucks off the road by 2030.

Research and advocacy group Environment America said the rule would conserve 943 million gallons of gasoline in Texas, saving motorists about $2.6 billion.

"The rule overwhelmingly is a very positive step forward," said Jim Kliesch, senior engineer for the Union of Concerned Scientists. "It reflects a long-overdue improvement to our vehicle fleet that, frankly, consumers have needed for way too long."

North Texas trucks

How consumers will respond to more small cars in regions like North Texas remains unclear. Fifty percent of all new vehicles sold in the area are light trucks, a category that includes pickups and sport utility vehicles.

Auto analysts say automakers will meet the target by offering a mix of options in their fleets, including electric cars and conventional sedans that are powered by turbocharged, four-cylinder engines instead of V-6s.

Light trucks also must meet a higher standard. But administration officials and analysts say the rules are flexible enough that manufacturers can still offer trucks as long as they produce and sell enough small cars to balance out the fleet average.

"What they are doing is giving the consumer more choice instead of less choice," said Bruce Belzowski, assistant research scientist at the University of Michigan's Transportation Research Institute.

"The other vehicles that they always purchased – they can still buy those," he said. "But they may look at those smaller vehicles."

But Drew Campbell, a consultant for the New Car Dealers Association of Dallas, said manufacturers would inevitably scale back production of larger cars to meet the fuel-economy targets.

"For manufacturers to hit that fleet number, they are going to have to sell a lot more of those smaller cars, which means they'll have to take people out of the bigger cars," he said. "For people in the Southwest, that means fewer choices."

Some industry experts disagree with the government's cost estimates for meeting the new standards. *Automotive News*, the industry's leading trade publication, wrote recently that compact car prices could increase by $2,000, midsize sedans by $6,000 and full-size pickups by $9,000.

Next up: power plants

The EPA has said that stationary sources such as power plants are next in line – as early as 2011 – for rules that limit greenhouse gas emissions. The administration is moving forward with such rule-making, although it continues to say it prefers that Congress limit emissions under a comprehensive climate-change law.

The vehicle rule "shows that it can be done, but it shows that it can be done in a thoughtful way that doesn't turn the economy on its ear," EPA Administrator Lisa Jackson said.

Texas officials and business groups opposed the rule, arguing that the EPA shouldn't use its Clean Air Act authority to regulate greenhouse gases.

In comments to the EPA, the Texas Commission on Environmental Quality also asserted that improved fuel economy would result in more pollution in areas like North Texas. The state agency, which regulates environmental pollution, said motorists would drive more as they get more miles out of a gallon of gasoline.

Staff writer Terry Box in Dallas contributed to this report.

Apr 01, 2010

Obama aides sign off on new fuel standards (*USA Today*)

The Obama administration signed off today on new fuel efficiency standards for cars and trucks, requiring automakers to meet targets of 35.5 miles per gallon for 2016 models.

They're "the most aggressive fuel efficiency standards ever set in the United States," said Transportation Secretary Ray LaHood. The Department of Transportation worked on the new standards with the Environmental Protection Agency.

EPA Administrator Lisa Jackson called it "a win-win program for our economy and the environment."

In previewing the announcement yesterday, President Obama said the new standards come "after decades in which we have done little to increase auto efficiency." He said the new rules "will reduce our dependence on oil while helping folks spend a little less at the pump."

(Posted by David Jackson)

U.S. orders greener cars by 2016 (*Minneapolis Star Tribune*)

In its first move to curb greenhouse gas emissions, the government mandates vehicles average 35.5 mpg by 2016.
By JOHN M. BRODER, New York Times
Last update: April 1, 2010 - 10:30 PM

WASHINGTON - The federal government took its first formal step to regulate global warming pollution on Thursday, mandating that the U.S. car and light-truck fleet reach an average fuel efficiency of 35.5 miles per gallon by 2016.

The move ends a 30-year battle between regulators and automakers but sets the stage for what may be a bigger fight over climate-altering emissions from stationary sources such as power plants, steel mills and refineries.

The new tailpipe rules were jointly written by the Transportation Department and the Environmental Protection Agency.

The rules are expected to reduce emissions of carbon dioxide and other heat-trapping gases about 30 percent from 2012 to 2016.

Officials said the program would save the owner of an average 2016 car about $3,000

in fuel over the life of the vehicle and eliminate emissions of nearly a billion tons of greenhouse gases over the lives of all regulated vehicles.

Reaching the new efficiency figure will add about $1,000 to the cost of the average new car by 2016, according to industry and government estimates.

The tailpipe rule reflects a truce between the auto industry and state and federal governments, which have been feuding over emissions and mileage standards since the 1970s. It is the first time the federal Clean Air Act has been applied to carbon dioxide and other global warming pollutants -- a move cleared by a groundbreaking 2007 Supreme Court ruling.

The EPA is now writing greenhouse gas standards for stationary sources, a much larger effort whose impact will be felt across the entire economy. Officials have said those regulations would not go into effect before next year at the earliest, but they are already being fiercely challenged by lawmakers, state governments and an array of industry groups.

New Fuel Economy Standard Adds GHG Component (*EP Magazine*)

Apr 02, 2010

The U.S. Department of Transportation (DOT) and the U.S. Environmental Protection Agency have established historic new rules that set the first-ever national greenhouse gas (GHG) emissions standards and will significantly increase the fuel economy of all new passenger cars and light trucks sold in the United States.

The rules could potentially save the average buyer of a 2016 model year car $3,000 over the life of the vehicle and, nationally, will conserve about 1.8 billion barrels of oil and reduce nearly a billion tons of GHG emissions over the lives of the vehicles covered.

“These historic new standards set ambitious, but achievable, fuel economy requirements for the automotive industry that will also encourage new and emerging technologies,” said Transportation Secretary Ray LaHood. “We will be helping American motorists save money at the pump, while putting less pollution in the air.”

“This is a significant step toward cleaner air and energy efficiency, and an important example of how our economic and environmental priorities go hand-in-hand,” said EPA Administrator Lisa P. Jackson. “By working together with industry and capitalizing on our capacity for innovation, we’ve developed a clean cars program that is a win for automakers and drivers, a win for innovators and entrepreneurs, and a win for our planet.”

DOT and EPA received more than 130,000 public comments on the September 2009 proposed rules, with overwhelming support for the strong national policy. Manufacturers will be able to build a single, light-duty national fleet that satisfies all federal requirements as well as the standards of California and other states. The collaboration

of federal agencies also allows for clearer rules for all automakers, instead of three standards (DOT, EPA, and a state standard).

The final rules, issued by DOT's National Highway Traffic Safety Administration (NHTSA) and EPA, establish increasingly stringent fuel economy standards under NHTSA's Corporate Average Fuel Economy program and greenhouse gas emission standards under the Clean Air Act for 2012 through 2016 model-year vehicles.

Starting with 2012 model year vehicles, the rules together require automakers to improve fleet-wide fuel economy and reduce fleet-wide GHG emissions by approximately 5 percent every year. NHTSA has established fuel economy standards that strengthen each year reaching an estimated 34.1 mpg for the combined industry-wide fleet for model year 2016.

Because credits for air-conditioning improvements can be used to meet the EPA standards, but not the NHTSA standards, the EPA standards require that by the 2016 model-year, manufacturers must achieve a combined average vehicle emission level of 250 grams of carbon dioxide per mile. The EPA standard would be equivalent to 35.5 miles per gallon if all reductions came from fuel economy improvements.

Specifically, the new National Program:

- Reduces carbon dioxide emissions by about 960 million metric tons over the lifetime of the vehicles regulated, equivalent to taking 50 million cars and light trucks off the road in 2030.
- Conserves about 1.8 billion barrels of oil over the lifetime of the vehicles regulated. Enables the average car buyer of a 2016 model year vehicle to enjoy a net savings of $3,000 over the lifetime of the vehicle, as upfront technology costs are offset by lower fuel costs.

NHTSA and EPA expect automobile manufacturers will meet these standards by more widespread adoption of conventional technologies that are already in commercial use, such as more efficient engines, transmissions, tires, aerodynamics, and materials, as well as improvements in air conditioning systems. Although the standards can be met with conventional technologies, EPA and NHTSA also expect that some manufacturers may choose to pursue more advanced fuel-saving technologies like hybrid vehicles, clean diesel engines, plug-in hybrid electric vehicles, and electric vehicles.

In conjunction with the United States, Canada is also announced Light Duty Vehicle GHG-Emissions regulations. U.S. EPA and NHTSA have worked closely with Environment Canada to ensure a common North American approach.

W.H. finalizes strict fuel standards (*Politico*)

By: Lisa Lerer
April 1, 2010 01:49 PM EDT

The Obama administration finalized strict new gas mileage standards for new cars and trucks Thursday, a key piece of the White House's climate and energy agenda.

Vehicles released in 2016 will be required to meet fuel efficiency targets of 34.1 miles per gallon — an increase of nearly 10 mpg over the current rules.

The new rule is a big win for the administration, which is struggling to push a climate bill through a skittish Senate.

The heads of the Transportation Department and the Environmental Protection Agency say the new standards will increase costs by about $1,000 per vehicle. But EPA Administrator Lisa Jackson stressed that consumers will save $3,000 in fuel costs because of the more efficient transmissions.

The rule, she said, “is a win-win program for our economy and our environment.”

The new standards reduces carbon dioxide emissions by about 960 million metric tons over the lifetime of the vehicles, equivalent to taking 50 million cars and light trucks off the road in 2030, according to the government.

A 2007 Supreme Court ruling required the EPA to begin regulating carbon dioxide emissions from vehicles. But the Bush administration stalled on releasing new rules. At the same time, California and 13 other states set their own state-specific vehicle standards — rules that were effectively blocked by a refusal of the Bush administration to grant California a waiver from the Clean Air Act.

Automakers pushed the Obama administration hard to promulgate a national rule.

“America needs a road map to reduced dependence on foreign oil and greenhouse gases, and only the federal government can play this role,” said Dave McCurdy, president and CEO of Alliance of Automobile Manufacturers.

Environmentalists also heralded the new rule as a major step forward.

“By completing these rules, the Obama administration is putting our country on the road to creating thousands of clean energy jobs and cutting our dangerous dependency on oil,” said Roland Hwang, transportation program director at the Natural Resources Defense Council.

Administration releases new fuel efficiency rules (*Associated Press*)

By KEN THOMAS (AP) – April 1, 2010
WASHINGTON — The Obama administration set tougher gas mileage standards for new cars and trucks Thursday, spurring the next generation of fuel-sipping gas-electric hybrids, efficient engines and electric cars.

The heads of the Transportation Department and the Environmental Protection Agency signed final rules setting fuel efficiency standards for model years 2012-2016, with a goal of achieving by 2016 the equivalent of 35.5 miles per gallon combined for cars and trucks, an increase of nearly 10 mpg over current standards set by the National Highway Traffic Safety Administration.

The EPA set a tailpipe emissions standard of 250 grams (8.75 ounces) of carbon dioxide per mile for vehicles sold in 2016, equal to what would be emitted by vehicles meeting the mileage standard. The EPA issued its first rules ever on vehicle greenhouse gas emissions following a 2007 Supreme Court decision.

"These historic new standards set ambitious, but achievable, fuel economy requirements for the automotive industry that will also encourage new and emerging technologies," Transportation Secretary Ray LaHood said in a statement. "We will be helping American motorists save money at the pump, while putting less pollution in the air."

Each auto company will have a different fuel-efficiency target, based on its mix of vehicles. Automakers that build more small cars will have a higher target than car companies that manufacture a broad range of cars and trucks. The standard could be as low as 34.1 mpg by 2016 because automakers are expected to receive credits for reducing greenhouse gas emissions in other ways, including preventing the leaking of coolant from air conditioners.

"This is a significant step towards cleaner air and energy efficiency, and an important example of how our economic and environmental priorities go hand-in-hand," EPA Administrator Lisa P. Jackson said in a statement.

Dave McCurdy, a former congressman from Oklahoma who leads the Alliance of Automobile Manufacturers, a trade group representing 11 automakers, said the industry supports a single national standard for future vehicles, saying the program "makes sense for consumers, for government policymakers and for automakers."

LaHood and Jackson said the new requirements will save 1.8 billion barrels of oil over the life of the program. The new standards move up goals set in a 2007 energy law, which required the auto industry to meet a 35 mpg average by 2020.

The rules should add costs to new cars and trucks. The government said the requirements would add an estimated $434 per vehicle in the 2012 model year and $926 per vehicle by 2016 but would save more than $3,000 over the life of the vehicle through better gas mileage.

EPA and the Transportation Department said the requirements would reduce carbon dioxide emissions by about 960 million metric tons over the lifetime of the vehicles regulated, or the equivalent of taking 50 million cars and light trucks off the road in 2030.

Environmental groups have sought curbs on greenhouse gas emissions, blamed for global warming, and challenged the Bush administration for blocking a waiver request from California to pursue more stringent air pollution rules than required by the federal government. The request was granted by the Obama administration last year.

"The standards forthcoming under the 'clean car peace treaty' are a good deal for consumers, for companies, for the country and for the planet," said David Doniger, climate policy director for the Natural Resources Defense Council.

Automakers have been working on an assortment of fuel-efficient technologies, including hybrids, electric cars and technologies that shut off an engine's cylinders when full power isn't needed.

Nissan is releasing its electric car, the Leaf, later this year, while General Motors is introducing the Chevrolet Volt, which can go 40 miles on battery power before an engine kicks in to generate power. Ford is bringing its "EcoBoost" line of direct-injection turbocharged engines, which provide a 20 percent increase in fuel efficiency, to 90 percent of its models by 2013.

On the Net:

- Transportation Department: http://www.dot.gov/
- Environmental Protection Agency: http://www.epa.gov/

From the April 2010 Issue

EPA to regulate GHG emissions from vehicles (*Ethanol Producer Magazine*)

by Holly Jessen
Posted April 1, 2010

In its first-ever official action regulating greenhouse gas (GHG) emissions, the U.S. EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) announced a program to regulate light duty vehicles.

The joint final rule was discussed during a press conference call April 1 and will apply to vehicles model years 2012 through 2016, specifically all passenger cars, light-duty trucks, and medium-duty passenger vehicles. The vehicles must achieve average fleet wide economy standards of 35.5 mpg by 2016.

The changes will come at a cost of $53 billion to automakers. However, EPA's Administrator Lisa P. Jackson pointed out the net benefit was estimated at $190 billion due to reduced gasoline use and lower emissions. She also mentioned health benefits, specifically for her son, who suffers from asthma.

Consumers will see a $985 increase in vehicle prices by 2016. Vehicle owners will get that back in an average of three years due to increased fuel efficiencies, Jackson said, sooner when the vehicle is purchased on an extended payment plan. A consumer that purchases a 2016 vehicle should save the average buyer $3,000 during the life of the car, the EPA said.

The regulations establish one single federal standard for light duty vehicles, rather than a patchwork of state standards. Vehicles will be required to meet an estimated combined average emission level of 250 grams of CO2 per mile, or 35.5 mpg. The standards will cut GHG emissions by about 960 million metric tons. It will also cut consumption of oil by 1.8 billion barrels over the lifetime of the vehicles sold with model years of 2012 to 2016.

The 35.5 mpg figure will be reached if the industry were to meet CO2 reduction levels solely through fuel economy improvements. The EPA regulation allows automakers to use air conditioning credits to meet part of the requirements for 2012-2016 model years, while the NHTSA does not. The regulations also allow automakers to continue to get credits for making flex fuel vehicles that run on E85 until 2015, after which it must be shown that the fuel is being utilized.

The Alliance of Automobile Manufacturers has said it is on board with the new regulations. The group, which represents Detroit's Big Three, Toyota Motor Corp. and seven other automakers, said it will result in a 30 percent decrease in CO2 emissions and a 40 percent increase in fuel economy. “The regulations provide manufacturers with a roadmap for meeting significant mileage increases for model years 2012-2016, as well as the certainty and lead time necessary to cost effectively add new technology,” the group said in a news release. However, the Alliance is also pushing for regulations for 2017 and beyond.

In a question and answer session held at the end of the news conference many reporters asked about the tailoring rule for regulating GHG emissions from stationary sources. The EPA has repeatedly stated that it has no plans of regulating emissions from stationary sources until 2011. “Nothing is happening today except we are announcing wonderful rules on cars,” Jackson said.

She repeatedly stated that the sky wasn’t falling and Armageddon wasn’t coming because these GHG regulations were announced. The agency planned to introduce regulations for regulating stationary sources in a thoughtful way that doesn’t “turn the economy on its ear,” moving slowly and deliberately so states and the EPA are ready when the regulations are announced. Starting in 2011, a small number of stationary sources of GHG emissions, which are already required to obtain permits, will be regulated. “We believe that there is a need to phase in regulations,” she said.

The EPA is working very hard on the tailoring rule, Jackson added, but had no specific date to announce when those regulations would be finalized. It does, however, need to

come as soon as possible.

When asked if the deliberate approach would give Congress time to come up with its own legislation, she said the EPA was trying to be mindful of what legislators are working on. “Certainly nobody is wishing more than me for a legislative answer,” she said.

New emissions standards set for cars and light trucks (*Washington Post*)

April 2, 2010 Friday
Met 2 Edition
A-SECTION; Pg. A01
Maryland
New emissions standards set for cars and light trucks;
Years-long battle ended; greater fuel efficiency expected to offset cost

By Juliet Eilperin
Consumers will pay more for cars upfront but may save money in the long term under new rules finalized Thursday by the Obama administration that will increase fuel efficiency and for the first time set greenhouse gas emissions standards for cars and light trucks.

The new fuel efficiency standards, issued by the Transportation Department and the **Environmental Protection Agency** as the result of a May 2009 deal with the auto industry, represent a peaceful end to a contentious legal battle over how to regulate tailpipe emissions. At a time when it is unclear whether Congress will pass climate legislation this year, the new rules also mark the White House's most significant achievement yet in addressing global warming.

By model year 2016 vehicles must get an average of 35.5 miles per gallon. The requirements will add as much as $985 to a vehicle's initial cost, according to EPA estimates, but buyers will save about $4,000 on fuel over the life of the car, administration officials said.

Transportation Secretary Ray LaHood and **EPA Administrator** Lisa P. Jackson estimated that the tougher Corporate Average Fuel Economy (CAFE) requirements will save 1.8 billion barrels of oil over the life of cars and trucks sold between the 2012-16 model years with those vehicles' improved efficiency.

"These historic new standards set ambitious but achievable fuel economy requirements for the automotive industry that will also encourage new and emerging technologies," LaHood said. "We will be helping American motorists save money at the pump while putting less pollution in the air."

Environmentalists hailed the move, saying it will transform the U.S. auto market.

The fuel economy standards move up goals set in a 2007 energy law, which mandated a 35 mpg average by 2020. Passenger cars and light trucks now are required to get an average of 27.5 mpg. As a result of the new rules, greenhouse gas emissions from cars should be reduced 21 percent by 2030.

"These standards are good for consumers, the companies, the country and the planet," said David Doniger, policy director of the Natural Resources Defense Council's climate center.

Gloria Bergquist, vice president at the Alliance of Automobile Manufacturers, said the new requirement "gives us a clear road map for future fuel economy increases. We have a hill to climb, and it's steep, so we will need consumers to buy our fuel-efficient technologies in large numbers to meet this new national standard."

Some critics worried about the cost. Rep. Darrell Issa (R-Calif.) called it "the result of backroom deals and an ideological agenda that will cause more Americans to lose their jobs. Even though unemployment is at nearly 10 percent, this administration continues to press expensive regulations as if the economic recession never happened."

The NRDC, by contrast, estimated that in 2020, the standards will save consumers $65 billion in fuel costs by cutting oil consumption by 1.3 million barrels a day while also cutting carbon dioxide emissions by more than 220 million metric tons in that year.

The rules cover four types of pollutants -- carbon dioxide, methane, nitrous oxide and hydrofluorocarbons -- so automakers can meet the standards through an array of measures.

Many will probably substitute a new refrigerant called HFO-1234yf, which the EPA could approve in months, that releases a far less potent greenhouse gas than the one now used in air-conditioning units. Auto companies will probably add hybrid and electric cars as well as produce vehicles with smaller turbocharged engines and with engines that do not have to idle at stop signs or in traffic.

California pioneered the idea of greenhouse gas limits for vehicles, setting standards in 2004 that were adopted by 13 other states and the District. Automakers challenged the rules in court, and the Bush administration refused to grant California a waiver from the Clean Air Act, effectively blocking the standards from taking effect.

Once President Obama took office, the alliance, which represents 11 U.S. and foreign automakers, pressed for a deal with the states, labor groups and environmental organizations.

Canada adopted identical emissions standards for its vehicles Thursday, broadening the impact of the regulations. Canada's environment minister, Jim Prentice, said his

government was "pleased to be taking this step to further harmonize our climate change action with the Obama administration -- a step that will protect our environment and ensure a level playing field for the automotive industry."

U.S., Canada hike car fuel efficiency, set CO2 standard (*Reuters*)

Story also appeared: *Washington Post*

By Timothy Gardner and David Ljunggren
Reuters
Thursday, April 1, 2010; 5:54 PM
WASHINGTON/OTTAWA (Reuters) - The United States on Thursday finalized its first greenhouse gas emissions rules on automobiles and hiked fuel efficiency standards for the first time since the 1970s, measures Canada imposed as well.

The U.S. rules will first apply to 2012 model cars, rolling off production lines next year. They are part of President Barack Obama's goal to cut emissions of greenhouse gases by about 17 percent under 2005 levels by the year 2020.

Obama wants Congress to pass a long-delayed climate bill, but to push it along, he has also set in motion steps for the Environmental Protection Agency to begin regulating emissions from cars and large polluters like power plants.

The EPA determined late last year that emissions of the gases blamed for global warming harm human health. The agency's authority to do so has been challenged by industry groups and lawmakers in courts and in Congress. Thursday's emissions rule marked EPA's first move to cut output of the chemicals.

"We've developed a clean cars program that is a win for automakers and drivers, a win for innovators and entrepreneurs, and a win for our planet," said Lisa Jackson, the administrator of the EPA, which finalized the fuel rules with the Department of Transportation.

The efficiency rules, which car-makers knew for months were coming, require that cars and trucks get on average 35.5 miles per gallon (15 kilometers per liter) by 2016, up 42 percent from current rules, of just under 25 miles per gallon.

The EPA spelled out on Thursday for the first time that average vehicle emissions will be limited to 250 grams of carbon dioxide per mile by 2016, down from 295 grams in 2012.

Canada's government also finalized fuel efficiency rules on Thursday. Canadian Environment Minister Jim Prentice said Canada and the United States "will effectively share common standards" for limiting vehicle greenhouse gas emissions.

The two countries are working together on proposed standards for tractor-trailer trucks, which should be released in the next few months, Prentice said.

The North American auto industry is highly interlinked, and Canada has said its strategy for emissions also hinges on U.S. policy because of the two nations' integrated economies.

PATCHWORK REGULATION AVOIDED

The program will add about $52 billion in vehicle costs, but benefits should hit $240 billion, the EPA said. The savings would come in lower fuel bills and in reduced health care costs as soot and other particulate emissions fall.

The U.S. rule will save 1.8 billion barrels of oil and 960 million tonnes of carbon emissions over the life of the vehicles, equivalent to taking 58 million cars off the road for a year, the EPA said.

Oil refiners, one of the industries challenging EPA authority, slammed the rules. "Such misguided and flawed policy has the potential for devastating consequences to American consumers, businesses, jobs, and the economy," said Charles Drevna, the president of the National Petrochemical and Refiners Association.

But automakers mostly support them because they would create the first national standard for controlling car and truck emissions, superseding state plans that would have created a patchwork of regulations.

CONSUMERS GET WHAT THEY WANT

One auto dealer called the rule a victory for consumers and U.S. automakers.

"Every day customers walk into my stores asking for the same thing -- cars that go farther on a dollar. For the most part that was not an American car. Now domestic cars will become more competitive," said Adam Lee, president of Lee Auto Malls, a string of dealerships selling both foreign and domestic cars.

To meet the emissions standards, automakers are expected to improve the efficiency of traditional combustion engines and make more hybrids and cars that run fully on electricity.

The rules are expected to add an average of $950 to the cost of new vehicles, the EPA said Thursday, down about $350 from earlier projections. By 2016 Volkswagen would be hit with about $1,850 in added costs per car, nearly five times the amount Toyota would face, the agency said.

That said, a driver would save about $3,000 over the life of a vehicle when the rules are fully implemented.

The EPA will next look to limit emissions from stationary sources like power plants and factories. But administrator Jackson said no polluters would be regulated before 2011, in part to give Congress time to pass climate legislation.

"It's entirely consistent with allowing Congress, especially the Senate, time to work on a bill, we are trying to be very mindful of where they are going as we work on regulations," Jackson said.

(Additional reporting by Tom Doggett, John Crawley, Christopher Doering in Washington and John McCrank in Toronto; Graphic by Jasmin Melvin; Editing by David Gregorio)

Auto emissions: New greenhouse gas caps raise gas mileage standards (*Christian Science Monitor*)

The Obama administration set the first-ever greenhouse gas emission limits for US cars Thursday. To meet them, gas mileage standards must increase 40 percent to 35.5 miles per gallon.

Secretary of Transportation Ray LaHood and EPA Administrator Lisa Jackson announced a proposal to reduce greenhouse gases and improve the gas mileage standards of US cars at a press briefing in Washington on Sept. 15, 2009. Those regulations took effect Thursday.
(Newscom)

By Mark Clayton, Staff writer
posted April 1, 2010 at 3:30 pm EDT

The nation's first-ever law requiring a reduction in greenhouse gas emissions goes into effect today, mandating that automakers progressively chop the amount of tail-pipe gases emitted from US cars.

The first cars to be affected by the law will be automakers' 2012 lines. By 2016, model year greenhouse gas emissions must not exceed an average of 8.8 ounces per mile – a 21 percent reduction from today's levels. To get there, vehicles' gas mileage will need to achieve on average 35.5 miles per gallon fleetwide – a 40 percent improvement from current levels.

Costs to the industry for that four year period are projected to be about $52 billion – adding about $950 to the price of a car. But consumers should be able to save enough over three years to pay for the extra cost, said Transportation Secretary Ray LaHood and Environmental Protection Agency Administrator Lisa Jackson in a joint statement Thursday.

Overall, they said, the program would result in $240 billion in savings from reduced fuel costs, oil imports, and pollution.

“These historic new standards set ambitious, but achievable, fuel economy requirements for the automotive industry that will also encourage new and emerging technologies,” said Transportation Secretary Ray LaHood in prepared remarks. “We will be helping American motorists save money at the pump, while putting less pollution in the air.”

What the law will do

The rule, which results from a compromise plan between the Obama Administration, states, and automakers last May, is expected to save the average buyer of a 2016 model-year car about $3,000 over the life of the vehicle, the EPA estimates. At the same time, the rule will cut the nation's oil use by 1.8 billion barrels over the vehicles' lifetimes. It is the equivalent of removing 42 million cars from the road, Ms. Jackson said.

Cars, trucks, and other transportation sources represent a big and growing share of US greenhouse gas emissions – about 28 percent of all US greenhouse gases in 2006, the EPA reports. Transportation was the "fastest-growing source" of greenhouse gases in the nation, it said, representing nearly half of the increase in total US greenhouse gas emissions since 1990.

Environmental and consumers groups applauded the move. "This represents the single largest step this country has taken to address our oil addiction, save consumers money, and cut greenhouse gas emissions from cars in at least three decades," says David Friedman, research director of the vehicles program at the Union of Concerned Scientists. "It's a historic move."

States in the lead

Yet he and others agree the national standards would have been unlikely without pressure from the 13 states led by California, whose legal and other actions pushed the matter to the forefront of the national climate and energy policy debate.

In response to state suits, the US Supreme Court found greenhouse gases could be considered air pollutants within the meaning of the Clean Air Act in a landmark 2007 decision. In December 2009, the EPA concluded that heat-trapping gases endangered public health and welfare. Now, under the act, the EPA has taken the first step to regulate those emissions.

Automakers were under financial and political pressure to back President Obama's program to cut tailpipe emissions and reduce fuel use last May. They were on board Thursday, too.

“America needs a roadmap to reduced dependence on foreign oil and greenhouse gases, and only the federal government can play this role,” Dave McCurdy, President and CEO of the Automobile Alliance, which represents US and other automakers, said in a statement.

Regulation of large, stationary sources of carbon dioxide, such as power plants would not begin until next year and would only apply to "a small number of sources" at that time, Jackson said.

Efforts to remove EPA authority to regulate greenhouse gases have been bubbling in the Senate, but have not emerged.

April 2, 2010

New EPA rules to limit mountaintop removal (*Register Herald*)

‘No or very few’ valley fills will meet standards
By Christopher J. Jackson
Register-Herald Reporter
BECKLEY — The U.S. Environmental Protection Agency has tightened limitations on mountaintop removal with new actions to “clarify” and strengthen guidelines for Appalachian mining permits.

EPA Administrator Lisa Jackson said Thursday the guidelines were long overdue and were being implemented to protect Appalachian communities from damaging impacts from mountaintop removal coal mining.

“This is not about ending coal mining. This is about ending coal mining pollution,” she said during a conference call. “Coal communities should not have to sacrifice their environment or their health or their economic future to mountaintop mining.”

The guidelines clarify existing requirements of Sections 402 and 404 of Clean Water Act permitting programs that apply to pollution from surface mining in order to protect waterways. It details how the agency uses the law to ensure that future mining will not cause harm to the environment, water quality and human health.

The EPA cited a growing body of scientific studies, including those conducted by former agency scientists, that waterways are damaged by runoff from mountaintop mining. Two scientific reports are being published for public comment and submitted for peer review to the EPA Science Advisory Board.

One pertains to the aquatic impacts of mountaintop removal and valley fills, and the second establishes a scientific benchmark for unacceptable levels of conductivity, which measures water pollution from mining.

The EPA identified a range of conductivity standards of 300 to 500 microSiemens per centimeter. The measurement of 500 microSiemens per centimeter is about five times above normal levels. Anything above that measurement is considered harmful. Mining estimated to produce a runoff equal to or below 300 is deemed acceptable, according to the EPA.

This conductivity level is intended to protect 95 percent of aquatic life and freshwater streams in central Appalachia, EPA officials said.

The guidelines are effective immediately, according to the EPA.

“These new guidelines will reduce the destruction caused by mountaintop removal, and communities will be able to focus on building a clean energy economy,” Sierra Club executive director Michael Brune said in a statement.

Massey Energy, one of the largest producers in the affected region, provided a chart showing San Pellegrino and Perrier mineral waters exceed the EPA standard, as did water from a pond at a southern West Virginia mine.

“We’re deeply concerned by the impact this policy will have on employment and economic activity throughout the Appalachian region,” National Mining Association spokesman Luke Popovich said.

The organization’s figures show surface mines in the six states covered by the policy produced more than 150 million tons of coal and employed nearly 20,500 people in 2008. U.S. production totaled more than 1.17 billion that year.

“To painstakingly try to limit the impacts to one kind of mining operation, to a single industry and to future operations is frankly disingenuous,” Popovich said.

Gov. Joe Manchin said in a statement prior to the announcement that he’s pleased the EPA is working to clarify its regulations, but that the new guidelines are subject to public opinion and promised to make sure “our voices are heard loud and clear during the public comment period” to ensure the regulations are reasonable and attainable.

“I believe the EPA has a responsibility to work with each state to find the balance between the jobs, the economy and the environment, of which we all want to be stewards,” he said. “This nation needs the coal West Virginia has been able to produce for many, many years.

“As we go through this transition to the fuel of the future, I believe we can find better ways to mine and use coal, but we are looking for a good partnership in Washington to make that possible.”

Jackson expects the guidelines to change behaviors, stating that “if we keep doing what

we’re doing in respect to these projects, we’re going to continue to see decreasing degradation of waterways.”

Valley fills, which go hand-in-hand with mountaintop removal, could be a thing of the past, she said.

“Minimizing the number of valley fills is a key factor,” she said. “(We’re) talking about no or very few valley fills are going to be able to meet standards like this.”

She added the intent of the guidelines is to better convey to the people what science has been telling them for years.

“It would be untrue to say that you can have numbers of valley fills, anything more than say, very minimal valley fills and not expect to see irreversible damage to stream health,” she said. “That’s just the truth.”

The EPA is applying the policy in West Virginia, Kentucky, Pennsylvania, Ohio, Virginia and Tennessee. “All the science here and all the data, much of it comes from the state of West Virginia,” Jackson said.

She said she understands the importance of coal in the country, especially in Appalachia, and stressed these measures are for providing safer communities, not reducing jobs.

“Getting this right is important to Americans who rely on affordable coal to power their homes and businesses,” she said, “as well as coal communities that count on jobs in a livable environment both during and after coal companies move to other sites.”

Posted on Thu, Apr. 01, 2010

New guidelines could reduce streams buried during surface mining (*Lexington Herald-Leader*)

By Bill Estep
bestep@herald-leader.com
The number of stream areas buried during surface mining should drop significantly under new guidelines announced Thursday, the nation's top environmental regulator said.

The guidelines include a new standard the U.S. Environmental Protection Agency will begin using in deciding whether to grant mining permits.

Limiting the number of valley fills at surface mines will be a key factor in meeting the standard, EPA Administrator Lisa Jackson said in a conference call with reporters.

"Obviously, we're talking about minimizing ... valley fills," Jackson said.

The standard relates to conductivity — a measure of the salinity in water. Conductivity is an indication of substances in the water such as iron, manganese and sulfates.

If the measure is high, it's an indicator there are enough contaminants present to hurt water quality and damage aquatic life.

EPA has not used a conductivity standard in deciding whether to grant permits until now.

The new standard won't apply to existing permits, but will be used in more than 70 pending permits receiving increased scrutiny from the agency, as well as others going forward.

Environmentalists immediately applauded the news.

"Today's announcement is a major step toward protecting Appalachia's natural heritage. If effectively implemented and vigorously enforced, this policy will largely prevent coal companies from dumping mining waste into streams," the Sierra Club said in a news release.

EPA Seeks To Downplay Doubts Over Legal Authorities For Equity Actions (*Inside EPA*)

Obama administration officials are downplaying lingering doubts among EPA staff and state regulators over the agency's legal authorities to address environmental justice concerns, telling a major EPA-sponsored symposium on the issue that they need better data to back up their efforts and face questions about when to act and how to measure success.

"It is not so much a question of do we have the authority, but do the data support action?" Carol Ann Siciliano, EPA's associate general counsel, said March 18 at the symposium, "Strengthening Environmental Justice Research and Decision Making: A Symposium on the Science of Disproportionate Environmental Health Impacts."

Patrice Simms, deputy assistant attorney general for environment and natural resources, echoed Siciliano's comments, emphasizing that President Obama, EPA Administrator Lisa Jackson and EPA General Counsel Scott Fulton are all on board to push action on environmental justice. However, Simms warned, issues still need to be resolved around how to determine when EPA should act, and how it should measure success.

Integration of environmental justice planning across federal agencies, and between the federal government and state agencies, is currently inadequate, and needs to be improved, Simms said. Also, he echoed Siciliano in saying EPA needs more detailed data to make sure its actions on equity concerns are legally defensible.

However EPA staff at the conference expressed surprise that the situation appears so clear-cut, given years of uncertainty and argument that has held back regulatory action to address disproportionate impacts of environmental decisions. State environmental permit writers are unclear on how environmental justice concerns should figure in their work, one staffer said, referencing New Source Review and Prevention of Significant Deterioration permits under the Clean Air Act as two areas where this is the case. Panelists noted the remarks but did not offer a direct response.

Despite concerns from EPA staff, environmental justice activists welcomed the agency's efforts and pressed to go even further. Vernice Miller-Travis, a former member of EPA's National Environmental Justice Advisory Council (NEJAC), said that the current administration now believes it has the authority to take action on the grounds of disproportionate impact, and "this is huge." The question now, she said, is "how do you actually do the rulemakings?"

Siciliano said that there may be further legal authorities in environmental statutes that are not yet obvious that could be used to resolve environmental justice problems. "Where are the lurking authorities? Where are the hard ones?" she said, adding that EPA will now be looking for such authorities. EPA plans to create an internal docket of novel uses of statutes for equity purposes, she said.

Miller-Travis expressed concern that EPA has not yet examined the entire Civil Rights Act of 1964 for all possible authorities to pursue equity actions. She said that within EPA, concern for the act's provisions has not moved beyond Title VI, when the entire statute applies to everything the federal government does. Title VI prohibits racial discrimination in federal government programs.

EPA Unveils 'Action Plan' To Assess Risks From Plastic Ingredient BPA (Inside EPA)

April 2, 2010

EPA has released its chemical "action plan" for the controversial plastic ingredient bisphenol-A (BPA), which could require industry to provide test data about the risks of the chemical and might lead to further regulations of the substance pending inter-agency research.

EPA released the long-anticipated BPA action plan March 29, the fifth in a series of plans released by the agency to use existing authority under the Toxic Substances Control Act (TSCA) to better regulate chemicals. EPA Administrator Lisa Jackson announced the chemical action plans last year in an effort to use TSCA authority to regulate chemicals.

Previous EPA action plans for other chemicals included the possibility of taking regulatory action under TSCA, such as issuing test orders. Test rules usually involve the agency requiring manufacturers to provide certain toxicological tests or other chemical hazard data to EPA. *The plan is available on InsideEPA.com.*

The action plan will require industry to provide data on potential risks of BPA, "including long-term effects on growth, reproduction, and development in aquatic organisms and wildlife;" will add BPA to a newly established list of chemicals of concern; will require information on the presence of BPA in water; will use the agency's Design for the Environment program to reduce unnecessary exposure to the chemical; and will further evaluate disproportionate impacts from the chemical in non-food packaging applications to children and other vulnerable sub-populations.

EPA's action plan for assessing the risks of BPA follows the Food & Drug Administration's (FDA) January announcement that it had concerns about the chemical's use in food packaging and would conduct further research.

"We share FDA's concern about the potential health impacts from BPA," Steve Owens, head of EPA's toxics office, said in a March 29 statement. "Both EPA and FDA, and many other agencies are moving forward to fully assess the environmental and health impacts to ensure that the full range of BPA's possible impacts are examined."

Despite Planned Mine Veto, Activists See Long Road Fixing EPA's 'Fill' Rule (*Inside EPA*)

April 2, 2010
EPA's landmark plan to veto the already issued disposal permit for a massive mountaintop mining project in West Virginia may have bolstered environmentalists opposed to the practice, but they acknowledge they still face a long haul winning their top priority: convincing the Obama administration to alter EPA's definition of "fill" material -- which currently allows mines and other industries to dispose of their waste in nearby waters without strict discharge permits.

EPA's move to veto the mine is "not a world-changing thing, but it's important," says one environmental attorney familiar with the issue.

The agency announced March 26 that it was, for the first time, proposing to veto a previously issued permit allowing development of the Spruce No. 1 mine in Logan County, WV -- one of the largest mountaintop removal operations in Central Appalachia. *Relevant documents are available on InsideEPA.com.*

EPA cited concerns that proposed mitigation efforts were insufficient, that the mine would cause too large an increase selenium and conductivity levels in the affected

waterways and that the cumulative impacts of the mine would cause too much damage to surrounding waterways and forests, among others.

The announcement of the planned veto drew strong criticism from industry and West Virginia lawmakers, who charged it would damage the state's economy. A source with the National Mining Association says the decision will increase economic uncertainty as other firms worry their approved permits could be revoked, but declined to speculate on its broader implications.

"Whether EPA has shown its hand in this instance, I'd rather not say," the source says. "There's enough that is disturbing in this decision . . . that it's probably idle at this point to speculate on what this means for related decisions."

Environmentalists generally welcomed the decision, noting that EPA's justification for its decision seemed to embrace arguments they have been making in other appeals to curtail the practice. EPA has "done a nice job of taking the arguments we've been developing the last couple years," and using them for the basis of the proposed veto, an environmentalist notes.

Activists also say the proposed veto should force the Corps to broaden their consideration of cumulative impacts and effects on downstream water quality in future permitting decisions.

But the source cautions that EPA's move does not in and of itself represent an "across the board veto" of other pending permits, because the Spruce mine was to be one of the largest facilities in the state and the justifications for the proposed veto may not apply as fully at smaller mines.

They also acknowledge that the move does not necessarily represent a watershed moment in their broader effort for EPA to strengthen other Clean Water Act (CWA) standards to further restrict mining operations, including a push to redefine the Bush administration's expanded definition of fill material.

The Spruce Mine permit is one of 79 U.S. Army Corps of Engineers mountaintop mining permits that EPA began reviewing when President Obama took office. So far, the agency has only moved forward on two of them: allowing a permit for the Hobet 45 mine to move forward with stricter environmental controls than first proposed, while threatening to veto the Spruce Mine permit.

The disposal of mine waste in waterbodies is permitted under the Corps' section 404 "dredge and fill" permits because the Bush administration expanded the agencies' definition of "fill material," to include any material "changing the bottom elevation of any portion of the water," which is exempted from the water act's definition of "pollutants" subject to regulation under EPA's strict section 402 discharge permit requirements.

In a recent test of the issue, the Supreme Court -- in *Coeur Alaska v. Southeast Alaska Conservation Council* -- granted EPA deference to categorize mining tailings and other pollutants as “fill material” exempt from strict discharge limits under the CWA.

Since the court’s ruling, environmentalists have made addressing the issue a top priority, warning that a regulatory fix is needed to prevent other industries -- including mountaintop and hardrock mines, power plants, chemical and cement manufacturers, solid waste landfills and others -- from disposing of their wastes in waterbodies without the strict treatment requirements likely to be included in 402 permits.

Last July, a broad coalition of environmentalists called on President Obama to direct EPA and other agencies to launch a rulemaking to reverse the Bush administration regulation.

While EPA Administrator Lisa Jackson said earlier this year that the agency was weighing a new “fill” definition, the issue appears to be stalled at the White House. Last month, the Natural Resources Defense Council urged supporters to lobby the president to let EPA “immediately” initiate a rulemaking to change the “fill” definition, fearing it may not be completed before the end of Obama’s first term. “[I]n order to ensure [a rulemaking] happens by the end of the Obama administration’s current term, the process needs to begin immediately,” the group said in an email to supporters.

Sources say they are not aware of much movement at EPA regarding its reconsideration of the fill definition. One source questions how serious EPA is about revising the definition, suggesting the proposed permit reviews may be just a “PR move” to earn good will from the environmental community.

Others say the new fill definition and other policy measures -- such as long-awaited guidance on the standards the agency plans to apply to permits -- are needed to provide more certainty. Despite the proposed veto, “there’s still something missing. EPA remains unwilling or unable to articulate why some mountaintop projects, such as Hobet 45, are acceptable but others [like Spruce No. 1] are not,” Holly Doremus, an environmental law professor at the University of California-Berkley and a member of the Center for Progressive Reform, wrote in a recent blog post.

An environmental lawyer who has litigated mountaintop mining cases says EPA’s technical support document explaining its decision “is a reflection of everything environmentalists have been saying for years.”

Despite their concerns about the stalled policy, activists are nevertheless pleased with EPA’s proposed veto and hope that it indicates EPA plans for other mines.

EPA in vetoing the permit highlighted several shortcomings in the approved application, including a deficient analysis of the cumulative impacts of the permit and the inability of mitigation efforts to compensate for expected environmental damage. One

environmentalist says EPA's decision showed mitigation to be "a charade," which activists have been arguing for years.

EPA said the valley fills from the mine would impact a greater portion of streams than would be compensated by a mitigation plan for the mine site, and it faulted the plan for relying on an assessment method that was insufficient because it "only accounts for the physical aspects of stream condition and completely ignores the interrelationship of water chemistry and biological resources in stream functioning," according to the proposed veto.

Environmentalists noted EPA's focus on downstream water impacts of mine operations in proposing the veto and rejecting the mitigation plan; environmentalists have previously faulted the Army Corps of Engineers for not adequately considering such impacts in its permit decisions. EPA said the mitigation plan "fails to recognize the true functioning of healthy headwater streams and so therefore fails to replace the streams' lost ecological services."

On conductivity, a measure of water's salinity levels, EPA said Spruce discharges were likely to have high levels of total dissolved solids (TDS) that would increase conductivity and cause adverse effects to downstream waterways. In its technical support document, EPA acknowledged the lack of numeric criteria for TDS or conductivity but says it has previously found that conductivity levels above 500 microsiemens per centimeter (uS/cm) "has been strongly associated with high probability of impairment to native biota." EPA says conductivity levels in the streams around the proposed site are roughly 100 uS/cm in areas that have not previously been mined, compared to levels of roughly 1,000 uS/cm or more in nearby streams that have been subject to similar mining activity.

It also cites concerns about the growth of golden algae, which can be toxic to native species and becomes more pervasive at conductivity levels above 700 uS/cm or TDS levels above 500 milligrams per liter (mg/l); EPA notes that waters draining from the nearby Dal-Tex Mine exceed these levels.

A draft of EPA's forthcoming guidance for CWA permits proposed a limit of 500 uS/cm that would require a company to reduce a mine's size or shutdown completely and a 400 uS/cm limit that would trigger requirements for "increased" best management practices. West Virginia regulators and officials in other states objected to the standard, saying it was too strict and could negatively impact an array of projects beyond just mountaintop mines. Environmentalists, meanwhile, are petitioning the agency to move ahead with the standard.

In the Spruce permit, EPA also faulted the likelihood that mining operations would increase concentration of selenium, a micronutrient that can be toxic at high levels, beyond the numeric chronic water quality criterion set by West Virginia regulators at 5 micrograms per liter (ug/l). -- *Nick Juliano*

April 2, 2010

EPA Weighs Sweeping Changes To Water Permitting, Enforcement Efforts (*Inside EPA*)

SAUSALITO, CA -- EPA is weighing sweeping changes to its Clean Water Act permitting and enforcement as part of its review of water act implementation, including prioritizing enforcement actions for specific watersheds, strengthening general permits and ramping up enforcement against industries that violate those permits.

EPA has formed six action teams to look at specific water programs, overseen by a steering committee with staff from the agency, the Environmental Council of the States (ECOS) and the Association of State and Interstate Water Pollution Control Administrators. The teams are assessing specific water program areas and will make recommendations for improvements that will be forwarded to EPA assistant administrators for further consideration.

Lisa Lund, director of EPA's compliance division in the enforcement office, told ECOS' spring meeting here March 24 that some of the action teams are advocating sweeping changes to EPA's Clean Water Act efforts that would potentially overhaul some permitting and enforcement efforts.

For example, one of the action teams is focused on "new approaches," including assessing steps EPA could take to revise its National Pollutant Discharge Elimination System (NPDES) permitting process to reflect current water quality problems, such as chronic noncompliance and lengthy delays in enforcement proceedings.

Separately, a short-term oversight action team is looking at changes that the agency could make to its water programs to address some of the most urgent problems with the Clean Water Act permitting process.

Other teams include an electronic reporting team, tasked with finding ways to use electronic data reporting to streamline the permitting and enforcement process; a public access team conducting focus groups to determine what data is useful to the public and how to publicize it; a data analysis team looking at streamlining the processing procedures; and an outreach team fielding concerns from non-governmental organizations and citizens' groups to develop ways in which the agency can better make meaningful improvements in water quality.

The ongoing action teams' review of water programs stems from EPA's July 6 announcement of a Clean Water Act Action Plan "to enhance public transparency regarding clean water enforcement performance at federal and state levels, to strengthen that performance, and to transform EPA's water quality and compliance information systems."

EPA Administrator Lisa Jackson ordered the plan following the release of EPA Office of Enforcement & Compliance Assurance water act data that she said shows “the level of significant non-compliance with permitting requirements is unacceptably high and the level of enforcement activity is unacceptably low.”

The new approaches team is developing some of the most sweeping recommendations for overhauling, revising or updating Clean Water Act programs, Lund said. One of the group’s focus areas is on revamping EPA’s general NPDES permits, which EPA issues on a state, regional or national basis covering a specific sector.

Lund said the team is looking at longstanding problems with enforcing those permits and punishing polluters who do not comply. “I think there is a great deal of concern about the effectiveness or enforceability of general permits, so we’ve been talking about how to strengthen that,” Lund told ECOS’ Compliance Committee.

Lund said the new approaches team has “an idea to actually go out and evaluate general permits that are out there to identify areas that could be strengthened and used to bring up the general baseline protection offered by this general permit, as well as enforceability,” Lund told state officials at the meeting.

The new approaches team is also weighing other options, including focusing federal and state resources to prioritize pollutant reduction in certain tributaries in certain watersheds in order to make the biggest gains in the most impaired waters. Nutrient pollution, Lund said, would certainly be one such criteria pollutant that would be a priority.

“There is an idea about focusing a certain percentage of resources, federal and state, to address specific pollutant problems in key watersheds,” Lund said.

The team is also weighing the idea of prioritizing enforcement by establishing tiers of noncompliance violations based on their actual impact on water quality, according to Lund’s remarks.

Under EPA’s current procedure the agency processes all violations -- which can range from an unpermitted discharge to a late submission of paperwork -- without priority. Because those violations are not equally detrimental to the health of the waterways the agency is charged with protecting, Lund said the idea of creating tiers for the violations from the front-end to determine which to process first makes sense to all parties involved.

“That is a huge number of violations, and they range anywhere from a late [Discharge Monitoring Report (DMR)] to an effluent violation that directly impacts water quality,” Lund said. “I think you all agree that those violations are not equal and therefore we are thinking of how to deal with those violations differently.”

Meanwhile, Lund said that the Clean Water Act Action Plan electronic reporting team has suggested that EPA promote voluntary electronic reporting by permitted sources, or alternatively issue a rule that would mandate electronic reporting. The traditional reporting method is burdensome on all parties involved, and electronic reporting could greatly increase the speed with which regulators can get data they use to consider enforcement actions, Lund said.

“We are looking at ways of gaining access to information without following the traditional path of facilities reporting to states, states reporting to EPA,” Lund said. “So they’re looking at, certainly, voluntarily encouraging electronic DMRs -- whether that’s the state eDMR tool, or the federal DMR. We are [considering] a rule that would be mandating that kind of approach. That would be a huge burden reduction that we can really take advantage of.” State eDMR tools allow electronic reporting of DMRs, which collect data on NPDES permits.

Lund said the reporting group is also considering developing an electronic permit application tool to facilitate the NPDES permit process, as well as an electronic notice of intent to discharge tool.

The Clean Water Act Action Plan team charged with developing short-term strategies has suggested developing an interim guidance to regions as quickly as possible that would develop “joint and collaborative end-goal planning between region and state” that would first assess the state’s progress in setting standards, developing total maximum daily loads for impaired waterways, issuing NPDES permits, and taking enforcement actions, and then develop a federal priority framework to direct the state to take on the most urgent problems first.

“That will be the basis for a commitment made on an annual basis, and that will give the Region and the state a path toward work sharing in a way that fits,” Lund said. “We want that to begin with 2011 planning, so it would really try to bring that more holistic view to the annual planning process across the board.”

The group also is suggesting strengthening EPA oversight of state enforcement efforts, targeting states that have a long history of failing to enforce federal permitting standards, Lund said.

Lund cautioned that this is not intended to penalize states for a failure to issue individual permits or enforcement actions, and will take into consideration constrained state resources because of the recession. Rather it will target those states where enforcement and water permitting programs have been under-performing over time, she said.

“So if the state is not taking enforcement actions as a whole, if they are not writing protective permits as a whole, then we’re going to take the lead and start taking actions in this situation,” Lund said. “Again, that’s programmatically, we’re not talking about an

individual permit or an individual case or an individual violation, but it's where there has not been the programmatic performance over time."

But the suggestions are prompting early concerns from at least some state officials. Steve Thompson of Oklahoma's Department of Environmental Quality said he was concerned EPA would issue a "one-size-fits-all" approach towards collaborative enforcement under which all states are treated the same for purposes of analyzing their water act enforcement, even though some states have larger budgets for permitting and enforcement than others.

"It's very certainly not a one-size-fits-all," Lund replied.

Thompson also questioned whether the new approaches under consideration would lead to major changes to the state review framework, which is EPA's tool for assessing state enforcement of the water act, Clean Air Act and Resource Conservation & Recovery Act. "We're just starting to get used to that as the fundamental process by which we look at program performance," he said, asking whether EPA would change it.

Cynthia Giles, assistant administrator in EPA's Office of Enforcement & Compliance Assurance, in response said, "There's been a lot of things wrong with the state review framework. . . . I don't think anyone is looking to say we should do that as a fundamental revision, but I do think we need to make sure the state review framework and state oversight in the water program . . . [is] consistent with the direction that we're going." -- *John Heltman*

Unions, Activists Urge EPA To Tighten Interim Dioxin Cleanup Goals (*Inside EPA*)

April 2, 2010

Unions and activists are urging EPA to strengthen the interim cleanup standards for the carcinogenic and ubiquitous contaminant dioxin, arguing that the numbers EPA is proposing for both residential and industrial sites far exceed existing levels of dioxin in the environment and are not protective of workers or children.

EPA has proposed interim site cleanup goals for dioxin, which are to be used at contaminated sites until EPA completes its risk assessment of the contaminant (*see related story*).

The agency has struggled to complete its assessment for more than two decades, and Administrator Lisa Jackson has set a deadline of December 2010 for its completion. The agency's proposed interim preliminary remediation goal (PRG) for dioxin includes non-cancer and cancer values for both residential and non-residential sites, for a total of four different goals. These values vary widely, ranging from 3.7 parts per trillion (ppt) of

dioxin in soil to protect against cancer at residential sites up to 950 ppt for non-cancer endpoints at commercial sites (*Inside EPA*, Jan. 15).

Activists and some 38 union groups -- including the United Auto Workers and the United Steelworkers -- delivered two letters to EPA waste chief Mathy Stanislaus during a March 30 meeting. The letters urge EPA to base its cleanup goals on cancer risks, not non-cancer risks, which yield less stringent remediation goals. The groups argue non-cancer-based PRGs are not protective, given the contaminant's carcinogenic properties.

"We are extremely concerned that the EPA is proposing a commercial/industrial PRG that is based only on non-cancer health effects which does not adequately protect workers from the risk of developing cancer," according to the unions' March 30 letter. "Increased mortality from soft-tissue sarcomas and all cancers among workers exposed to dioxin has also been reported." *Relevant documents are available on InsideEPA.com.*

The unions also raise concerns in their letter about the differences between the residential and industrial PRGs. The draft PRG document recommends a cleanup goal of 72 ppt, based on non-cancer risks, to clean up residential sites and 950 ppt for commercial or industrial uses. The unions argue this is "another problem" with the proposal, noting that at 950 ppt, the industrial level is "significantly higher than the proposed 'residential' level of 72 ppt. This PRG fails to protect workers and sensitive populations from exposure to Dioxin, and ignores Dioxin's cancer risks."

The unions "strongly urge" EPA to instead adopt its proposed cancer risk-based PRG for commercial and industrial soil of 17 ppt. They note that this PRG would be "protective for both cancer and non-cancer effects."

The accompanying letter signed by some 145 activist groups organized by the Center for Health, Environment & Justice supports the unions' arguments, and urges EPA to put in place PRGs for both residential and industrial property that are based on cancer risk. The activists' letter also notes that commercial and industrial sites' uses can change, and such sites are often purchased by local school boards.

"The property purchased by public schools was often commercial or industrial property in the past and if it is contaminated by Dioxins, it would only be re-mediated to 950 ppt. There are no federal laws prohibiting schools from building on that land and young children would be exposed to unsafe levels of dioxin in soil and dust," according to the activists' March 30 letter. "Many remediated areas are often used for parks and playgrounds, which again would result in hazardous exposures to young children and parents if the property was cleaned to the proposed commercial/industrial PRG."

EPA Seeks Finance Advisers' Help To Tout Efficiency's Economic Benefits (Inside EPA)

April 2, 2010

EPA's air chief is asking the agency's finance advisers for recommendations on how to fund energy efficiency projects and assess their economic benefits, a request that could help EPA Administrator Lisa Jackson's ongoing effort to frame environmental regulations as good for the economy because they drive technological innovation.

Regina McCarthy, head of the Office of Air & Radiation, made the request at a March 16 meeting of the agency's Environmental Financial Advisory Board (EFAB) in Washington, DC.

If the board decides to respond to the request, it could provide input on how to tout the economic benefits of regulations. Tools to quantify the economic benefits of energy efficiency may be especially important for the agency as it moves to begin requiring greenhouse gas (GHG) limits at stationary sources in 2011.

Efficiency is one of the few approaches EPA's air advisers have been able to agree should be considered as a best available control technology in upcoming permit limits for GHGs. And EPA is urging states to consider requiring efficiency in permits, even before 2011, to cut both conventional pollutants and GHGs (*see related story*).

McCarthy said there is a public perception that environmental regulation is expensive, and EPA wants the board to help find ways to make it easier to fund energy efficiency projects and to help define the economic benefits of efficiency, Acting EPA Region IV Administrator Stan Meiburg said in a March 26 interview with *Inside EPA*.

The request is "quite remarkable and very positive," Meiburg said, noting that the board in the past has focused on other finance issues, such as financial assurance and financing water projects.

Meiburg is the agency's designated federal official for EFAB, which was chartered in 1989 under the Federal Advisory Committee Act. "It was established to provide advice and analysis to EPA's Administrator on paying for the growing costs of environmental protection and how to increase investment in environmental infrastructure through the leveraging of public and private resources," according to EPA's Web site.

Depending on whether EFAB takes up the requests, its future recommendations could help EPA better frame energy efficiency measures as cost-effective, job-creating ways to improve the environment. It is unclear what types of energy efficiency projects McCarthy wants the board to review, but EPA's Web site defines energy efficiency as covering a range of projects including energy-efficient appliances and reductions in facilities' energy use.

EFAB has already done some work on financing energy efficiency projects, which could be a starting point for any work the group might decide to do in response to McCarthy's request, Meiburg said.

For example, at the March 16-17 meeting EFAB released a draft report titled “Financing Energy Efficiency and Environmental Improvement Devices,” which calls for implementation of programs at the state and local levels to finance energy efficiency and other environmental improvements at public and not-for-profit facilities.

The report recommends that institutions such as schools, hospitals and churches form consortiums to apply for bonds for environmental projects at the facilities, which would be issued by the state or by a state-run non-profit designed for that purpose. The approach could secure lower-cost and longer-term financing than would otherwise be available and serve as a blueprint for marshaling investment in efficiency at the state and local levels, the report says. *The draft report is available on InsideEPA.com.*

The scope of McCarthy’s request, as well as the potential policy use of the information, is not defined but EFAB will work with the agency’s air office to refine the request, Meiburg said.

EFAB will discuss whether to accept McCarthy’s request at their meeting in August, when the group determines the issues they will be working on, Meiburg said. However, Meiburg noted that a direct request from an assistant administrator carries a lot of weight with the board.

The group will also consider whether it will work on other topics, possibly including long-term stewardship of carbon capture and sequestration projects and the investment of state revolving loan funds (SRFs), Meiburg said. SRF money is used to fund water and wastewater projects.

Jackson has stressed in past speeches that economic growth and environmental protection are not incompatible and that environmental regulation can drive innovation.

For example, in a March 8 speech at the National Press Club in Washington, DC, Jackson said, “Recent years have seen a growing grassroots environmentalism that is directly tied to our economy. Informed consumers are demanding more of their products. Business leaders are recognizing cost-savings potential of energy efficiency and sustainability -- and they are putting serious money behind innovation.”

Jackson cited the catalytic converter, which is used to reduce vehicle pollution, as evidence that regulation can drive innovation and create American jobs in manufacturing pollution reduction technology.

Jackson said that many automakers opposed use of the Clean Air Act to require the converters, “Yet, the auto industry survived.” She said converters had cut lead pollution by 92 percent from 1980 levels, and by 1985, cuts of lead in the environment had resulted in estimated health benefits of $17 billion per year. “The initial cost of the rule was paid back 10 to 13 times,” Jackson said. She added that New Jersey’s Engelhard Corporation, which she said “led the commercial production of the catalytic converter,” was sold for $5 billion in 2005.

“That’s just one good example of how it works. A new environmental rule led to new innovations, which led to new jobs,” according to Jackson’s National Press Club speech. Jackson has also made similar remarks in recent speeches to the American Lung Association and the National Urban League.

The administrator also said in a Feb. 1 speech at EPA headquarters that the agency’s budget request for fiscal year 2011 will lead to “responsible, targeted investments [that] will protect our health and the environment, advance creative programs and innovative solutions, and help build a new foundation for our prosperity.” -- *Kate Winston*

EDITORIAL / COMMENTARY / OP ED / LETTERS

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April 2, 2010
Editorial

Everybody Wins (*New York Times*)

The new automobile fuel economy standards formally adopted by the Obama administration on Thursday will yield a trifecta of benefits: reduced dependence on foreign oil, fewer greenhouse gas emissions, and consumer savings at the pump.
This was truly a moment to celebrate. But it was tempered by the fact that some in Congress are trying to undo the laws that made the new standards possible.
The standards will require automakers to build passenger cars, sport-utility vehicles and minivans that average 35.5 miles per gallon by 2016 — a 30 percent increase over today’s cars, and the biggest single jump in fuel economy since the original standards were adopted in the 1970s. Cars will cost more, but the government estimates that consumers will save an average of $3,000 in fuel over the life of a new vehicle.
The standards will also impose the first-ever limits on automobile greenhouse gas emissions, and are expected to reduce fleetwide emissions by 21 percent by 2030 compared with what the output would have been without the standards. Because emissions from passenger vehicles represent about one-fifth of America’s greenhouse gases, this is a step forward for the planet.
The automakers, who fought the rules until they went bust, have come to accept this as a step forward as well. A single national standard provides regulatory certainty, and they’ve got to get more efficient to survive.
Yet some in Congress seemed determined to roll back the laws that got us here. Senator Lisa Murkowski, a Republican from Alaska, and several other senators have mounted a challenge to the federal government’s authority to regulate greenhouse gases under the Clean Air Act — not just from automobiles but from other sources. The Supreme Court gave the Environmental Protection Agency that authority three years ago, and the new emissions standards would have been impossible without it.
There has also been talk in the Senate of eliminating California’s special authority under the Clean Air Act to set more aggressive motor vehicle standards than the federal limits. California used that authority to pass a law in 2002 setting greenhouse gas emissions

limits for cars sold there. It was the first law of its kind in this country, and it provided the momentum and the foundation for the new nationwide standards.
What all of these opponents mean to do is to roll back history and the hard-won environmental protections it has produced. That would be a huge mistake.

Opinion

Future cars, now (*Los Angeles Times*)

California's Air Resources Board should set standards that push the industry beyond old under-the-hood technology to achieve cleaner, more efficient cars.
By Dan Becker and James Gerstenzang
April 2, 2010
Two federal agencies, working with California, have taken the biggest step in the nation's history to reduce the United States' global warming footprint. On Thursday, the Environmental Protection Agency and the National Highway Traffic Safety Administration announced specific rules that require automakers to build cars, SUVs and minivans that will average 35.5 mpg by 2016 and cut their greenhouse gas emissions by 30%, thereby saving an estimated 1.8 billion barrels of oil.

It's been a long haul. For a dozen years, the auto industry stymied efforts in Washington to improve fuel economy standards. California stepped in, enacting its own emissions law in 2002 under the federal Clean Air Act. Last May, President Obama instructed the EPA and NHTSA to use the California benchmark to set new national standards for fuel economy and emissions.

These national rules are a good step forward, but they're not enough. Now it is time for California to show the way again.

Vehicles in the United States release more global warming pollution than all but five countries. Given the greenhouse gases spewed along the nation's roadways, the cost of importing oil and the risk of relying on overseas supplies, we must start working on and adopt a next generation of fuel economy and emissions standards that begin to wean us off internal combustion engines.

Let's move beyond under-the-hood technology that is already more than a century old. We need to develop rules that will begin the shift to electric cars, or even fuel cells, while we also clean up the electric power plants on which they will rely.

Given the three to five years it takes to design and produce new models, and how long automakers have managed to delay the new standards, it is time to start working on rules that would phase in from 2017 to 2025. Some of the vehicles they shape will still be on the road in 2040.

This is where California comes in. Its Air Resources Board has begun analyzing the

next standards it could set. These would be the second round of improvements under the law pioneered in 2002 by state Sen. Fran Pavley (D-Agoura Hills) when she was a member of the Assembly. We encourage the board to act as though the world depends on these standards. It does.

Less-polluting passenger cars should be available for those who want them. It is up to the auto industry to develop the next generation of technology to provide them, along with SUVs and pickups. And it is government's role to set the standards that push industry to meet this goal.

This shift, beginning with 2017 models, will not just determine what will eventually replace today's gas guzzlers. It also will improve energy security, the economy and the environment.

Europe is cutting auto emissions further and faster than we are. Europeans manage quite nicely with smaller cars -- on the high-speed Autobahn, no less -- and with few SUVs and pickups.

U.S. automakers have announced that they will make smaller cars and trucks. They are right to rethink size. Less bulk means less gas consumed.

That would be a change -- if it happens.

One major reason cars are not more efficient today is weight. Compared with vehicles built in 2000, the EPA reports, 2009 models are heavier (by 167 pounds) and more muscular (with 19% more horsepower).

To cut global warming, the auto companies must build clean, smaller cars -- without sacrificing safety. Safety is a function of design and technology, not just of size.

Air bags are a good example of how better safety technology is saving lives. The number of large SUVs and pickups has grown over the past two decades, as has the number of SUV-car collisions. Yet injuries and deaths in passenger cars have fallen by nearly half since 1989, according to NHTSA.

By adopting strict rules, Americans won't have to import fuel-efficient vehicles. Detroit can build them, giving us choices beyond gas guzzlers. At the same time, we'd be creating jobs for American workers making cars and light trucks that could compete in the marketplace.

We have the right to demand safe cars that pollute less. If automakers get it right, they will make cars people want. Having supported the industry with billions in bailouts and cash for clunkers, Americans don't want to hear "no" from Detroit anymore.

The auto industry is at a crossroads: Do we move it down the path of safer, less polluting, more efficient vehicles, or do we allow the companies to continue on the

course that led some of them to bankruptcy and ignominy?

Getting the next generation of cars right isn't just good for the planet. It's good for American jobs. It's good for the economy. It's even good for the carmakers.

Dan Becker is director of the Safe Climate Campaign, an environmental advocacy group in Washington. James Gerstenzang, a former member of The Times' Washington bureau, is the campaign's editorial director.

- April 01, 2010

EPA Green Police Mount Assault on Energy (*FOX News*)

Get ready for the green police. Today, the Environmental Protection Agency will commit itself to becoming an environmentalist Big Brother, like a not-so-jolly green giant.

This afternoon, the EPA is expected to announce new, more stringent fuel efficiency targets for automakers. The regulations are bad enough—they force people to buy smaller cars, which results in increased vehicular fatalities—but it gets worse. The EPA's announcement will mark the first time that it has used its authority under the Clean Air Act to regulate greenhouse gas emissions. That's a big deal, because the Clean Air Act is written such that regulation triggers more regulation. Thus, today's announcement on fuel efficiency is like reaching critical mass in a regulatory chain reaction, and the result is a weapon of massive economic destruction.

Here's how it works. Once the Clean Air Act applies to mobile sources, like cars, it must also apply to stationary sources, like buildings. These regulations, in turn, engender stringent National Ambient Air Quality Standards. And so on and so forth. You get the idea.

But the Clean Air Act was written in 1970 to fight smog, not global warming. Greenhouse gases are much more prevalent than smog forming emissions, so the thresholds for what constitutes a polluter are all out of whack. If the EPA adheres to the text of the legislation, then it would have to regulate everything larger than a mansion—your apartment building, your office complex, your small business. It would be a nightmare.

Even the EPA admits that regulating greenhouse gases under the Clean Air Act is "absurd." To avoid having to shackle the entire economy, the EPA wants to increase the threshold for the regulation of greenhouse gas "pollution" under the Clean Air Act, from 250 tons a year, to 25,000 tons a year. Otherwise, the EPA argues, it will be forced to regulate almost everything, which would be, the EPA concedes, "absurd."

But it's not that simple. The EPA is part of the executive branch of government, and it is unconstitutional for the executive to legislate. The EPA's attempt to alter the text of the Clean Air Act flies in the face of the separation of powers, one of America's founding political principles. Environmentalist litigation groups undoubtedly will sue to ensure the full implementation of the Clean Air Act, and if they win, then the EPA will be forced to impose an unprecedented regulatory straightjacket on the American economy.

This is why the Congress never voted to subject greenhouse gases to the Clean Air Act. In fact, the Senate actually stripped greenhouse gas provisions from the 1990 Amendments to the Act. Michigan Rep. John Dingell, who authored the Clean Air Act, said that, "This [regulating greenhouse gases] is not what was intended by the Congress." Despite this legislative history, the Supreme Court ruled in 2007 that the EPA could regulate greenhouse gases.

The U.S. Supreme Court ruled that the EPA could regulate greenhouse gases, not that the EPA must regulate. Former President George W. Bush had the good sense to let sleeping dogs lie. President Obama, on the other hand, thinks he can leverage the Supreme Court's decision into a political victory.

He had campaigned for the presidency on a promise to deliver a "cap-and-trade" program to reduce greenhouse gas emissions, but he is having trouble getting it through Congress. So the President devised a high-stakes game of chicken. He is threatening to unleash the EPA in order to coerce climate legislation out of Congress. Today's California waiver announcement is the consummation of Obama's threat.

These are hyper-partisan times, but both parties in Congress agree that they don't like being pushed around by The White House. In the Senate, Republican Sen. Lisa Murkowski of Alaska has joined with Democratic colleagues Blanche Lincoln of Arkansas, Ben Nelson of Nebraska and Mary Landrieu of Louisiana to sponsor legislation, known as a Resolution of Disapproval, which would strip the EPA of the authority to regulate greenhouse gases under the Clean Air Act.

Due to a procedural quirk, this Resolution of Disapproval (S.J. 26) cannot be filibustered, so it only needs a majority to pass in the Senate. There is a legally mandated time limit before which the bill must be considered, so the Senate will address S.J. 26 shortly after returning from the Easter recess. The vote is expected to be very close.

If it fails, get ready for the green police.

William Yeatman is an energy policy analyst at the Competitive Enterprise Institute and editor of Globalwarming.org.

AIR

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U.S. moves to curb emissions from new vehicles (*San Francisco Chronicle*)

David R. Baker, Chronicle Staff Writer

Friday, April 2, 2010

The Obama administration slapped limits Thursday on greenhouse gas emissions from cars and light trucks, enacting on a national scale a policy pioneered in California.

The federal government's move marked the first time it has regulated carbon dioxide and other gases blamed for warming the planet, setting a precedent that was hailed by environmentalists but slammed by industry groups that fear further regulation.

Under the new rules, the average fleetwide fuel economy of cars and light trucks would be raised to 35.5 miles per gallon in 2016, a 40 percent increase over current standards. The rules also would encourage the production of hybrids, electric cars and vehicles that burn alternative fuels, a boost to companies such as California's Tesla Motors and Fisker Automotive.

Following California

The regulations were closely modeled on a 2002 California law that provoked a long, fierce fight with the auto industry. State lawmakers and industry executives who spent years arguing over the law expressed satisfaction with the outcome Thursday.

"It's a great day for Californians and consumers," said state Sen. Fran Pavley, D-Agoura Hills (Los Angeles County), who wrote the 2002 law. "Reducing our dependence on foreign oil, cleaning our air and saving consumers money at the pump are things everyone can support."

Automakers had sued to stop the state law and persuaded the Bush administration to block it. They argued that regulating greenhouse gas emissions amounted to setting new mileage standards, a job that should be handled by the federal government rather than individual states. But last May, they agreed to national emissions rules proposed by President Obama.

"A year ago, the auto industry faced a regulatory maze resulting from multiple sets of inconsistent fuel economy/greenhouse gas standards," said Dave McCurdy, president of the Alliance of Automobile Manufacturers, a trade association that sued California over Pavley's law. "The national program announced today makes sense for consumers, for government policymakers and for automakers."

Dire predictions

But critics of the new rules consider them a dangerous precedent. Limiting greenhouse gas emissions from cars could pave the way for further regulation of carbon dioxide, drive up energy costs and strangle the economy, they say.

"This rule is not just about vehicle efficiency," warned the American Petroleum Institute in a statement. "It's about EPA overreaching to create an opportunity for regulating greenhouse gas emissions from virtually every firm and business in America, no matter how unwieldy, intrusive and burdensome such regulation might be."

Following California's example, the new federal rules were developed by the U.S. Environmental Protection Agency and U.S. Department of Transportation.

Changes in 2012

Starting with the 2012 model year, automakers must improve the average fleetwide efficiency of their cars and light trucks by roughly 5 percent each year until they reach 35.5 miles per gallon in 2016. The current standard is 25.3 miles per gallon.

The change would save an estimated 1.8 billion barrels of oil over the vehicles' lifetime and slash greenhouse gas emissions by 960 million metric tons over the same period - equivalent to removing 50 million cars from the road.

Consumers will probably pay more for cars up front, perhaps spending an extra $950 by 2016. But EPA officials say the fuel savings will more than make up for those additional costs. Over the lifetime of their cars, drivers will probably see a net savings of $3,000, according to the EPA.

Automakers, many of which are struggling to rebuild after a disastrous few years, already have more efficient cars in the works, including the plug-in hybrid Chevy Volt and the electric Nissan Leaf. The EPA predicts that car companies will be able to meet their emission targets using existing technologies.

Automakers that beat their emission targets will be able to trade credits with companies that have trouble meeting the new standards. That could be a boon to Palo Alto's Tesla Motors, which makes electric sports cars.

"Our expectation is that yes, we will generate credits, and we can trade those credits with other manufacturers to meet their compliance requirements," said Diarmuid O'Connell, Tesla's vice president of business development.

California's push to regulate greenhouse gases from cars has prompted action abroad. Canada on Thursday adopted standards similar to those announced in Washington.

"We're not just stopping here in the United States," Pavley said. "We're moving on."

Curbs on emissions

The federal government's limits on greenhouse gas emissions from cars and light trucks starts in 2012 and would:

-- Increase fleet-wide fuel efficiency by about 5 percent per year until reaching 35.5 miles per gallon in 2016.

-- Save drivers an estimated $3,000 over the life of the car, even though they would pay more for the car up front.

-- Save 1.8 billion barrels of oil over the lifespan of the vehicles covered.

-- Cut greenhouse gas emissions by 960 million metric tons over the lifespan of the vehicles covered.

EPA & DOT Finalize New Vehicle Standards To Save Oil, Cut Pollution, And Create Jobs (*Wired News*)

- By Tony Borroz
- April 1, 2010 |
- 3:56 pm

Today the White House confirmed new clean car rules from the Environmental Protection Agency and the Department of Transportation. The new rules will secure the

biggest boost in fuel economy in decades and, for the first time will use the Clean Air Act to require reductions in the amount of heat-trapping emissions for cars and light trucks.

The joint rule will increase the average fleet wide fuel economy of all new vehicles sold in America to 34.1 miles per gallon by model year 2016. The new standards also establish national global warming pollution values for vehicles at 250 grams per mile, or approximately 25 percent less than the emissions produced by vehicles today.

“To paraphrase the vice president, this is a really big deal. Because of these standards, Americans will drive vehicles that save them money at the pump, cut the country’s oil dependence, and produce a lot less global warming pollution,” said Jim Kliesch, a senior engineer in the Union of Concerned Scientists’ Clean Vehicles Program.

The Union of Concerned Scientists analysis of the new rules show that they will reduce U.S. oil consumption by 1.2 million barrels per day by 2020. That’s more juice than America currently imports from Saudi Arabia and Kuwait combined. The rules will cut global warming emissions by 209 million metric tons in 2020. That’s the comparable to taking virtually 31 million cars and light trucks off the road. The new rules will also save drivers a whopping $34 billion in 2020. And yes, this will be even after drivers pay the cost of technology improvements for the new vehicles.

And the cherry on top is the new rules will produce up to 20,000 new jobs in the auto industry and up to 200,000 nationwide by 2020.

“The states laid the groundwork for these national standards. Because of their leadership, all Americans will enjoy the benefits of cleaner, more efficient vehicles,” said Brendan Bell, a Washington representative in the Union of Concerned Scientists’ Clean Vehicles Program.

The New Economy

A loophole in US crackdown on carbon emissions from cars (*Christian Science Monitor*)

US gives carbon emission credits for hybrid, electric, and other alternatively fueled cars. The loophole is aimed at spurring the alternative technology.

By Laurent Belsie
posted April 1, 2010 at 6:31 pm EDT

The federal government's tough new fuel economy and greenhouse-gas emissions have a big green loophole: electric and other alternatively fueled cars.

In its effort to encourage the technology, the Environmental Protection Agency (EPA) is giving automakers a pass on each so-called "green" car they produce.

Here's how it works. Starting in 2012, automakers will have to produce a fleet of cars and light trucks that produce on average no more than 295 grams of carbon dioxide per mile. By 2016, the standard tightens to an average 250 grams per mile. That's the equivalent of 35.5 miles per gallon.

But automakers can get a credit for each electric or other alternatively fueled vehicle they produce. The EPA will pretend that the first 300,000 such vehicles that an auto company makes (200,000 for small automakers) produce zero emissions. Hybrids get credit for the amount of range provided by their batteries.
The agency says it's offering the incentive in the hopes of promoting the technology.

That's a noble goal, but it relaxes the pressure on auto companies to improve their conventional fleet, says David Friedman, research director of the vehicles program at the Union of Concerned Scientists in Washington.

For example: The more Nissan boosts sales of its upcoming all-electric Leaf, the less it will have to improve the fuel economy of the rest of its cars.

Once automakers reach their 200,000 or 300,000 limit on alternative vehicles, then the EPA will begin to figure the emissions costs of producing the electricity or other fuel that powers the alternative cars.

If new climate legislation gets passed, the EPA could reexaming the issue, perhaps giving even low-mileage vehicles a zero-emissions designation if they're powered by renewable fuels.

Mr. Friedman and others argue that there are better ways – through subsidies and tax credits – to encourage the new technologies. "Do we really want automakers to go back to selling Hummers and claiming that they're zero-emission vehicles?" he asks.

Still, Thursday's announcement of the new standards will be a huge benefit to consumers and the environment, he adds. "This is a historic rule and this is a day to celebrate."

US finalises new fuel economy standards for vehicles (*Sify*)

2010-04-02 03:50:00
US regulators Thursday finalised new fuel efficiency rules for cars and light trucks, raising fuel economy standards and for the first time regulating greenhouse-gas emissions blamed for global warming.

The announcement is part of a broader pledge by President Barack Obama to shift the US economy towards cleaner forms of energy and curb climate change, though efforts to achieve comprehensive reforms have so far floundered in Congress.

The Obama administration will by 2016 require carmakers to reach an average of 15.1 km per litre across their fleet of models, up from the current 11.6 km per litre. The rule also requires an average carbon dioxide emission level of 155 grams per kilometre.

The new standards will be introduced gradually, starting in 2012. Lisa Jackson, head of the Environmental Protection Agency (EPA), called it a 'historic' standard that would be a 'win-win programme for our economy and our environment'.

Obama first directed his administration to raise fuel economy standards in May 2009 in an effort to curb pollution from vehicles, which account for about one quarter of all climate-damaging emissions from the US.

The new rules were welcomed by environmentalists and carmakers, who had agreed to back the higher fuel economy requirements after talks with the Obama administration last year.

General Motors Co in a statement said: 'While these requirements are very challenging, we feel confident that GM will be able to achieve the mandated fleet fuel economy targets.'

Separately, GM announced that the first Chevy Volt had rolled off the factory production line. The plug-in hybrid, which enters mass production later this year, is a central element of GM's strategy to green its car fleet.

The Volt is powered by an electric motor with a range of about 64 km, after which a petrol motor kicks in that extends its range by nearly 500 km.

GM's plans are part of a wider trend in the industry towards petrol-electric hybrids and other greener vehicles. Japanese maker Nissan will later this year begin selling its all-electric Leaf model.

The higher fuel economy standards were estimated to cost carmakers $52 billion and will add about $950 to the cost of each vehicle by 2016, the EPA estimated.

Jackson argued consumers will make up the difference in lower petrol costs. The administration also argues the new standards will ultimately save 1.8 billion barrels of oil.

Obama supports a more comprehensive clean energy bill that would impose a pollution cap on most industries. Yet talks have stalled in the US Senate amid stiff opposition from conservatives and some fellow Democrats over its potential costs to the economy.

Mexico City drastically reduced air pollutants since 1990s (*Washington Post*)

By Anne-Marie O'Connor
Washington Post Staff Writer
Thursday, April 1, 2010; A08

MEXICO CITY -- This megalopolis once had the world's worst air, with skies so poisonous that birds dropped dead in flight. Today, efforts to clean the smog are showing visible progress, revealing stunning views of snow-capped volcanoes -- and offering a model for the developing world.

As Mexico prepares to host world leaders at a U.N. climate-change conference later this year, international experts are praising the country's progress. Many say its determined efforts to control auto emissions and other environmental effects of rapid urbanization offer practical lessons to cities in China, India and other fast-growing countries.

International officials say steady improvement of Mexico City's air could bolster President Felipe Calderón's bid for a leadership role among developing countries seeking to address global warming.

"We have seen a lot of improvement. It is very clear," said Luiz Augusto Cassanha Galvao, a senior environmental officer at the Pan-American Health Organization. "On a scale of one to 10, they were at 10, and now they're at five."

Mexican officials have attacked the root causes of pollution that plagues many large urban centers with spiraling growth.

They plan to further reduce vehicle emissions, which are the city's greatest source of pollution. Pemex, the state oil monopoly, plans to build a $9.3 billion plant to produce low-sulfur fuel. Mexico City Mayor Marcelo Ebrard is expanding the low-emissions Metrobus system, which has eliminated 80,000 tons of carbon monoxide annually since 2005. Officials plan to add hybrid buses. A suburban train system is to replace hundreds of thousands of vehicles.

The potential payoff for such efforts is now in sight: Mexico City does not even rank among the top 10 polluted cities worldwide, said Walter Vergara, a leader of the climate-change team at the World Bank, which is aiding public transportation projects in Mexico.

Mexico City appears to have cut most of its pollutants at least by half, said Miguel Naranjo, a Panama City-based official of the U.N. Environment Program, while recent studies show a number of cities in China and India recording higher levels of the most serious pollutants.

"They are having the same problems Mexico had in the past," Naranjo said. "They are growing faster than their capacity to adjust. They face a big challenge not to repeat the mistakes of Mexico."

In 1992, the United Nations declared Mexico City the most polluted on the planet. High ozone levels were thought to cause 1,000 deaths and 35,000 hospitalizations a year. Thermal inversions held a toxic blanket of dirty air over a grimy city that seemed to embody the apocalyptic "Makesicko City" of the fiction of Mexican author Carlos Fuentes.

Mexico was forced to act. It replaced the city's soot-belching old cars, removed lead from gasoline, embraced natural gas, expanded public transportation, and relocated refineries and factories.

Change was gradual, but the pace has quickened in recent years.

The presence of lead in the air has dropped by 90 percent since 1990. Suspended particles -- pieces of dust, soot or chemicals that lodge in lungs and cause asthma, emphysema or cancer -- have been cut 70 percent. Carbon monoxide and other pollutants also have been drastically reduced.

"It is no longer an emergency situation," said Raul Estrada, a spokesman for Greenpeace in Mexico, "though obviously, it is not 100 percent satisfactory."

In March, the Mexico City Atmospheric Monitoring System, which has pollution sensors all over the city, began to measure additional chemicals, such as the highly toxic benzene, that are suspected to contribute to Mexico City's ozone problem.

Ozone levels have dropped 75 percent since 1992, but they still exceeded international standards for a total of 530 hours last year.

"You shouldn't even have one hour of high ozone levels in an entire year, and we have 530 hours," said Humberto Bravo Álvarez, one of Mexico's most respected air pollution experts. Bravo said corruption, such as people paying off emissions inspectors, has reduced the impact of the new controls.

Had Mexico not taken action, "it would be living hell," said Exequiel Ezcurra, a former head of Mexico City's National Institute of Ecology who is now a professor at the University of California, Riverside.

Ezcurra attributes much of the improvement to a requirement that Mexico-based auto manufacturers put catalytic converters on cars produced for the Mexican market. Now Mexico must require all diesel vehicles to be retrofitted with a filter that is the equivalent of a catalytic converter, he said.

"If the government decides to do something about it, it can be done," said Nobel Prize-winning air quality expert Mario Molina. "There's really no excuse not to do more."

Experts say Mexico must do more, simply to hold on to its progress in the face of uncontrolled growth.

Cars have doubled to more than 4.2 million. New suburbs are endemic.

Mexico City's geography adds to the problem; the city of more than 20 million is cradled in a 7,300-foot-high bowl, surrounded by peaks higher than 17,000 feet that trap pollutants.

But experts say many places overcame similar challenges. European cities, for example, halved pollution in recent decades by dramatically reducing coal fuel.

"Simple measures that enormously reduce pollution are feasible, and they are not expensive," said Michal Krzyzanowski, an air quality adviser for the World Health Organization.

"It is not the destiny of mankind to live in polluted cities."

Cuccinelli back to court over new EPA rules (*News Virginian*)

By Jim Nolan Media General News Service
Published: April 2, 2010

Virginia Attorney General Ken Cuccinelli is heading back to court in his ongoing legal challenge to new Environmental Protection Agency regulations governing carbon dioxide and greenhouse gases.

The latest challenge comes on the heels of the EPA authorizing new rules on fuel efficiency for new cars and trucks built between 2012-2016.

Cuccinelli's office said it views the new standards as "a tacit denial" of its previously filed lawsuit challenging the global warming research upon which the EPA relied to formulate regulations.

In the suit, Cuccinelli sought to block the adoption of the regulations and asked the EPA to reopen its proceedings, arguing that the climate change research was "unreliable, unverifiable and doctored."

"We will file a notice of appeal with respect to today's ruling," said Brian J. Gottstein, spokesman for the Virginia Attorney General's office.

Gottstein said the motion will ask for the opportunity to present new evidence to the court, but did not specify what the evidence might be. He said it likely will be filed sometime this month in the U.S. Court of Appeals in Washington.

In December, the EPA announced findings that concluded that global warming was real and poses a threat to people. The decision opened the door for the agency to crack down on cars, power plants and other sources of heat-trapping gases.

Cuccinelli filed suit in February, challenging the research methods and conclusions and arguing that ensuing regulations would negatively impact the Virginia economy, costing jobs. Texas also filed legal action against the adoption of the EPA regulations.

Environmental scientists and climate experts have dismissed the litigation, saying the overwhelming evidence in the scientific community supports the idea that manmade pollutants have contributed to the warming of the earth.

The attorney general also has filed suit against the federal government over recently passed health-care reform, arguing that its provision mandating nearly every American to obtain health insurance is unconstitutional. Thirteen other states also are challenging the legislation.

Jim Nolan writes for The Richmond Times-Dispatch.

Shell's Chukchi Sea drilling plan gets clean-air OK from EPA (*Associate Press*)

Story also appeared: *Anchorage Daily News*

/ adn.com
(04/01/10 13:51:01)
The U.S. Environmental Protection Agency has approved a clean-air permit for Shell's plan to drill for oil and gas in the Chukchi Sea this summer, the EPA said.

The oil company said that obtaining the permit was critical to its decision on whether to proceed with exploration drilling in the Arctic sea this summer. Lawsuits over the federal government's leasing of tracts in the Chukchi to Shell and other companies in 2008 also are clouding the oil company's drilling decision.

A Shell Alaska spokesman said Wednesday, in praising the U.S. Interior Department's plan announced that day to allow drilling on the 2008 leases, "The issuance of draft Chukchi and Beaufort air permits earlier this year started a timeline of events that will ultimately dictate Shell's drilling plans for 2010. As of today, we are still planning to drill in 2010 and remain optimistic that our final Chukchi and Beaufort sea air permits will be issued soon."

The proposed permit authorizes Shell to conduct a multiyear exploratory oil and gas drilling program with the Frontier Discoverer drillship and support fleet, the EPA said.

Alaska U.S. Sen. Mark Begich said today, "Approval of Shell's clean-air permit for Chukchi Sea development is great news for Alaska and hopefully is a sign of much more responsible oil and gas development to come in Alaska's resource-rich offshore."

Alaska U.S. Rep. Don Young also hailed the decision: "It's about time that unelected bureaucrats stop holding Shell's shareholders' hostage."

Still pending with the EPA is Shell's application for an air permit for its planned drilling in federal waters of the Beaufort Sea to the west of the Chukchi.

Shell gets key EPA permit for Alaska drilling (*Reuters*)

6:03pm EDT
* EPA issues permit Shell needs to drill in Chukchi Sea
* Shell plans to drill up to 3 wells off Alaska coastline
* Shell confident it can get other permits needed to drill
By Yereth Rosen
ANCHORAGE, Alaska, April 1 (Reuters) - Royal Dutch Shell <RDSa.L> has secured a critical U.S. regulatory permit to conduct planned exploratory oil drilling this year in Alaska's Chukchi Sea, regulators and the company said on Thursday.

The Environmental Protection Agency has authorized emissions from Shell's drill ship and support vessels, issuing a final air-quality permit.

The permit comes a day after the Obama administration affirmed support for exploration in Arctic waters off Alaska. It is the first "major-source" air-quality permit ever issued for the Arctic outer continental shelf, EPA officials said.

Shell has been seeking the permit for years, a spokesman said. He said the company is confident it can get the rest of the permits it needs for the Chukchi, which the U.S. Minerals Management Service (MMS) has estimated holds about 15 billion barrels of recoverable oil and 77 trillion cubic feet of natural gas.

Only five exploratory wells have ever been drilled in the Chukchi because despite the estimated abundance of recources, remoteness and harsh conditions have discouraged exploration.

The EPA permit is "one of the major milestones we needed to fall in place so we would continue to plan for drilling in 2010," said Curtis Smith, spokesman for Shell in Alaska.

The final air-quality permit is subject to public comment and could be appealed.

The MMS approved Shell's Chukchi Sea drill plan on Dec. 7. The company plans to drill up to three wells at two prospects located about 75 miles (120 km) off the northwest Alaska coastline.

Shell first drilled the prospects, Burger and Klondike, two decades ago. It abandoned the prospects, but won back exploration rights for $2.1 billion in a lease sale held in 2008 by the MMS.

Shell still needs permits from other agencies to drill in the Chukchi, "But we have a high degree of confidence that we will achieve those permits," Smith said.

Shell made concessions to secure the permit, including use of ultra-low-sulfur diesel fuel to reduce air pollution in the fleet, Jan Hastings, EPA regional deputy air-quality director at the Seattle office, said in a telephone news conference.

The final EPA permit for Shell's Chukchi operations sets limits for air pollutants such as sulfur dioxide and particulates. It addresses public concerns on a draft air-quality permit issued on Jan. 8.

Separately, Shell also plans to drill two wells this year at prospects in the Beaufort Sea off Alaska's northern coast. Shell spent $84 million acquiring exploration rights there in MMS lease sales held in 2005 and 2007.

A decision on the Beaufort permit, issued in draft form in February subject to public comment, is due later this month, Hastings said.

(Editing by Bill Rigby and David Gregorio)

EPA Proposes To Scrap 'Less Effective' Bush-Era NSR Aggregation Rule (*Inside EPA*)

April 2, 2010
EPA is formally proposing to revoke an 11th-hour Bush EPA new source review (NSR) "aggregation" rule that changed the way facilities combine projects to determine whether they trigger NSR, with the agency saying the rule is "less effective" than past policy.

The agency issued a March 30 proposed rule responding to a Natural Resources Defense Council (NRDC) request for reconsideration of the NSR aggregation policy, which the Bush EPA issued Jan. 15, 2009, just days before the administration left office. *Relevant documents are available on InsideEPA.com.*

EPA says it is proposing to revoke the policy because the agency “is concerned that these changes to its ‘aggregation policy’ would make the agency’s new source review permitting program less effective.”

The aggregation rule allows some emissions from individual projects at a single facility to be counted separately to avoid triggering NSR, which requires new projects and major modifications at existing facilities to install expensive, stringent pollution controls.

The Bush-era rule expanded the definition of when emissions from individual projects at a single facility can be counted separately in order to fall under a 40 ton-per-year emissions threshold that triggers the need for an NSR permit.

But EPA says that in light of the legal and policy issues raised in NRDC’s petition and EPA’s own review of the rule, its preference is to revoke the regulation. EPA is also proposing to extend the effective date of a stay of the rule by an additional six months, and is soliciting comment on a longer extension of the stay, according to the proposed rule. The agency will take comment on the proposed rule for 30 days after it is published in the *Federal Register*.

Reconsideration of the rule is among several other actions to stay or review NSR policies established by the Bush EPA. The agency published in the March 31 *Federal Register* a final rule staying another Bush EPA rule allowing NSR exemptions for “fugitive” emissions -- which are those that escape inadvertently from industrial facilities -- for an additional 18 months. The stay is effective until Oct. 3, 2011.

EPA Proposal To Bolster MACT ‘Hammer’ Authority Draws Activist Praise (*Inside EPA*)

April 2, 2010
Environmentalists are praising EPA’s just-issued proposal to amend the permitting process for a “hammer” provision of the Clean Air Act requiring case-by-case maximum achievable control technology (MACT) limits in the absence of an agency sector-based MACT, saying it clarifies and reinforces states’ duty to comply with the hammer.

EPA in a March 30 *Federal Register* notice outlines its justification for requiring case-by-case MACTs at facilities when a federal court vacates an EPA sector-based MACT. Environmentalists say the rationale is in line with previous administrations, but offers key clarifications on the process that could prompt movement on stalled case-by-case permits.

The hammer requires states to set individual MACTs at facilities when there is no federal rule, but some industry and state officials have criticized the hammer requirements as a major funding and resource constraint.

The agency's proposal will affect a number of industrial sectors that were regulated under MACTs since vacated by federal court, including brick and polyvinyl chloride production, and any facility that uses a boiler. Those industries saw their MACTs struck down by courts after activists filed suit claiming the standards were too weak.

The proposal will also apply to any industry sectors that would be directly affected by future vacaturs of existing or pending agency MACTs. The Obama administration is crafting a number of MACTs, including a standard for the cement manufacturing and utility sectors. Meanwhile, industry plaintiffs have filed suit in federal appeals court over the Obama EPA's medical waste incinerator MACT issued in 2009.

EPA's "long-standing position" is that the hammer requirements of the air act apply whenever a federal court vacates entirely a MACT for a major industry sector, the notice says. EPA says its position is backed by congressional intent and case law. *The proposal is available on InsideEPA.com.*

EPA in the proposal also appears to address long-running industry criticisms that having to obtain case-by-case MACT permits would be cumbersome and lead to inconsistent standards across the country.

The information that industry would have to submit to EPA or states with delegated permitting authority is the same data that industry would have had to submit during the development of the original MACT, EPA says.

In the notice, EPA also outlines proposed steps to streamline and expedite the process for obtaining case-by-case MACTs. The proposal would condense the current bifurcated approach -- which establishes a two-part process for applying for the individual MACTs -- into one single, streamlined step.

"We created the bifurcated process in 2003 to allow a source additional time to compile the information necessary for the permitting authority to make a MACT floor determination," according to the agency's proposal. EPA adds that in the case of a complete vacatur of MACT, "many sources will have already compiled and submitted to the permitting authority the information required" by the MACT hammer provisions of the air act.

EPA is also proposing a 90-day deadline for emission sources covered by an already vacated MACT to submit applications for a facility-specific MACT. One environmentalist says the timeline is reasonable, because industry can begin work on the applications even while the rule is still in the proposed stage. The proposal would set an 18-month deadline for applying for case-by-case MACTs for future rules if they are vacated.

EPA says that in either case, "sources and permitting authorities should already have most, if not all, of the information to be included in the application" for a MACT hammer-triggered case-by-case limit, adding that aggregating and reviewing the material should add little additional burden" to permit applicants.

EPA says the case-by-case permit proposal will help to clarify requirements in the case of both existing and future vacaturs. “There has been confusion and uncertainty among some permitting authorities and sources” as to how the MACT hammer and EPA’s rules implementing the hammer apply when a MACT is vacated, “especially with respect to the timing of the application process,” according to the agency’s proposed rule.

The environmentalist praises the proposal for moving to implement the hammer permits, an issue which has stalled even though the source argues it has long been clear that the MACT hammer requirements apply.

The environmentalist also adds that the proposed rule could help to prevent a situation in which a vacatur removes public health protections simply because a legal challenger identifies a flaw in a regulation.

But industry sources are likely to oppose any move to implement the hammer permit requirement, which they have long opposed. In comments to the White House Office of Management & Budget on EPA’s proposed information collection request to support the boiler MACT in 2008, industry groups representing several sectors warned EPA not to implement the hammer in the absence of federal air toxics regulations.

The industry groups warned this approach “would trigger several thousand mini-rulemakings across the nation to establish MACT limits boiler-by-boiler.” -- *Molly Davis*

Despite Permit Delays, EPA Urges States To Use Discretion To Cut GHGs (*Inside EPA*)

April 2, 2010
EPA in a just-issued notice is following through on its vow to delay first-time federal greenhouse gas (GHG) permit requirements until 2011, but is urging states to use their existing powers to immediately begin considering mandatory efficiency measures in facilities’ Clean Air Act permits to cut GHGs along with conventional air pollutants.

Although EPA does not intend to impose GHG limits in air permits until Jan. 2, 2011, states with delegated air act permitting authority “are already in a position to, and should, use the discretion currently available” under best available control technology (BACT) permitting requirements “to promote technology choices for control of criteria pollutants that will also facilitate the reduction of GHG emissions,” EPA says in its March 29 final notice. *Relevant documents are available on InsideEPA.com.*

EPA’s notice is the conclusion of a review of a memo issued by former Bush EPA Administrator Stephen Johnson, who concluded that BACT for GHGs is not required because GHGs are not currently regulated under the air act. The new notice upholds Johnson’s position that permit limits are not required until GHG reductions are required

under the Clean Air Act, which will occur when EPA's GHG vehicle rules go into effect Jan. 2, 2011.

BACT is the level of emissions control required under the agency's prevention of significant deterioration (PSD) program. A climate workgroup of EPA's Clean Air Act Advisory Committee assessing possible BACT for GHGs was able to reach consensus earlier this year that efficiency measures should be part of a GHG permit BACT review. But the group failed to reach consensus on other issues, including when efficiency requires too many changes to a facility to be considered and how many parts of the facility should be assessed for efficiency measures.

EPA's notice makes clear that until 2011, BACT for GHGs will not be a federal requirement. Still, EPA says that BACT "clearly requires consideration of energy efficiency" for reducing so-called criteria pollutants for which the agency sets national air standards, which will also indirectly result in reductions in GHG emissions.

EPA says states already have authority to require efficiency as BACT in permits, but notes that neither the Clean Air Act nor agency regulations specify exactly how states should go about mandating efficiency. EPA is promising to write guidance on how to incorporate efficiency into permits "in the near future."

EPA also says that while states have some discretion to determine the limits required in permits, states must at a minimum consider GHG limits in permits by Jan. 2, 2011. If states do not begin requiring GHG limits at this point, or lack authority under state law to do so, the determination says EPA will call for revisions to their state implementation plans, which are blueprints for meeting air quality standards.

EPA also makes clear that pending permit applications -- those submitted but not finalized before Jan. 2, 2011 -- will be subject to GHG permit limits once the agency starts requiring the limits that year.

Previously, the agency has allowed some permit applicants to be subject only to the requirements in place when the application was submitted, but this "grandfathering" approach is not warranted in the case of GHGs because the agency's timeline gives facilities enough time to prepare for the requirements and because there are no limits to control GHGs from these facilities in the absence of the upcoming federal mandate.

Industry has raised concerns that delaying federal GHG permit requirements until 2011 means EPA will stall issuance of final permits until next year, in order to require those permits to include GHG limits.

But states are welcoming the final notice. Bill Becker, executive director of the National Association of Clean Air Agencies, said in a March 29 statement, "Providing nine additional months for states to revise their clean air laws and regulations will enable these agencies to closely align their programs with the federal permitting rules, thereby

assuring a smooth and rational transition to the daunting but important challenges" of regulating GHGs.

Still, some lawmakers continue to oppose EPA's efforts to regulate GHGs under the air act. Sen. Lisa Murkowski (R-AK), who has introduced a resolution that would block EPA's authority to regulate GHGs, says the new determination has done nothing to ease her concerns that GHG regulation will hurt the economy.

Although Jackson sent a March 26 letter to Murkowski on the issue, the senator says key questions remain unanswered and is calling for a meeting with the administrator the week of April 12. -- *Kate Winston*

California Delays Adoption Of New GHG Vehicle Standards Ahead Of EPA (*Inside EPA*)

April 2, 2010

California officials are pushing back by at least two months the proposed adoption of the next round of state greenhouse gas (GHG) standards for model year 2017-2025 passenger vehicles, according to a state source.

The reason for the delay -- pushing the earliest date for adoption from this summer to the fall -- is unclear, though EPA separately says a fiscal year 2011 priority is developing federal standards for model years 2017 and beyond.

It also remains unclear when the California Air Resources Board (CARB) will release the first draft of the standards; officials previously said the draft would be out earlier this year, but it may now be April or May.

State and federal officials and others have said there is an effort to closely coordinate the new state standards with federal regulators to reach a second "national pact" on GHG and fuel economy standards later this year.

EPA and the Department of Transportation (DOT) are set to issue their final regulations for the first such national pact April 1, under which EPA will establish first-time GHG limits for automobiles and DOT will issue tighter fuel economy limits. The rules will apply to passenger cars, light-duty trucks and medium-duty passenger vehicles for model years 2012 to 2016, cutting carbon dioxide emissions by an estimated 950 million metric tons and oil imports by 1.8 billion barrels over the lifetime of the affected vehicles, according to EPA estimates.

The federal rules reflect the details of a general agreement reached in May between California officials, automakers and the Obama administration. The agreement was sought to avoid differing GHG emission and fuel economy standards among states;

prior to the agreement, California and 13 other states had adopted GHG vehicle standards.

Some environmentalists have seized on the imminent issuance of the vehicle rules to highlight what they say is a contradictory Obama administration policy, after the president March 31 announced efforts to open up new offshore oil drilling areas even as officials move to set fuel efficiency and vehicle GHG standards.

But Obama countered that traditional energy sources such as oil remain vital elements of the economy and that allowing more drilling will ultimately aid the shift to a clean energy economy.

“The bottom line is this: given our energy needs, in order to sustain economic growth, produce jobs, and keep our businesses competitive, we’re going to need to harness traditional sources of fuel even as we ramp up production of new sources of renewable, homegrown energy,” President Obama said in his March 31 speech announcing the administration’s five-year offshore oil and natural gas drilling plan.

The Environmental Defense Fund (EDF) in a March 31 statement offered praise for the GHG vehicle rules, saying they will “deliver a trifecta of benefits to Americans: less dependence on Middle Eastern oil, less pollution, and more savings at the gas pump,” according to EDF President Fred Krupp. EDF says the GHG standards will help address global warming while Congress works to craft bipartisan climate and energy legislation.

EPA has announced plans to develop GHG standards for vehicles for 2017 and beyond, saying in its draft FY11 National Program Manager guidance for the air office that the standards are a priority for FY11.

Transportation Secretary Ray LaHood has previously told reporters that the administration is already working on a second round of vehicle GHG standards for model years 2017 and beyond -- while CARB has for many months been developing its own regulations for set GHG standards for the same model years.

Auto industry representatives demand that CARB work with EPA and DOT to develop the state standards together, to make it more likely that a national pact can be reached to keep GHG emission limits consistent throughout the country. Still, one industry source says that it may be premature to discuss specific elements of the pending state efforts, including whether it will set specific miles per gallon (mpg) fuel economy targets.

A recent report by a national auto union and environmentalists suggested federal regulators could conceivably set a 40.2 mpg standard to be achieved by 2020 under the next set of GHG standards.

“I’m not aware that any specific targets have been discussed,” the source says. “At this point we are looking more towards a process for 2017 and beyond. I’m not sure that

there is much use in setting a specific standard for 10 years from now. Ten years ago there weren't even hybrids available and CARB envisioned a world of fuel-cell vehicles."

The source adds that CARB likely will want to address its schedule for the new standards shortly after the Obama administration issues it finale federal rules for model years 2012-2016 this week.

Meanwhile, California regulators are also pursuing GHG rules for heavy-duty vehicles. State regulators approved last year a GHG regulation for heavy-duty tractors and trailers of 53 feet or longer.

The rule, which CARB is now proposing to relax to some degree, requires truck owners to improve the fuel efficiency of their rigs by requiring use of aerodynamic tractors and trailers that are also equipped with low-rolling resistance tires. One of the compliance mechanisms in the CARB rule is that trucks meet current EPA SmartWay verified technologies. Some of the technologies include trailer rear fairings, front-gap fairings and trailer side skirts. The CARB regulation does not include any engine-related rules to reduce GHG emissions.

EPA's FY11 National Program Manager guidance notes that the agency intends to promulgate a final rule to control GHG emissions from heavy-duty vehicles, such as large trucks and buses.

In a related development, the National Research Council (NRC) in a recent report details measures federal regulators could take to lower GHGs from medium- and heavy-duty trucks by improving fuel economy.

These include mandating advanced diesel engines in tractor trailers or hybrid power trains in garbage trucks or buses, as well as requiring improvements in the aerodynamics of the vehicles. The March 31 NRC report also "urges Congress" to consider implementing a new fuel tax to avoid the complexity of regulating different types of vehicles, based on the assumption that this would induce firms to optimize the fuel-efficiency of their vehicles.

Another alternative laid out in the report is to apply a cap-and-trade system to trucking companies similar to the one that Congress is considering as a way to lower carbon dioxide (CO2) emissions.

The report was drafted by a committee of the NRC, which was chaired by Andrew Brown Jr., executive director and chief technologist at Delphi Corp., of Troy, MI. The report was requested by the National Highway Traffic Safety Administration (NHTSA), based on requirements in 2007 legislation requiring the Department of Transportation (DOT) to establish first-time fuel economy standards for medium- and heavy-duty vehicles.

The standards should be different than current miles-per-gallon (mpg) limits for passenger vehicles under NHTSA's corporate average fuel economy standards, the report says.

News Analysis

EPA Air Rule Vacatur Paves Way For Broad Suits Over Decades-Old Rules (*Inside EPA*)

April 2, 2010
The Supreme Court's decision not to review a key appellate court's vacatur of a 1994 EPA air toxics rule paves the way for industry to seek judicial review of other decades-old air, water, waste and other rules because the lower court established a vague standard for when plaintiffs can "reopen" rules to lawsuits, industry sources say.

The decision not to hear the case effectively leaves in place a new standard undermining jurisdictional time limits on suing to overturn years-old agency rules where EPA has subsequently updated or modified parts of the original rule and altered its context, sources say. One refining industry source says "it's just a matter of time" before industry files challenges to long-ago issued rules that it can now file suit to overturn, due to later changes to those rules.

Although the rule at issue in the appellate court suit was developed under the Clean Air Act, "There's no reason conceptually why the same thing couldn't happen" under the Clean Water Act, the Toxic Substances Control Act (TSCA), the Resource Conservation & Recovery Act (RCRA) and other statutes, a building industry source says.

Among the rules that could at some point, depending on future agency action, be seen as qualifying as "constructively reopened" and not subject to jurisdictional time limits previously blocking lawsuits over the rules are the Clean Air Act new source review (NSR) program, which has been modified many times over the years, and a Bush-era lead paint renovation rule amended by the Obama EPA and set for implementation April 22.

Industry groups wanting to challenge rulemakings issued in final form years ago were previously subject to a stricter standard to waive statutory time limits for filing suit over the rules. But the refining industry source says that the decision to let stand the 2008 appellate court ruling vacating the 1994 air toxics rule "undermines that," and loosens the limits that currently prohibit bringing lawsuits to challenge agency rulemakings issued several years, or even decades, ago.

EPA in its brief to the high court opposed industry's request for rehearing of the U.S. Court of Appeals for the District of Columbia Circuit's 2008 decision in *Sierra Club v.*

EPA to vacate a Clinton-era rule that said facilities need not meet Clean Air Act air toxics emission limits during periods of startup, shutdown and malfunction (SSM).

But in the brief EPA also said it agreed with industry's claims in the lawsuit that the D.C. Circuit erred by ruling that changes the agency made to the air toxics rule in recent years were a "constructive reopening" of the regulation, which exempted facilities from emission limits during SSM periods. Still, EPA said the high court should not review the ruling, saying there is little danger that the ruling will create long-term regulatory uncertainty.

"There is no reason to suppose that the decision below heralds a dramatic expansion of the 'constructive reopening' doctrine within the D.C. Circuit," EPA argued in a Jan. 27 brief to the high court. The agency also said the D.C. Circuit rarely finds constructive reopening, and said other rulings by the court show that the doctrine applies in only "limited circumstances," which justified EPA's claim that high court review is not necessary.

But several industry sources say that various industrial sectors could take advantage of what they say is a less clear standard for invoking the constructive reopening doctrine following the *Sierra Club* ruling.

In vacating the SSM exemption, the D.C. Circuit relied on a 2006 ruling in the case *Environmental Defense, et al. v. EPA*, in which the court held that "a regulation may be constructively reopened when an agency or court changes the regulatory context in such a way that could not have been reasonably anticipated by the regulated entity and is onerous to its interests" or following an "official interpretation of a regulation."

Industry sources say the ruling made the standard less clear by allowing a case to be constructively reopened when they and EPA did not agree that the standard had been met.

As a result, even though environmentalists brought the suit to strike the air toxics rule, industry sources say they could use the constructive reopening outcome of the lawsuit to challenge other agency rules.

EPA had argued in Supreme Court briefs that the environmentalists' challenge to the 1994 SSM exemption should not have invoked the constructive reopening doctrine because the agency's action under the Clean Air Act post-1994 modifying the regulatory context did not meet the standard for the doctrine's application. But EPA opposed the *cert* petition on the basis that the court would likely use discretion in applying the doctrine in the future.

The Clean Air Act requires a petition for judicial review of any rules under the law to be filed within 60 days of the rule's issuance "except that if such petition is based solely on grounds arising after such sixtieth day." Legal sources say that other environmental

rules -- including those under RCRA and TSCA -- contain similar provisions and could be affected by the *Sierra Club* ruling.

For example, the building industry source cites EPA's rule to tighten requirements aimed at reducing childhood exposure to lead paint dust generated during the renovation of contaminated buildings as one situation where the Obama administration has gone in the opposite direction of the Bush administration and tightened a rule, and one in which industry could potentially seek a challenge, even after the judicial time limit under TSCA has expired.

And a small business advocate points to the air act's NSR permitting program as a long-standing program that is highly contentious and is often amended through rulemakings, and therefore would be an ideal program to target retroactively with the precedent set by the *Sierra Club* ruling.

"There are some parts to that program that have been challenged and under litigation basically since [NSR] came into existence in 1977. It's always been a somewhat unsettled program and the idea, if it makes sense depending on which way the wind is blowing, is that we could open things up," says the source.

But an attorney working with a variety of industries on air toxics rules says it is difficult to predict whether any parties would want to expand the doctrine's use, since further precedent could create even greater uncertainty. "There's just tons of different issues that we thought were decided, I mean air, water, RCRA, I mean good gosh it would be totally confusing and a very unwieldy system for EPA," says the source.

The source also notes that the court may be more reluctant to apply the doctrine in the future, since the SSM vacatur was a court reaction to, not just the rule at hand, but also a broader series of rulemakings where the Bush administration was "taking too much liberty with the word of the [air] statute." The D.C. Circuit issued several rulings during the previous administration striking down air rules as violating the air act.

Industry sources point to a trend under the Obama administration to reconsider and tighten several Bush EPA rules that could be vulnerable to the constructive reopening doctrine under the Obama or future administrations, even after statutory limits for judicial review of the regulations expire, depending on whether a court sees future agency actions as meeting the constructive reopening standard.

"The current administration, where they are anxious to reconsider everything that was done in the last eight years, it may be that industry will be wanting to argue that EPA is doing something in the future that has changed the stakes of seeking judicial review of some older regulation, so the shoe may be on the other foot," according to an attorney representing the paper sector.

Sources note that a petitioner would have to convince a court that EPA, by changing a provision related to an older rule has "constructively reopened" the older rule.

A building industry legal source says the *Sierra Club* ruling “introduces uncertainty” as to when the constructive reopening doctrine applies, and that it could be applied potentially to all environmental statutes.

“The argument [in *Sierra Club*] was that sort of the fundamental context, if you will, of this particular rule had changed due to something that EPA had done, but that’s not exactly a bright line,” says the source. “I mean, how much does it have to change in order for a rule to be reopened effectively?” -- *Molly Davis*

Senate Climate Bill May Exempt California From State Program Preemption (*Inside EPA*)

April 2, 2010
Senate lawmakers drafting a compromise climate bill are weighing the option of excluding California’s regulatory efforts to cut greenhouse gases (GHGs) from what are expected to be provisions to preempt significant state authority to regulate GHGs, with one option being to grandfather California’s climate efforts into the bill, an informed source says.

Sen. John Kerry (D-MA) -- one of three key senators involved in drafting the bill -- told industry officials at a March 25 meeting that he has discussed a potential grandfathering provision with California Democratic Sens. Dianne Feinstein and Barbara Boxer, and California Gov. Arnold Schwarzenegger (R), the source says. The three Golden State lawmakers are all supporters of California’s pending cap-and-trade program to reduce GHG emissions.

Meanwhile, officials from 14 states, including those from California and other states involved in regional greenhouse gas initiatives, are resisting Senate plans to preempt state programs. The officials sent the Senate a March 30 letter urging lawmakers to preserve states’ ability to implement their own GHG policies. “Policy experiments at the state level lead to and preserve effective national policies,” the letter says. *Relevant documents are available on InsideEPA.com.*

At the meeting with industry, Kerry suggested that enactment of a federal GHG regime could remove some pressure on states to maintain separate climate programs designed to cut GHGs, the source says.

There would be precedent for emissions legislation carving out California from federal preemption. For example, Feinstein fought in 2003 to allow California to proceed with its own stringent emissions standards for small engines and brokered a deal with Sen. Kit Bond (R-MO), who did not want the strict California rule to apply elsewhere. The deal included language in the fiscal year 2004 omnibus spending law allowing California to have its own rule, and requiring EPA to develop a federal rule for the rest of the country.

It is unclear whether the pending Senate climate bill would adopt a similar carve-out to protect California's cap-and-trade program in perpetuity or some other measure to grandfather in the program. It is also unclear whether the suggested provision would require the state to ultimately match the GHG targets of a federal plan.

California's state climate law, AB 32, required the state to consider market-based mechanisms to reduce GHGs, and the California Air Resources Board is developing a draft cap-and-trade rule due out later this year.

The state's pending program -- which would require affected facilities to either install pollution controls to cut GHGs or buy emission credits to comply with the program's caps -- currently faces a challenge from a possible ballot initiative to freeze implementation of AB 32 until the economy recovers.

The extent to which the pending Senate bill would preempt other state programs is also unknown. Some observers say the bill may go beyond House-passed climate legislation that preempts state cap-and-trade efforts until 2017. Such an approach could be a partial response to long-time demands from industries that have urged the lawmakers to go even further and make permanent preemption of state or local GHG programs, in particular state climate cap-and-trade plans.

Some lawmakers, including Sen. Carl Levin (D-MI), have also called for preemption of state motor vehicle standards to cut GHGs. Under the Clean Air Act, California can develop and issue stricter mobile source rules than the federal government if it wins approval from EPA for an air act waiver to implement the rules.

Several sources say that senators appear more likely to include provisions preventing state cap-and-trade efforts but not other mechanisms for cutting GHGs, such as mandates to boost energy efficiency.

Still, these sources caution that it is not clear whether Sens. Kerry, Joseph Lieberman (I-CT) and Lindsey Graham (R-SC) are settled on any approach for preempting California or other states in the bill.

Industry is pressuring the three senators to permanently preempt state climate programs in their upcoming bill, according to a source following the issue. But states and environmental groups are pushing back against the effort, arguing that the state programs represent an important insurance policy against future failure to implement a federal emissions plan. Should Congress fail to pass a bill, the state programs could ensure GHG cuts.

The source says the Senate trio is using the House preemption language as a starting point, and is "looking at" an approach that would preempt state programs for a longer time-frame than laid out in the House bill but not necessarily make that preemption permanent. The source says the lawmakers have also been resisting the idea of preempting states' ability to implement other initiatives besides state trading programs,

such as building efficiency standards or motor vehicle emissions limits, which would need EPA approval.

On the separate issue of EPA authority to develop GHG regulations, the lawmakers argued during the March 25 meeting that proposals to bar EPA from any regulation for a year or two in advance of any climate legislation amount to kicking the can down the road and should not be viewed as an alternative to climate legislation.

Industry sources briefed on the emerging Senate proposal have previously said it is likely to go at least as far, and perhaps farther, than the House legislation in preempting several key agency authorities on climate. Industry sources say the plan appears likely to preempt EPA from regulating GHGs under several Clean Air Act programs including new source review, national ambient air quality standards, Title V permitting and air toxics standards -- authorities already preempted under the House measure. -- *Andrew Restuccia & Doug Obey*

BUDGET

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EPA Expects 'Difficult' FY12 Budget Due To Freeze On Funding Increases (*Inside EPA*)

April 2, 2010
SAUSALITO, CA -- EPA has begun preliminary internal discussions on how to prioritize its resources for what it expects to be a "difficult" fiscal year 2012 because of the president's freeze on federal budget increases for non-defense spending, according to the agency's chief financial officer.

Barbara Bennett, head of EPA's Office of the Chief Financial Officer, told the Environmental Council of the States' (ECOS) spring meeting here March 25 that for the FY12 budget request due early next year "we had our first conversations internally last week. We are looking at the process, again, in terms of recognizing that this could be a difficult year."

Speaking to *Inside EPA* at the meeting, Bennett cited President Obama's budget freeze for all non-defense spending, "which is pretty much all of our budget, so we're just reflecting realities."

She also said that for FY12 "we recognize that we're not going to have another 35 percent increase" to EPA's budget, referencing the FY10 appropriations law that boosted the agency's budget to $10.3 billion compared to its FY09 enacted funding level of roughly $7.6 billion. Obama is requesting $10.02 billion for the agency in FY11, a slight drop in its current funding.

EPA is looking at “how to prioritize, how to really focus the attention in terms of resources that we will have,” she said. Bennett said there would be opportunities for states to offer their feedback on FY12 priorities in the coming months. “[W]e will continue to refine, as best we can, with some of the limitations that we have as well, to work together to try to drive the best approach possible in terms of all the work that needs to get done,” she said.

Bennett said that EPA will begin engaging more with states on the FY12 budget around April or May, citing restrictions on discussing the budget outside the agency until then. “We don’t have unlimited resources, so there is competition for resources, and anytime you have competition for resources it means not everybody is going to get everything. But what I’ve committed to is to be able to come back and say, ‘What are the trade off conversations and how do we make this decision?’”

CLIMATE CHANGE

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Activists Urge Senators To Reject Industry Fracking Measure In Climate Bill (*Inside EPA*)

April 2, 2010

Environmentalists are urging senators to reject an effort by the oil and gas industry to include language in pending compromise climate and energy legislation that would block EPA from regulating the controversial drilling practice called hydraulic fracturing, or fracking.
Activists have urged Sens. Robert Casey (D-PA) and Charles Schumer (D-NY) -- co-sponsors of a bill that would give EPA authority to regulate fracking -- to ask lawmakers crafting climate legislation not to include language that would block EPA from regulating fracking under the Safe Drinking Water Act (SDWA), one environmentalist says.

Environmentalists also plan to discuss the issue with the three lawmakers crafting the compromise legislation, Sens. John Kerry (D-MA), Lindsey Graham (R-SC) and Joseph Lieberman (I-CT), the source says.

The effort comes in response to an industry bid to include language in the climate compromise bill to keep regulation of fracturing at the state level. Industry has circulated a discussion draft of non-binding sense of the Senate language saying that states are in the best position to regulate the practice. Industry has long argued that states, not EPA, should regulate fracking because states have a better understanding of local geology.

Fracking is a controversial practice in which operators inject water, chemicals and sand underground to crack shale and release gas. While the 2005 energy law exempted the practice in most instances from EPA regulation under the SDWA environmentalists and

some in Congress have raised concern that fracking could contaminate drinking water. Lawmakers in both the House and Senate have introduced legislation that would restore EPA's authority under drinking water law and require disclosure of the chemicals used in fracking.

EPA meanwhile March 18 announced a broad review of the the environmental and human health impacts of hydraulic fracturing. One energy consultant says the broad scope of the review is reminiscent of recent agency reviews of the lifecycle impacts of biofuels and coal mining that have boosted regulatory uncertainty for industry (*Inside EPA*, March 26).

ENERGY

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Senators Seek Oil Industry, Chamber 'Cease Fire' On Climate/Energy Bill (*Inside EPA*)

April 2, 2010

The trio of senators brokering a compromise on climate and energy legislation are working to garner what one industry source is calling a "cease-fire" with the oil and natural gas industries and the business community on their bill, hoping they can at least win a neutral industry response in exchange for several industry-friendly provisions.

By quieting powerful trade groups like the American Petroleum Institute (API) and the U.S. Chamber of Commerce, which have mobilized significant opposition to past legislative efforts, Sens. John Kerry (D-MA), Lindsey Graham (R-SC) and Joseph Lieberman (I-CT) hope to gain support among moderate Democrats and some Republicans, sources say.

Kerry's spokesperson would not comment and Lieberman's spokesperson was not available for comment.

The senators, who have been tasked by Senate leadership with developing a compromise proposal that can pass the upper chamber, have held a series of meetings with various stakeholders -- including fellow lawmakers, White House officials, environmentalists and industry -- over the past few weeks to forge a consensus on the legislation. But sources and lawmakers alike say an array of unresolved issues remain on both the bill's energy and carbon provisions, uncertainty heightened by the absence of legislative text to which lawmakers and stakeholders can react.

The trio is urging API and the Chamber to mute any potential future opposition to the bill with a number of provisions meant to sweeten the pot for the groups.

In exchange for the oil industry's neutrality on the bill, for example, sources have previously said the industry would be subject to a so-called "linked fee" for transportation fuels linked to the price of carbon allowances rather than a hard cap on the transportation sector's emissions, sources familiar with the discussion say.

The legislation is also expected to include a title on domestic oil and gas exploration, a key priority for the oil and gas industry. While the details of which areas in the Outer Continental Shelf would be opened to drilling remain unclear, Bruce Josten, the Chamber's vice president of government affairs, told reporters March 25 that states will apparently have the opportunity to "opt in" for drilling that takes place up to 35 miles off a state's coast, while states will have to "opt out" of drilling that is 35-75 miles off their coast.

One source says the senators are also considering provisions that would share 25 percent of drilling revenue with states and put 10 percent of revenue in a land conservation fund.

Discussions regarding a so-called "clean energy standard" (CES) are also continuing among the senators and industry. A CES would allow states to meet low-carbon energy requirements with a broad range of energy sources -- including nuclear, coal with carbon capture and sequestration, and potentially natural gas. Graham and a number of industry groups have been pushing the proposal, according to industry and Senate sources, but there has been little mention of the proposal in outlines and presentations by the lawmakers.

The senators are also considering nonbinding language reiterating current law that exempts the natural gas drilling practice known as hydraulic fracturing from EPA regulation under the Safe Drinking Water Act. The senators will also include incentives for natural gas vehicles, according to a source that attended a March 25 industry meeting with the senators, the third in as many weeks.

But the senators made it clear at the meeting that they are trying to negotiate what a source that attended the meeting is calling a "cease fire" with the Chamber and the oil and gas industry. Lieberman, at the meeting, told API that he was looking for neutrality from the industry on their upcoming bill, not necessarily vocal support. Kerry, for his part, criticized the group for running a series of television advertisements raising questions about the administration's support for drilling, calling them not "constructive," the source says.

Meanwhile, the senators also met March 25 with major oil companies -- including BP, Conoco-Phillips and Shell -- to get their perspective on the legislation.

An API spokesperson said the group currently has no position on the Kerry-Graham-Lieberman legislation because they have not seen any legislative language. "We can't support it and we can't oppose it until we see details," the spokesperson says, adding

that API would like to see an economic study of the bill by the Energy Information Administration.

The chamber echoed API's statement, saying in its own statement that "There is still a lot of ground to cover to translate ideas into legislation. Once a bill is presented to us, we will carefully evaluate it."

FUEL

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APRIL 2, 2010

Baby Steps to Drive Auto Fuel Savings (*Wall Street Journal*)

Despite Washington's New 35.5 MPG Standard, Low-Tech Changes Will Rule the Road in Near Term

By STEPHEN POWER

WASHINGTON—The Obama administration unveiled new fuel-economy regulations that promise to change the cars Americans drive. But the rules won't produce a mass migration to tiny cars, electric vehicles or hybrids, at least not yet.

Toyota says its March U.S. sales climbed 41%, boosted by customer incentives it launched amid its recalls. WSJ's Joe White joins the News Hub with more. Plus, the latest trends at the New York Auto Show and how investors should be playing rising interest rates.

Pushing fuel-saving technology into otherwise conventional cars and light trucks will make cars for the 2016 model year about 34% more fuel efficient on average than last year's models, and about $950 more expensive to buy. Consumers should get that outlay back over three years in fuel savings, the administration said Thursday.

But despite all the hoopla in Washington and the auto industry over electric cars, auto makers appear likely to rely for the next few years on a number of more mundane solutions to reduce fuel consumption of vehicles that look and operate like cars now. Among some of the incremental solutions: more-efficient tires, low-friction engine lubricants and added gears.

Auto makers also will use technology to build four-cylinder motors that can deliver the power of six-cylinder engines and replace V-8 motors with more efficient six-cylinder versions. More use of turbocharging allows for reduced engine size while maintaining performance.

A sign of what motorists can expect will come in the next few weeks when Ford Motor Co.'s 2011 Mustang V-6 reaches dealers. The car delivers 305 horsepower and 31

miles per gallon on the highway—making it the first car with such a combination, according to the company.

The vehicle's improved fuel economy is made possible in part by a six-speed transmission, which allows for more-precise gear ratios; lower-rolling-resistance tires, which minimize the energy-wasted from friction; and an electric—rather than hydraulic—power-steering system, which reduces engine strain. The company said it plans to use electric steering on 90% of its vehicles by 2012.

"When you add these things up, they are cumulative things that [produce] significant fuel savings," said Ford spokesman Said Deep. "There isn't a silver bullet" when it comes to the issue of fuel economy, he added.

Auto makers are proceeding with new alternative vehicles. Nissan Motor Co. this week set prices for its Leaf electric car, which goes on sale in December. General Motors Co. plans to start selling its range-extended Chevrolet Volt electric sedan in California, Michigan and Washington, D.C., this year. Toyota Motor Corp. plans to begin sales of a small electric vehicle next year.

The Obama administration's new fuel-economy and emissions standards—proposed last fall and formally adopted Thursday, after months of public comment—are expected to boost the average fleet-wide fuel economy of new vehicles sold in the U.S. to 35.5 mpg by the 2016 model year. That compares with an EPA estimated 26.4 mpg during the 2009 model year.

The regulations don't come cheap. According to the Environmental Protection Agency, which developed the regulations with the Department of Transportation, the requirements are expected to cost the auto industry $52 billion over five years, making it among the most expensive set of rules in U.S. history. The rules are also the first written with the stated goal of reducing greenhouse-gas emissions.

The EPA says the typical driver will save about $3,000 through fuel saving over the life of a vehicle. But the higher upfront costs are worrying dealers.

"With tight family budgets and a shaky job outlook, consumers want to maximize their transportation dollars, not pay more for redundant rules and an unnecessary bureaucracy," Ed Tonkin, chairman of the National Automobile Dealers Association, said in a written statement.

Auto dealers worry that unless gasoline prices are higher than $3 or $4 a gallon, consumers will continue to pay a premium for large, comfortable, less -efficient cars and trucks and insist on paying less for smaller, high-mileage cars. The national average retail price for a gallon of self-serve regular was $2.80 on Monday, according to AAA.

The Alliance of Automobile Manufacturers—some of whose members, like GM and Chrysler LLC, are dependent on Washington for financial aid—were more upbeat,

saying the rules will spare auto makers from "a regulatory maze" at the state and federal levels. The industry agreed to go along with President Barack Obama's plans last year as part of a deal to avoid state regulation of tailpipe greenhouse-gas emissions.

As part of that deal, California, which had drawn up plans to implement its own controls, agreed to consider compliance with the federal standards as satisfying the state's regulations until 2016. Because it typically takes auto makers three to five years to plan their lineups, the industry is pressing the administration to define how the industry will be regulated after 2016.

"When our engineers struggle with changing or conflicting laws, it derails efforts to introduce new technologies with long-term research-and-development time frames," said Dave McCurdy, the auto alliance's president.

The industry may have to wait a bit for answers. Transportation Secretary Ray LaHood on Thursday said administration officials haven't focused on what comes next. "Our people have been working 24-7 to get this rule out," he said. "Anything post-2016 will come after people get a good week of sleep and a good opportunity to clear their heads."

On Your Side: New Fuel Efficiency Standards (*WJLA News*)

posted 6:33 pm Thu April 01, 2010 - ARLINGTON, Va.
from ABC 7 News - http://www.wjla.com/news/stories/0410/721651.html
New cars could soon cost nearly $1,000 more. The reason: tough new fuel efficiency standards, put in place by the president.

Under the new federal rules signed Thursday by the Transportation Department and the Environmental Protection Agency, average fuel efficiency for an automakers fleet of cars and light trucks must average 35.5 miles per gallon by 2016, an increase of nearly 10 mpg over current standards set by the National Highway Traffic Safety Administration.

The rules will make new cars and trucks more expensive. The government said the requirements would add an estimated $434 per vehicle in the 2012 model year and $926 per vehicle by 2016, but would save more than $3,000 over the life of the vehicle through better gas mileage.

Quansan White supports the plan, but doesn't like the idea of shelling out more money for a car in the poor economy.

"Very frustrating but that's how everything is, everything is going up," White said.

Industry insiders back a national standard for fuel efficiency because of concerns that some states, including California, the nation's largest carmaker, will set their own standards, complicating efforts for carmakers. Analysts believe the change will lower America's dependency on foreign oil and lower greenhouse gas emissions, all while saving consumers money at the pump.

"I think it's a win-win," said AAA Mid-Atlantic's Lon Anderson. "Good for the environment, cheaper for motorists and the auto manufacturers are satisfied with this."

These guidelines are expected to impact the way that cars are made for years to come by encouraging manufacturers to build more hybrid and electric vehicles.

"This is a huge step forward," said Deron Lovaas, of the Natural Resources Defense Council. "We're off the treadmill and moving forward. We're now part of the race. Other nations are doing the same and now we are competing with them for cleaner, more fuel efficient cars."
Customers will save $65 billion by 2020 through reduced fuel expenditures, according to the government's estimate. That works out to saving 1.3 million barrels a day of oil, and 220 million metric tons fewer of carbon dioxide.

Auto Group May Offer EPA Compromise For Measuring Hybrids' Efficiency (*Inside EPA*)

April 2, 2010
The Society of Automotive Engineers (SAE) may soon offer EPA a compromise approach to the thorny problem of measuring the fuel economy of plug-in hybrid electric vehicles (PHEVs) when it issues a rule later this year, an issue that has split automakers based on their preferred fuel economy technologies.

SAE's hybrids committee is crafting a report on the issue that may suggest the agency label both the actual gasoline consumption and electric power use of the cars, automotive industry sources say, rather than the agency's proposed approach which sought a single, combined measure of the vehicles' efficiency using a measure that is "equivalent" to a traditional miles-per-gallon (MPG) measure.

But some sources caution that even if EPA adopts the compromise approach, it still faces many technical questions and possible confusion for consumers who may struggle to understand their future fuel costs. "There is a lot of back and forth" between manufacturers over the preferred method for labeling, a Toyota source says.

The agency's approach has sparked controversy for favoring manufacturers such as General Motors (GM) and Nissan whose electric vehicles appeared significantly more efficient under the agency's proposed approach than gas-electric hybrids developed by Toyota and Ford.

A source working on the forthcoming SAE report says the only viable option to measure, and therefore label, the fuel economy of PHEVs is to consider two separate measurements, one a measure of fuel consumption using the traditional miles-per-gallon (MPG) metric, and the other a measure of electric use in kilowatt-hours per mile, although there are other options, the source says.

The so-called J-1711 report, which is being written by SAE's hybrids committee and is still subject to approval by other SAE committees, will inform EPA's forthcoming rule. The non-binding report is expected in the next few months, the source says, and "EPA would like to reference parts of it, I'm sure."

EPA is required by law to present all vehicles' fuel economy in a MPG format. But the agency has been struggling to develop a metric for measuring the energy use of PHEVs as the vehicles use little if any transportation fuels. While the agency has released ratings for conventional gasoline, flex-fuel, and hybrid cars, it has not for vehicles that can use either an electric or gas-powered driving mode.

The agency has drafted a methodology for crafting an "MPG-equivalent" metric for these vehicles, but the methodology resulted in PHEV manufacturers making claims that their vehicles would be considerably more efficient than their competitors.

General Motors Company (GM), for example, estimates that its upcoming Chevrolet Volt will achieve at least 230 mpg based on a draft methodology developed by EPA, while Nissan announced that its all-electric Leaf will achieve 367 mpg. Their vehicles favor larger batteries and all-electric propulsion for part or all of their vehicles' driving modes.

But Toyota and Ford, which are developing traditional hybrid vehicles, favor smaller, cheaper batteries and a mix of electric and petroleum-driven propulsion, a Toyota source says, resulting in their vehicles gaining MPG ratings significantly lower GM's Volt and Nissan's Leaf.

As a result, critics of EPA's methodology charge its mpg-equivalent formula does not tell consumers the true cost of operating a PHEV, or give an accurate picture of the vehicles' greenhouse gas (GHG) emissions.

The mpg-equivalent approach also discriminates against PHEVs that constantly use a blend of battery power and gasoline engine power, such as those being developed by Toyota and Ford, automotive industry sources say, as the "blended" vehicles tend to display lower mpg-equivalent numbers.

For example, over short distances, the Volt operates on battery power alone -- getting high mpg-equivalent numbers -- then switches to only gasoline engine power, getting much lower numbers. Since most driving is local, a combined measure that assumes a relatively short average distance driven would give the Volt relatively higher fuel economy numbers.

Sources caution, however, that even if EPA opts to list both fuel consumption in real mpg and electric consumption in a labeling regime, many technical questions remain that manufacturers can fight over. For example, EPA currently specifies fuel efficiency in city and highway driving modes.

This is problematic for PHEVs, because GM's Volt and Nissan's Leaf use battery power only over short distances -- therefore displaying zero mpg in city mode -- while Toyota and Ford vehicles would show mpg numbers all the time. Over longer distances, the Toyota and Ford vehicles would show higher mpg numbers than the Volt, as they, unlike the Volt, would not rely exclusively on a gasoline engine at any point.

Another possibility for labeling fuel economy of plug-in hybrids would be to invert the fuel economy metric and tell the consumer how much fuel -- or electricity, or both, a car would use per 100 miles of driving. Various automakers and consumer advocates, including Honda, recommended this consumption-based metric in comments on EPA's 2006 rulemaking on fuel economy labeling of conventional vehicles.

A source with the Electric Power Research Institute (EPRI) notes that EPA faces a delicate balancing act in setting the metric and labeling method. In its rule, the agency must achieve three things, the source says: the fuel economy label must convey useful information to the buyer on a vehicle's energy use; the agency must inform car companies how to meet the new labeling standards; and consumers must be educated to accept higher up-front vehicle purchase costs in return for fuel savings.

Actually conveying the fuel costs of a vehicle to the consumer will be a tough task, however, as many factors such as a consumer's driving habits and the price of electricity will be involved. Dealerships and car companies could offer customers online calculators to estimate their car-related energy costs, the EPRI source suggests.

The source says that although the alternatives to mpg equivalent are attractive in some ways, consumers are most comfortable with mpg. Whether consumers choose between plug-in hybrid vehicles based on advertised fuel economy ratings once those ratings become very high is questionable, the source adds, as factors such as performance and upfront purchase cost will become important considerations at that point.

Another crucial issue, the source says, is the relationship between fuel economy labeling and the administration's pending package of EPA's vehicle GHG rule and the Transportation Department's (DOT) fuel economy standards (*see related story*).

The EPRI source says there are "big ramifications" for labeling from how EPA gives credit to manufacturers for fuel economy and GHG rules -- different fuel economy metrics might even be required for labeling for consumers on the one hand, and for compliance with DOT and EPA rules on the other. This is because the most important considerations for the consumer will likely be simple, comprehensible labeling and cost of ownership, while EPA in its GHG rule will be looking more closely at GHG emissions, the source says. -- *Stuart Parker*

Petroleum Industry Sues EPA, Charging Retroactive Application Of RFS (*Inside EPA*)

Major petroleum industry groups have filed lawsuits in federal court challenging EPA's recently issued renewable fuel standard (RFS), arguing the standard is unlawful because it retroactively requires refiners to meet volume mandates for periods in 2009 and 2010 -- before the rule was issued -- and because the volumes could be impossible to meet.
However, EPA has previously argued that its final rule is not retroactive and is instead "forward-looking" because it will not determine companies' compliance with the regulations until late February 2011.

In a related development, the agency is already developing a notice of proposed rulemaking (NPRM) due within 12 months that will outline EPA's renewable fuel volume standards for 2011.

The National Petrochemical & Refiners Association (NPRA) and the American Petroleum Institute (API) filed separate suits March 29 in the U.S. Court of Appeals for the District of Columbia Circuit seeking review of EPA's final RFS signed Feb. 3 and published March 26 in the *Federal Register*. While the filings do not outline industry's arguments against the suit, the groups both said they are targeting the rule's retroactive application.

Under the 2007 Energy Independence & Security Act, EPA was required to promulgate rules to implement the RFS by 2008 and establish the volumes of renewable fuels it would require in 2009. But EPA missed the two deadlines and issued its RFS proposal in May 2009 and its final rule including volume mandates in March. The agency proposed and adopted requirements for refiners to meet the combined volumes for 2009 and 2010 for biomass-based diesel, which is diesel made from waste grease or other renewable biomass feedstocks.

Industry argues the combined 2009-2010 volume mandate amounts to retroactively requiring compliance with the rule before it was issued. "This simply isn't right," said Gregory Scott, NPRA executive vice president and general counsel, in a March 29 interview. "EPA misses its deadlines and they turn back on the obligated parties and says you're going to be held responsible for us missing our deadlines."

NPRA in comments on the proposed RFS said the combination of the 2009 and 2010 volume mandates for biomass-based diesel is unfair because it results in a standard of 1.15 billion gallons when Congress intended for only a 1 billion gallon mandate in 2012, according to EPA's summary of comments on the proposal. "EPA has no authority to 'recapture' volume mandates under different start-date scenarios," NPRA argued, the summary says.

Industry argued that the plan would also put refiners in an immediate “compliance deficit,” because by issuing the rule in early 2010 industry has already missed its chance to comply with 2009 requirements.

Companies that blend renewable fuels accumulate Renewable Identification Numbers (RINs) assigned to the fuel to demonstrate compliance with the rule. Should companies fail to meet the volume requirements they face a $32,500 fine for every day of the year, NPRA’s Scott said. “If you get to the end of the year and you don’t have the requisite number of RINs or credits, you’re considered out of compliance for the whole year,” he said.

NPRA claims that EPA’s requirement to comply with volumes assigned to a period before the rule was issued, coupled with the sheer volume of the standard, will make the standard near-impossible to meet.

NPRA wants the court to remand the rule to EPA to “correct these errors,” Scott said, adding that NPRA has not made a decision on whether to seek a preliminary injunction -- which would, if successful, freeze the RFS pending resolution of the suit -- or seek expedited hearing to have the case heard this year rather than a likely 2011 hearing date.

API meanwhile has filed a separate suit with the D.C. Circuit raising concerns about the rule’s retroactive requirements. In a March 29 press release, the group said the rule is “unlawful and unfair” and said that it would impose “unreasonable” mandates on refiners for bio-based diesel and other advanced biofuels.

EPA in its response to comments on the proposed RFS rejected refiners’ concerns about retroactive application and the combination of the 2009 and 2010 volume requirements for biomass-based diesel.

EPA argues that there is “significant” productive capacity for biomass-based diesel that is not currently used because of inadequate demand. The agency also claims that the combined 2009-10 volume requirement will be sufficient incentive to use the extra capacity.

EPA says it is not causing an immediate compliance deficit, because compliance will not be determined until Feb. 28, 2011. Further, the combination of a 2009-10 volume mandate does not impose retroactive requirements and is instead “forward-looking” because EPA will not determine companies’ compliance until Feb. 28, 2011.

Meanwhile, EPA’s February action initiation list of just-launched rulemakings says that the aegncy will in 12 months or less issue an NPRM for the RFS’ 2011 volume requirements for renewable fuels, including cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel.

GENERAL

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AT&T wins first major deal at EPA (*NetworkWorld.com*)

Other federal telecom news: Verizon adds mobility management suite
By Carolyn Duffy Marsan, Network World
April 01, 2010 03:05 PM ET
Sponsored by:
<A HREF="http://ad.doubleclick.net/jump/idg.us.nwf.printpage/;pos=imu;sz=336x280;tile=4;ord=1270158944?"> <IMG SRC="http://ad.doubleclick.net/ad/idg.us.nwf.printpage/;pos=imu;sz=336x280;tile=4;ord=1270158944?" border=0 height="280" width="336"></A>

AT&T won a seven-year, $29 million contract to support the U.S. Environmental Protection Agency's nationwide network -- the carrier's first major deal with this federal agency, which has more than 17,000 employees in Washington, D.C., 10 regional offices and 27 laboratories.

AT&T is providing the EPA with an MPLS network and VPN services, which is an upgrade from its current mix of frame-relay and private line connections.

AT&T will protect EPA's network with a range of security services including intrusion detection/protection, incident response, managed firewall and antivirus management, which are all mandated under a new federal cybersecurity program.

AT&T won the EPA deal through a competitive bid under the U.S. General Services' Networx Enterprise contract. The other Networx Enterprise contractors are Verizon, Qwest, Sprint and Level 3 Communications.

Awarding the network deal to AT&T was a shift in strategy for EPA, which previously used the systems integrator Computer Sciences Corp. to outsource all of its IT and network services.

"EPA is a new customer now moving all of their telecom services…over to Networx," says Jeff Mohan, executive director of the Networx Program Office at AT&T Government Solutions. "It was a greenfield opportunity for the Networx contractors…and a validation that the Networx contract can provide a breadth of services."

AT&T says it won the EPA deal because it offered the best value to the government. The award was made March 19, but it was announced Thursday.

Mohan says the Networx carriers are seeing a steady increase in awards, but that the program is not yet living up to its promise of being the world's largest-ever telecom deal worth an estimated $20 billion over 10 years. Networx was awarded in 2007.

"We're seeing a steady ramp up in Networx business, but the industry is not where it needs to be," Mohan says, pointing out that the predecessor contract called FTS 2001 expires in the summer of 2011. "There are still a number of large awards yet to be made and several large networks yet to be in transition."

In other federal telecom news, Verizon Business announced this week a new offering that helps government agencies manage and secure large numbers of smart phones, laptops and other wireless devices.

Verizon's Mobility Management for Government includes antivirus, antispam, VPN, device, expense and asset management services. The services can be bought separately or in a bundle, and they add a "minimal" additional cost per device each month, Verizon says.

Verizon's Mobility Management for Government is available on the GSA's Washington Interagency Telecommunications System 3 and Alliant contracts.

"Smartphones are on the rise in the government. But as they increase the deployment of smartphones and other mobile devices that increase productivity, agencies have another issue of more things to manage," says Susan Zeleniak, group president of Verizon Federal. "This solution is primarily geared at finding a way for agencies to manage the expense and the infrastructure to support the mobile devices and the security surrounding those mobile devices."

Verizon Business also announced the first federal customer of its Mobility Management for Government service: the U.S. Geological Survey, which is using the service to manage 1,500 smartphones.

GAO Urges New EPA Analysis Of Staffing Needs For Core Agency Work (*Inside EPA*)

April 2, 2010

The Government Accountability Office (GAO) is recommending that EPA conduct a new workforce analysis of its staffing needs for core regulatory work, warning that the agency is “at risk” of not having sufficient numbers of appropriately skilled staff to effectively do its work.

GAO March 31 issued a report reviewing workforce planning at EPA, the Department of the Interior (DOI) and the Forest Service. The report was mandated in the fiscal year 2009 omnibus spending law, which said that workforce plans for the agencies “are in many cases outdated and that no comprehensive review of appropriate staffing needs for the future has been undertaken.” *The report is available on InsideEPA.com.*

EPA union officials have said they hope the report will bolster their claims that EPA has failed to adequately plan for staffing needs on air, climate, water and other issues, and that the report will prod the agency or lawmakers to seek a new analysis. Unions claim that EPA does not have sufficient staff to handle the major burden of potential new climate regulations in addition to its existing work on a slew of other issues.

The GAO report says that EPA -- which has about 17,000 full-time equivalent employees constituting about 20 percent of the agency’s FY10 budget, and 6,000 contract employees -- has not “comprehensively analyzed” its workload and workforce since the late 1980s to determine optimal staffing levels and distribution.

The report calls effective management of the agencies’ workforces a “daunting challenge.” It echoes some of the unions’ concerns about a lack of adequate workforce planning at the agencies, concluding that unless EPA, DOI and the Forest Service “more clearly align their workforce plans with their strategic plans and monitor and evaluate their progress, they are at risk of not having the appropriately skilled workforce they need to effectively achieve their missions.”

The report adds, “To their credit, the agencies have begun to focus attention on the need to use strategic workforce planning.” But GAO outlines a number of recommendations for the agencies to adopt to improve their planning for staffing needs.

Among the recommendations GAO makes is for the three agencies to align workforce planning with strategic planning and the development of their budgets; to involve managers, employees and others in workforce planning; to develop strategies to address workforce gaps; and to monitor and evaluate the results of agency workforce planning efforts.

EPA in its March 22 response included with the report says, “We recognize that EPA must continue to address the human capital needs of its workforce to remain positioned for success as we pursue our vital mission of protecting human health and the environment.”

EPA says it “agrees with the principles” underlying GAO’s recommendations, but suggests changes to the report, including its claim that it does consider workforce planning needs in budget planning.

MINING

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APRIL 1, 2010, 3:23 P.M. ET

EPA Says Mining Policy Aims to Protect Water Quality (*Wall Street Journal*)

A Wall Street Journal Roundup
The U.S. Environmental Protection Agency Thursday issued guidance to limit damage from mountaintop-removal mining, a practice environmentalists have long sought to halt in West Virginia and other parts of Appalachia.
The EPA spelled out tighter water-quality standards for surface coal mining permits across Central Appalachia. The agency also released two reports that discuss the damage to watersheds by the mining practice.

Mountaintop-removal mining involves blasting off mountaintops to get at the coal underneath. Environmentalists consider the practice to be the most abusive form of coal mining because it levels mountains and buries streams under rock and debris.

EPA says the practice increases salt levels in waterways downstream, hurting fish and other aquatic life. Officials say the new policy is designed to protect 95% of aquatic life and streams in the region.

The coal-mining industry says moutaintop-removal mining is cheaper and safer than traditional underground mining.

The Appalachian region accounts for about a third of U.S. coal production, with 40% of that coming from mountaintop removal and other forms of surface mining.

Stepping Up Oversight, EPA Criticizes NRC Uranium Mine Impact Reviews (*Inside EPA*)

April 2, 2010
EPA is pushing ahead with ramped-up oversight of the Nuclear Regulatory Commission's (NRC) environmental reviews of uranium mining, criticizing NRC's review of three Wyoming mines for inadequately considering the mines' water, air and waste impacts and threatening to involve the White House to resolve EPA's concerns.

The agency's aggressive stance is significant because activists are increasingly looking to EPA to clamp down on the environmental impacts of so-called in-situ uranium mining after a recent appellate court ruling backed the NRC licensing and environmental review process, which activists say is not stringent enough. Uranium mining is expected to increase in response to potential climate change policies that may favor low-carbon nuclear power.

EPA Region VIII, which oversees several uranium-producing Western states including Wyoming, sent March 3 comments to NRC criticizing the adequacy of site-specific National Environmental Policy Act (NEPA) draft supplemental environmental impact statements (SEISs) NRC did for the three Wyoming mines.

EPA says the reviews do not account for groundwater contamination, air pollution and other adverse impacts of the mines. The agency says NRC should revise the SEISs to more adequately assess the potential impacts and says that if the commission does not sufficiently address EPA's concerns then it will consider elevating the issue to the White House Council on Environmental Quality -- a rare step used to arbitrate inter-agency NEPA disputes.

During in-situ mining, uranium-dissolving agents known as lixiviants are added to groundwater and injected through wells into the subsurface ore body, then pumped back to the surface in order to extract uranium. Because in-situ mining involves on-site uranium recovery, the mines are considered to be milling facilities and are regulated by the NRC. But the practice can result in contamination of groundwater, as well as other environmental harms, prompting warnings from environmentalists that in-situ mining is not adequately regulated.

Activists are increasingly relying on EPA to scrutinize in-situ mining since the U.S. Court of Appeals for the 10th Circuit's March 8 ruling in *Southwest Environmental Research & Information Center, et al. v. United States, et al.,* which backed the NRC's licensing and NEPA review process. The ruling was the first time a federal court has ruled on the adequacy of the NRC's process for in-situ uranium mines (*Inside EPA*, March 19).

EPA last year promised to increase its oversight of NRC's reviews of in-situ uranium mines due its concerns about the commission's general environmental impact statement (GEIS) for the practice in four key uranium-producing states -- Wyoming, Nebraska, South Dakota and New Mexico. At the time, EPA suggested that the GEIS had not adequately resolved the agency's concerns about groundwater contamination and waste disposal.

The commission's reviews for the Lost Creek, Moore Ranch and Nichols Ranch mines in Wyoming are the first site-specific reviews the commission has conducted since the GEIS, and EPA's comments appear to show that the agency is following up on its vow to scrutinize the reviews. The agency says the draft SEISs inadequately analyzed the wastewater disposal, air quality impacts, groundwater restoration targets and climate change impacts of the projects.

Regarding groundwater contamination, EPA says the draft SEISs fail to discuss the possibility that the commission will have to relax water quality standards after mining. While in-situ mining operations aim to restore groundwater to pre-mining water quality, NRC or states that implement NRC's licensing programs often approve alternative concentration limits (ACL) that ease water quality standards to accommodate post-mining water quality.

“Without further elaboration in the final GEIS and these SEISs on how often NRC, or its Agreement States, approve ACLs, or the ACL concentrations which have been approved previously by NRC or its Agreement States, this raises an issue of whether the draft SEISs’ characterization of the potential permanent degradation of groundwater as ‘small’ is accurate,” the comments say. *Relevant documents are available on InsideEPA.com.*

EPA also says the SEISs do not assess alternatives to flushing and cleaning the groundwater, which often takes longer than planned, and do not assess instances in the past when mining fluids escaped into groundwater beyond the mining area.

In addition to groundwater issues, EPA raises concern that the NRC only assessed the option of disposing of wastewater underground, even though the geology in the area might prohibit it.

EPA also says that the air emissions from drilling numerous wells could have significant air quality impacts and affect the area’s ability to meet wilderness visibility requirements. EPA also suggests the SEISs include an expanded discussion of how the projects will impact and be impacted by climate change.

One source with the Powder River Basin Resource Council, a citizen group in Wyoming, says the SEISs are significant because they are a test of NRC’s site-specific environmental review process. The NRC has historically spent a lot of time licensing uranium mines, and has treated NEPA review as an “afterthought,” the source says. EPA’s comments show that the commission is now going to have to ramp up its environmental review process, the source says.

EPA’s response is also significant because it shows “EPA is watching and paying attention in a way that they maybe haven’t been for uranium mining in Wyoming in the past,” the source says. While EPA has always paid close attention to groundwater, there has been an increasing realization of the risks of in-situ mining and the agency has increased its oversight in response, the source says. EPA’s comments echo concerns the group raised in comments, particularly relating to groundwater contamination and wastewater, the source says.

An NRC spokesman says the commission is working to resolve EPA’s concerns. NRC has had several conference calls with EPA and had a meeting with the agency March 30, which have helped the commission understand EPA’s comments and helped EPA understand NRC’s authority and the draft SEISs, the spokesman says.

“The staff feels many of the EPA’s comments can be addressed by enhancing the SEISs, further clarifying how the GEIS was used and providing additional information on the NRC’s regulatory processes in the SEISs. We’ll continue discussions with the EPA over the next few weeks to ensure the EPA’s comments are satisfactorily addressed,” the spokesman says. -- *Kate Winston*

PESTICIDES
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Calif. bill would expand pesticide safety program (*Associated Press*)

Story also appeared: *Washington Post*

By ROBIN HINDERY
The Associated Press
Friday, April 2, 2010; 3:35 AM
SACRAMENTO, Calif. -- Josefina Miranda doesn't need scientific studies to tell her about the dangers of pesticide exposure. She knows them all too well.

On a Thursday morning in 1995, the four-months pregnant farmworker spent several hours working in a field in the small Central Valley town of Earlimart - a site she remembers as being so soaked with pesticides "it was like it had been raining."

Two days later, she had a miscarriage.

Miranda, now 38 and still working the fields, said the doctor at the hospital told her the pesticides were not to blame for her miscarriage because she didn't ingest any chemicals. But she believes otherwise. Other farmworkers from the same field also fell ill, she said, but they were too afraid to report their symptoms or seek medical attention.

Miranda and the rest of California's 700,000 farmworkers may soon receive greater protection under a proposed expansion of the state's nationally renowned pesticide safety program.

A bill moving through the state Assembly would require laboratories that test for pesticide poisoning to report their data to the California Department of Pesticide Regulation. Currently, labs only report test results to patients' physicians, not to any state agency.

The bill would allow health officials in the nation's largest agricultural state to more accurately track pesticide exposure and implement safety precautions, said Assemblyman Pedro Nava, D-Santa Barbara, who wrote the bill.

"California would be the first state to collect this data on such a large scale, coordinating multiple labs," said Margaret Reeves, senior scientist at the Pesticide Action Network North America, which is a sponsor of Nava's bill. "California should be a model in setting the path for national monitoring of pesticide illness."

California generates more than 11 percent of U.S. agricultural sales. In 2008, its farmworkers handled about 5 million pounds of pesticides containing organophosphates and carbamates - chemicals that can cause infertility, nerve damage and other serious health effects, according to the Department of Pesticide Regulation.

Pesticides used for agricultural purposes accounted for 22 percent of the nearly 1,500 cases of suspected pesticide exposure in California in 2007, the most recent year the department has analyzed. The largest share of reported cases - 45 percent - occurred in non-agricultural circumstances, such as home gardening and the shipment or manufacturing of pesticides.

Under a state law in place since the early 1970s, employers must track the number of hours workers spend handling organophosphate or carbamate pesticides. Workers who do so regularly must undergo periodic blood tests to check for possible pesticide poisoning.

Nine labs throughout the state have approval to perform this test, which checks for a decrease in cholinesterase, or ChE, an enzyme essential to nervous system function. Pesticide exposure can lead to a drop in ChE, as can chronic malnutrition, liver damage and various other conditions.

Employers and physicians must report abnormal test results or suspected pesticide illnesses to their county's health department within 24 hours. The department then alerts the county agricultural commissioner and sends a pesticide illness report to the Department of Pesticide Regulation.

State officials acknowledge the current system isn't perfect. A Department of Pesticide Regulation fact sheet notes that: "Physicians often do not report potential pesticide illnesses."

Nava said his bill would help bridge the gap by requiring labs to report to the state and combining individual lab results in a statewide electronic database. Patterns would be easier to detect, he said, and officials could intervene quickly at sites with particularly high levels of pesticide exposure.

"The way things are structured now, the full information is not available to public agencies that have a specific responsibility to follow up on farmworker health," Nava said. "This makes no sense from a public safety standpoint."

Nava modeled his proposal, in part, on the pesticide safety program in Washington state, which has been compiling ChE test results for several years.

The Department of Pesticide Regulation has not taken an official position on the legislation, which is awaiting a hearing in the Assembly Environmental Safety and Toxic Materials Committee.

Department spokeswoman Lea Brooks said the bill's reporting requirements would be difficult to implement because labs are not told whether a ChE test is linked to potential pesticide exposure or some other health concern. However, she said she wasn't aware of a reason why doctors couldn't provide that information in the future.

Nava's bill could generate some useful data, but it's largely unnecessary, Brooks added.

"DPR staff is confident that existing mechanisms are sufficient to detect serious acute pesticide effects," she said in an e-mail to The Associated Press.

Erik Nicholson, national vice president of the United Farm Workers, said improved tracking of ChE test results would allow California to focus its safety efforts on the highest-risk individuals.

"We're talking about classes of pesticides that are based on nerve-gas technology and can have a very significant impact on human health," he said.

SUPERFUND

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Posted date: 4/1/2010

Superfund Cleanup Effort Gets Boost (*Los Angeles Business Journal*)

By HOWARD FINE
Los Angeles Business Journal Staff

Twelve companies have agreed to pay $3.9 million towards the cleanup of a San Gabriel Valley Superfund site, the U.S. Environmental Protection Agency announced Thursday.

The site, a 190-acre landfill in Monterey Park run by Operating Industries Inc., accepted hazardous liquid and solid waste from industrial companies from 1948 until it closed in 1984. In 1986, the EPA placed it on its national priority Superfund list of most polluted sites.

Since then, the EPA has secured more than $600 million from various industrial companies that had disposed waste at the site, using the “polluter pays” provision in federal toxic waste law.

Lautenberg Bill To Reinstate Superfund Tax At Odds With Nelson Proposal (*Inside EPA*)

April 2, 2010

Sen. Frank Lautenberg (D-NJ) has introduced a bill to reinstate the long-expired Superfund tax on industries, which differs from a separate bill Sen. Bill Nelson (D-FL) is offering to reinstate part of the Superfund taxes but not a broad-based corporate environmental income tax.

Lautenberg's bill, introduced March 25, is similar to House legislation introduced by Reps. Earl Blumenauer (D-OR) and Frank Pallone (D-NJ). It would reinstate the Superfund taxes exactly as they were when they expired in 1995 without adjusting for inflation. The legislation also mirrors the Obama administration's proposal -- first raised in its fiscal year 2010 budget request and repeated in the FY11 request -- to reinstate the taxes. *The bill is available on InsideEPA.com.*

The bill would revive a tax on chemical manufacturers, oil companies and other industries to fund the cleanup of sites where the parties responsible for the pollution cannot be found or no longer exist. The White House estimates that reviving the tax would generate $1.3 billion in annual revenue.

But the legislation is at odds with Nelson's bill, S. 3125, introduced March 16. Nelson's bill would reinstate the taxes and adjust them for inflation, but would drop a broad-based corporate environmental tax on all corporations with an income above $2 million, regardless of whether they produce oil or hazardous chemical-based products.

Lautenberg did not introduce his bill because he is necessarily opposed to the contents of Nelson's legislation, but because he wanted to introduce a bill containing the administration's proposal as a starting point for legislative discussions, according to a Senate Democratic source.

TOXICS

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EPA unit stressing chemical safety issues (*Plastics News*)

By Mike Verespej | PLASTICS NEWS STAFF
Posted April 1, 2010

BALTIMORE (April 1, 3 p.m. ET) -- To better reflect its mission, the unit of the Environmental Protection Agency responsible for the management of toxic chemicals will change its name on Earth Day, April 22, from the Office of Prevention, Pesticides and Toxic Substances to the Office of Chemical Safety and Pollution Prevention.

“We wanted to make the name change to better reflect the critical work we are doing to make sure the chemicals manufactured and used in this country are correct,” said Steve Owens, assistant administrator of the EPA unit, at Global Chem 2010 in Baltimore on March 30. “That will clarify better what we are working on.”

OCSPP, as the unit will be called starting in late April, is currently developing action plans to manage chemical of concerns, such as bisphenol A, and is responsible for the management of the Toxic Substances Control Act, which is expected to revised sometime within the next year.

EPA’s ability to regulate chemicals TSCA is extremely limited as the current statute requires them to find the “least burdensome way” to regulate chemicals. It has only regulated five chemicals in the 34-year history of the act.

Last September, EPA outlined its six principles of TSCA reform, but no bill has been introduced yet in Congress to reform TSCA. The chemical industry, non-government organizations and environmental groups all agree that reform is unlikely to occur in 2010 even though the chemical industry a year ago joined the increasing number of voices calling for TSCA reform.

Senators Urge OMB To Ensure Certification To Meet EPA Lead Paint Rule (*Inside EPA*)

April 2, 2010
Senators are urging the White House Office of Management & Budget’s (OMB) regulatory office chief to “take whatever actions necessary” to ensure EPA certifies enough renovators to meet the compliance goals of its imminent lead paint rule, including a possible delay to its implementation.
In a March 25 letter to Cass Sunstein, head of OMB’s Office of Information & Regulatory Affairs, 10 senators -- nine Republican and one Democratic -- echo concerns from the homebuilding industry that EPA may not be able to certify sufficient renovators before its lead renovation, repair and painting regulation takes effect April 22. EPA has issued press releases announcing its intent to implement the rule on schedule.

They ask Sunstein to take “whatever actions necessary” to address their concerns about the rule, which is designed to reduce lead exposure during building renovations. “These actions could include ensuring EPA has enough resources devoted to compliance assistance, speeding up the turnaround time for approving trainers, expediting public awareness and media campaigns and, if necessary, delaying the

rule's implementation or phasing in the rule in areas where there are adequate certified renovators," the letter says. *The letter is available on InsideEPA.com.*

Sens. James Inhofe (R-OK), Mike Crapo (R- ID), David Vitter (R-LA), George Voinovich (R-OH), Lamar Alexander (R-TN), Chuck Grassley (R-IA), Ron Wyden (D-OR), John Barrasso (R-WY), Christopher Bond (R-MO) and John Thune (R-SD) all signed the letter.

Industry claims that EPA is failing to quickly certify renovators, and warns that the consequence is that companies may either drop work renovating lead paint-contaminated homes built prior to 1978, or it may encourage some contractors to undertake work illegally on pre-1978 homes if the workers are not certified.

Rep. Lois Capp (D-CA) recently countered at a House hearing that EPA has certified tens of thousands more contractors than industry claims (*Inside EPA*, March 26).

Activists Highlight Differences With Industry On Pending TSCA Legislation (*Inside EPA*)

April 2, 2010
BALTIMORE -- With Congress unlikely to pass legislation this year reforming the Toxic Substances Control Act (TSCA), environmentalists are highlighting some of their key differences with industry over the bill including what chemicals data to require from industry and whether to prioritize certain chemicals for regulatory action.

"[R]eforming TSCA is not just about improving PR for the chemical industry -- it's about genuinely protecting public health," Andy Igrejas, director of the Safer Chemical, Healthy Families coalition of environmental and public health groups, said at a March 30 media event here. The activist coalition held its event outside the annual chemical industry GlobalChem conference in Baltimore that took place March 29-30.

Key provisions activists want to see in the bill -- and which they say industry opposes -- would require chemical makers to produce safety information for all chemicals, EPA to take fast action on high-hazard substances and safety assessments to consider cumulative exposure to chemicals, according to a statement from the group and its platform.

Industry officials however have a number of concerns with those provisions, even though they continue to advocate for "effective" chemical law reform through a "transparent and inclusive" stakeholder process.

In a presentation at the industry conference, Richard Denison, senior scientist with coalition member Environmental Defense Fund, outlined the same priorities for TSCA

reform and said it is time to get to “brass tacks” on the stakeholder differences, but admitted “the lack of legislation has been a barrier to that.”

Sen. Frank Lautenberg (D-NJ) and Rep. Bobby Rush (D-IL) are expected to soon introduce legislation reforming TSCA, though the bill has been pending for many months and missed past expected introduction dates. Further, EPA toxics chief Steve Owens recently told a meeting of state environmental officials that he does not expect TSCA reform legislation to pass this year, likely leading it to be debated through the mid-term elections. (*Inside EPA*, March 26).

Pointing out their differences with industry, activists reiterate calls for “basic safety information for all chemicals,” but charge that industry “wants to use the very limited information currently available for most chemicals to identify a few as priorities,” according to the Safer Chemical, Healthy Families statement. “Only these priority chemicals would be subjected to further information requirements and then only on a case-by-case basis.

However, industry presenters at the conference raised questions about EPA’s ability to process information on all chemicals. If too many evaluations need to be made by the agency, “the whole system will implode,” Cal Dooley, the American Chemistry Council’s (ACC) president and chief executive officer, told *Inside EPA*.

Others in industry have also raised questions about the number of chemicals that would be required for EPA assessment under toxics reform legislation. One industry source says even beyond resetting the TSCA inventory of chemicals to more accurately reflect the chemicals in commerce -- something called for by many in industry -- any prioritization plan will need to be able to focus on a manageable number of chemicals.

“Do you have in mind a system to apply to all 80,000 chemicals?” the source asks. For example, if EPA can make safety determinations on 100 chemicals a year, a group of only 500 priority chemicals would still be a 5-year program, the source adds. Numerous industry presenters at the conference also pointed to the issue of EPA resources.

Activists also are pushing for immediate action on certain chemicals of high concern in any new bill -- in particular, persistent, bioaccumulative toxins and chemicals with high levels of exposure and hazard. In his presentation, Denison said this action would focus on a “few dozen” substances of concern, rather than hundreds or thousands, but says industry would want to move all chemicals into a re-assessment process.

But ACC’s Dooley said developing a predetermined list of chemicals for action is a place of “clear distinction” between industry and activist groups, and says the idea is at odds with industry’s TSCA principles and those released last September by EPA. Industry and EPA’s principles do not discuss a predetermined list.

The activist coalition is also calling for “real-world analysis” of chemicals, including a focus on cumulative exposure, which is aligned with recommendations recently made

by the National Academy of Sciences. At the conference, Denison said industry seems to want to look at “one exposure at a time from one source at a time,” in addition to making safe-use determinations about individual uses of chemicals.

But the industry source says chemical makers have long expressed concerns about measuring aggregate and cumulative exposure to substances, which can be difficult, and would be concerned about legislation that includes the considerations. Further, Dooley said that any toxics law reform bill must include the ability to assess and manage risk, as chemical risk can vary by application.

Despite the differences between industry and activists over TSCA reform, Denison said in his presentation that he is “hopeful the process of engaging together . . . will help us resolve these differences.”

Denison also pointed out that activist groups have been pursuing state-based actions on specific chemicals, as well as pressuring retailers to move away from specific chemicals, which industry often cites as core reasons for wanting to modernize TSCA. “If you can make us happy, the problems that have driven you to the table will go away,” he said.

In a March 30 response to the coalition’s protest, ACC and the Society of Chemical Manufacturers & Affiliates said industry supports a new chemicals management law, but admits there is “a diversity of views among representatives of industry and the [non-governmental organization] community with respect to specific aspects of that reform.”

“We believe that effective chemical regulatory reform can be best achieved through a transparent and inclusive process, one that we look forward to continuing as we work towards a modern chemical management system that restores public confidence in the way chemicals are managed in commence,” the industry statement says. -- *Aaron Lovell*

Despite NAS Critique, Draft EPA Dioxin Study Tracks Prior Risk Estimates (*Inside EPA*)

April 2, 2010

EPA has crafted a draft assessment of the risks posed by dioxin that largely tracks the risk estimates EPA adopted in a 2003 version of the study, despite calls from a National Academy of Sciences (NAS) panel for EPA to significantly revise its earlier assessment, EPA and government sources say.

The 2006 NAS report urged EPA to reconsider its finding that dioxin is a human carcinogen, suggesting that EPA had overstated dioxin’s cancer risk. The report urged

EPA to consider less-conservative non-linear as well as linear modeling of dioxin's cancer risks.

But the range of cancer risk numbers in the new draft report is "not that different" from the risk number that EPA presented in 2003, one federal source says. The source describes the differences between the number in the 2003 assessment and the numbers in the new document as "factors of twos and threes. It's not orders of magnitude."

Still, the agency has followed other NAS recommendations. For example, the agency has crafted a first-time standard for non-cancer chronic oral risks, or reference dose (RfD), which will help protect against exposure in the food supply -- the largest exposure pathway.

Another "big difference" since the last draft report is that the new document relies on physiologically-based pharmacokinetic (PBPK) models published since the last draft risk assessment to produce both the cancer and non-cancer risk estimates, the source says. These models show how the body processes chemicals once they are ingested. "Scientifically, that's a big step forward," the source says.

The new PBPK models include human dose dependency, the source says, explaining that the more dioxin a person is exposed to, the more quickly he is able to metabolize and eliminate it. These new models "change the [risk] numbers a little," the source says. Though they are non-linear, it "doesn't mean that the relationship between the tissue dose response is non-linear," the source says, adding that the extrapolation to low-dose exposure remains linear.

This is important because a linear extrapolation of cancer risks from high experimental doses to the low doses generally encountered in the environment means that assessors are taking what is usually considered to be a conservative, health protective approach: assuming that any level of exposure could have adverse health effects.

But several sources say they are concerned that EPA's latest analysis of dioxin, the ubiquitous carcinogenic contaminant, contains multiple cancer risk estimates from ingestion and it is unclear which -- if any -- of the numbers EPA will implement for cleanup regulations and other standards (*see related story*).

Sources say that the draft document provides multiple modeling scenarios with different oral cancer slope factors. But with all the models, it remains unclear if any -- or which -- of the new numbers supersedes the earlier draft, the sources say. One federal agency source adds that some agencies' comments reflect this confusion, and ask EPA to clarify which number it will rely on in the assessment.

The comments are among those EPA is collecting from multiple federal agencies, part of the inter-agency review process before key risk assessments are released to the

general public. The document, EPA's response to the NAS review of the agency's risk assessment, has been in progress since NAS' critical 2006 report.

EPA plans to send the document to its Science Advisory Board for expert peer review before the summer, the first federal agency source says, so it should be released soon for public comment. Administrator Lisa Jackson last May gave EPA staff a deadline of December 2010 to complete the long-delayed dioxin assessment. Jackson's effort seeks to end years of struggle to finalize the new risk assessment, which the agency first launched in the early 1990s.

The first source says that both EPA's cancer and non-cancer risk estimates rely on human epidemiological data. This avoids the challenges that come with trying to extrapolate lab animals' responses to exposure to responses that could be expected in humans. The RfD is based on data from those living in and near Seveso, Italy, the site of an industrial accident in 1976 that released extremely high levels of the most toxic form of dioxin, 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD). It uses developmental effects shown in studies of Seveso survivors and their children as the critical health effects to calculate the RfD, the source says.

The new document includes a first-time RfD of $7x10^{-10}$ milligrams per kilogram bodyweight per day, sources say -- which is important because dioxin is detected in food. EPA has established a special communications committee that is preparing for the release of the assessment. Its communications plan is aimed at reducing concerns about the safety of the food supply and other public health issues anticipated to arise from the assessment (*Inside EPA*, Jan. 15).

Since then, the U.S. Department of Agriculture (USDA) has sampled the meat supply in various classes for dioxin and published surveys of its findings. The most recent data, from 2008, show declines in the levels of dioxin in three of four major meat categories: chicken, hogs and turkeys. The report, released last fall, show declines since 2003 of as much as 80 percent in these animals, "while any declines in cattle dioxin levels, if real, are less than those observed in the other slaughter classes."

A source at a second federal agency notes that EPA includes data from USDA's 2003 survey of dioxins in domestic meat and poultry in the new analysis. The source describes its inclusion as "one thing that will strengthen the assessment," noting that the data provides "more current levels" than were included in EPA's 2003 draft.

The source did not know if EPA's schedule will allow the agency to include the newest, 2008 data in its reassessment. Still, the source adds that the 2003 data is "more recent data" than in the previous draft and that EPA used it "to estimate the background" exposures to dioxin in the population.

The source added that another "big part" of updating the risk analysis is EPA's decision to adopt the newest toxicity equivalence factors (TEFs), calculated by a World Health Organization expert panel in 2005. EPA last September proposed adopting these new

TEFs, which allow regulators to compare the risks of some 170 different dioxins and dioxin-like compounds, including furans and polychlorinated biphenyls, to the risks posed by the most toxic of these congeners, TCDD. Using the TEFs, assessors can calculate the risk and set cleanup standards for a particular mixture at an individual site. NAS's 2006 report recommended EPA review the TEFs it had used in 2003 -- though it supported the overall TEF methodology.

But the TEFs are controversial, in part because they are generated by a group of experts without stakeholder involvement and are often hard to reproduce. Industry often argues that TEFs overestimate the risks that individual dioxins and dioxin-like compounds present in the environment -- issues that companies raised in comments to the agency last fall.

Such concerns are also being raised by at least one federal agency, says a third agency source. The source argues, like industry, that TEFs should only be used when there is no data available for a specific dioxin compound or mixture. The agency's comments argue that EPA guidance on mixture risk assessment prefers using data on similar mixtures instead of an individual congener approach, such as using TEFs. -- *Maria Hegstad*

Industry Urges EPA To Redo Risk Study Seeking Strictest-Ever Safety Limit (*Inside EPA*)

April 2, 2010

Key industry groups are calling for EPA to redo its controversial draft assessment for halogenated platinum (Pt) salts, a chemical widely used in a range of industrial processes, charging that the agency's draft study does not justify the need for the strictest-ever limit set for a substance -- 8,000 times stricter than any other safety level EPA has set.

"Setting [the reference concentration (RfC)] that is four orders of magnitude below that set for any other chemical, with extremely limited human exposure and based on flawed methodology, could have serious consequences for the platinum industry and other industries that rely on the availability and use of platinum," several key industry groups charged in a recent letter to the agency.

In another letter to the agency, the industry groups suggested that if EPA were to finalize the draft study, it could undermine the credibility of EPA's Integrated Risk Information System (IRIS) database. "Just as we take responsible stewardship of our products seriously, so do we take EPA IRIS seriously, and we wish it to retain the outstanding reputation that it has achieved through continued excellence in its science standards," the industry group said in another recent letter to the agency, sent last January.

At issue is EPA's draft IRIS assessment for halogenated platinum salts, which is used in vehicle emissions control devices, petroleum refining and pharmaceutical and fertilizer production. According to EPA's draft assessment, oral exposure to the chemical can result in a range of harmful effects, including renal failure, metabolic acidosis, fever, muscle cramps, gastroenteritis and rhabdomyolysis. Inhalation exposure can result in respiratory irritation and "effects associated with" allergic sensitization, EPA says.

An agency spokesperson says the agency is considering comments from last year's peer review panel and the public, but has not yet completed revisions to the draft assessment based on the comments.

The draft assessment included an RfC setting a safe level for inhalation of one picogram per cubic meter, and did not calculate a reference dose setting a safe oral exposure limit.

EPA released the draft IRIS assessment in February 2009, and held a May 2009 peer review for the assessment in Washington, DC. The draft assessment has yet to be finalized by EPA.

During the comment period on the draft assessment, several precious metals groups weighed in, questioning the study EPA relied on to justify its assessment. In comments filed in April 2009, the International Precious Metals Institute said "quantification of a relationship between sensitization and exposure to these salts is not possible, because the database . . . is entirely inadequate."

Because of the database issues, "a well-characterized dose-response relationship cannot be determined," and a low-observed-adverse-effect level and a no-observed-adverse-effect level (NOAEL) cannot be properly ascertained, according to the group. *Relevant documents are available at InsideEPA.com.*

But a host of domestic manufacturing trade groups -- including the American Petroleum Institute, Emission Control Technology Association, International Platinum Group Metals Association, Manufacturers of Emission Controls Association and The Fertilizer Institute -- are also now raising concerns with leadership in EPA's Office of Research & Development (ORD). The group met March 16 with current ORD chief Paul Anastas and also held a December 2009 meeting with interim ORD head Lek Kadeli.

Industry says since the review was first announced in April 2005 it was under the impression that EPA was focusing its assessment on elemental platinum prompted by reports of platinum emissions from automobile catalytic converts, but the draft assessment released in February 2009 focused on halogenated platinum salts and platinum compounds.

The draft assessment "came as a complete surprise, was totally unanticipated and caught the platinum industry unprepared for the governmental process that ensued," according to the January letter.

Industry is concerned about EPA's methodology for developing the RfC, charging it is based on a single epidemiological study that may not provide enough data to justify the agency's proposal. "The RfC is derived exclusively from a single epidemiology study on a worker population exposed to hexachloroplatinic acid," according to the letter the group sent EPA in January 2010. The 2000 study, "Exposure-Effect Relationship of Platinum Salt Allergy in a Catalyst Production Plant: Conclusions from a 5-year Prospective Cohort Study," examined exposure to platinum salts and incidence of platinum salt allergy in more than 200 workers in a catalyst production plant.

The industry groups say in May EPA-appointed peer reviewers "also drew attention to other shortcomings, e.g., the paucity and variability of the exposure dataset in the principal study. As freely acknowledged by the authors of this study, the exposure characterization conducted was very limited, added in the latter part of the medical monitoring epidemiology study."

Because there was little or no personal exposure monitoring of crucial exposure groups, the study "cannot be considered to provide a sufficient or robust exposure dataset," the letter concludes.

Industry also takes issue with the approach taken in the IRIS assessment. "The exposure stratification possible using this workplace population is restricted to only a single non-zero response group, and as indicated in the IRIS draft assessment, this prevents the use of more powerful risk assessment techniques such as Benchmark Dose modeling to derive a robust RfC," the January letter concludes.

In the draft assessment, EPA acknowledges limitations in the study it relied on, saying its confidence in the RfC assessment and the principal study are low. "The available exposure-response information for the development of allergic sensitization to halogenated Pt salts covers a period of only five years, and therefore, a less-than-lifetime exposure duration," according to the assessment. The document also says there is a "complete lack of information on whether inhalation exposure to halogenated Pt salts or other forms of Pt may induce other systemic, reproductive, developmental, or neurotoxicological effects."

Further, the occupational data on allergic sensitization is from healthy adult workers. "The potential susceptibility of young, aged, or asthmatic populations is unknown," the assessment says. "The overall confidence in the chronic RfC of low reflects the variation in the exposure data and confidence in the database."

Still, EPA relied on the study, saying it is "well-designed, well-conducted and well-reported prospective epidemiologic study that provided an exposure estimate that represents a NOAEL indicating that no cases of allergenic sensitization to halogenated Pt salts developed over a 5-year period in workers in a German [Pt] catalyst production facility."

An EPA spokesperson says that the agency is aware of the concerns raised with the draft assessment. “EPA is in the process of considering the independent external peer review comments and public comments,” the spokesperson says. “The agency has not completed revisions to the draft assessment based on those comments.” -- *Aaron Lovell*

WATER

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Ruling Blocks Industry Bid For Circuit Split On Chemical Spraying Permits (*Inside EPA*)

April 2, 2010

The U.S. Court of Appeals for the 2nd Circuit has shot down industry hopes for a circuit split that might force a high court review of a ruling requiring EPA and states to issue Clean Water Act (CWA) permits for spraying chemicals on or near waters, deciding on March 30 to defer to EPA plans to develop a nationwide general permit.

But the court backed a lower court ruling that held that sprayers are exempt from having to seek coverage under EPA’s permit until a legal requirement for the measure takes effect next April while also upholding activists’ arguments that the vehicles used in spraying, such as helicopters, are point sources subject to permit requirements.

Industry officials had urged the 2nd Circuit to reject key holdings of the 6th Circuit’s ruling in *National Cotton Council, et al. v. EPA*, which effectively requires operators to seek CWA permits for spraying pesticides on or near waters, in hopes that it would create a circuit split in the issue.

But in a March 30 ruling in *Peconic Baykeeper, et al. v. Suffolk County*, the 2nd Circuit said it would defer to the 6th Circuit’s approach, where the 6th Circuit temporarily has stayed the requirement for CWA permits while EPA develops a general National Pollutant Discharge Elimination System (NPDES) permit for pesticide spraying on or over waters of the United States. *The ruling is available on InsideEPA.com.*

“The court just really punted” the issue, an industry attorney says. “So it really doesn’t change very much, or the situation continues to be what it is. The big issue is whether this stuff is a pollutant [under the CWA],” the source says.

The Supreme Court Feb. 22 declined an industry bid to review *National Cotton Council*, but industry officials had held out hope that the *Peconic* citizen suit would lead to a circuit split and provide new grounds to ask the high court to reconsider the issue.

In *National Cotton Council*, the 6th Circuit vacated EPA's 2007 rule and 2005 Final Interpretive Statement exempting pesticide spraying operators from a requirement to obtain NPDES permits, finding the regulation and statement do not follow the true meaning of CWA language.

The 2nd Circuit in its March 30 ruling does not examine whether the exemption violates the CWA, and instead says: "We express no views on the reasoning of *National Cotton Council*."

However, the 2nd Circuit says that in light of the 6th Circuit's stay of its mandate until EPA develops a general permit, scheduled for next April, the agency's 2005 rule exempting sprayers from permit requirements remains in effect. "Therefore, if the EPA adheres to its expressed intent, then by April 9, 2011, the EPA and state authorities will have implemented a new permitting framework for the application of pesticides. In the interim, the application of pesticides consistent with the Final Rule remains lawful," the ruling says.

Consequently, the 2nd Circuit notes that no action is needed to remedy the situation, and "injunctive relief is unnecessary to prevent the alleged ongoing or future violations."

The court does, however, overturn the district court's ruling that found trucks and helicopters spraying pesticides are not point sources of CWA pollutants because the trucks and helicopters discharged pesticides into the air and thus any discharge was indirect. The 2nd Circuit finds instead that the "pesticides were discharged 'from' the source, and not from the air."

The 2nd Circuit relies in part on a 2009 ruling in *Cordiano v. Metacon Gun Club, Inc.*, in which the circuit ruled that the "'definition of a point source is to be broadly interpreted'," and embraced "'the broadest possible definition of any identifiable conveyance from which pollutants might enter waters of the United States'," the ruling notes.

An environmentalist is pleased to see the lower court's finding reversed, noting that activists were "very concerned about the district court's interpretation" of point sources and about the lower court's "ruling remaining on the books."

But the industry source says, "It was not a remarkable finding that spray from a hose from a nozzle on a truck is a point source."

The 2nd Circuit also remanded one issue to the lower court, saying "district court did not explain the basis for its conclusion that all spraying was in compliance with the" the label instructions required by the Federal Insecticide, Fungicide & Rodenticide Act (FIFRA). "[T]he judgment of the district court is vacated insofar as it held that the County's spraying activities were uniformly in compliance with the FIFRA requirements, and the case is remanded for further factfinding."

The ruling notes that pesticide labels do not allow all spraying over waters, and in some cases explicitly forbids it. While the record of the district court case "reveals instances of aerial spraying over creeks," the ruling says, and the court "acknowledged the existence of evidence that the County may have sprayed above various creeks," the 2nd Circuit says the lower court's ruling failed to explain why those spraying activities were deemed allowable.

SAB's Fixes For EPA Nutrient Criteria Guide Bolsters Industry Efforts (*Inside EPA*)

April 2, 2010
EPA's science advisers are urging the agency to overhaul its draft guidance for developing numeric water quality criteria for nutrients, changes that could help industry push the agency to consider alternative 'weight-of-evidence" approaches for setting the risk-based limits rather than the strict "stressor-response" approach the agency has used.

The agency's Science Advisory Board (SAB) said in a soon-to-be final draft report that EPA should more clearly identify the scope and intended use of the guidance, including how the guide's approach relates to other criteria development processes. Judith Meyer, chair of the SAB committee that reviewed the guidance and developed the draft report, noted during a March 24 SAB teleconference that "a serious flaw" in EPA's guidance is that it nowhere asks whether the approach outlined in the document is working. *Relevant documents are available on InsideEPA.com.*

At issue is EPA's draft Technical Guidance on Empirical Approaches for Numerical Nutrient Criteria Development, which uses an approach known as the stressor-response relationship to develop criteria.

Under the Clean Water Act, EPA develops water quality criteria to protect aquatic life and human health. States use the health-based criteria to set enforceable water quality standards and discharge permit limits. Most states have used so-called narrative criteria for nutrients that require "no toxics in toxic amounts," but activists have been pushing EPA to require states to develop nutrients criteria expressed in specific concentrations.

Municipal wastewater treatment plants in Pennsylvania have argued EPA's approach in the guidance is scientifically indefensible and would result in billions of dollars of extra wastewater treatment costs.

The draft SAB report, which the board voted March 24 to send to EPA Administrator Lisa Jackson once minor revisions are made, says the stressor-response approach is "a legitimate, scientifically based method for developing numeric nutrient criteria," but only if it is applied as part of a tiered weight-of-evidence approach and not used in isolation. "[W]e find that improvements in the Guidance are needed prior to its release to make

the document more useful to state and tribal water quality scientists and resource managers," the SAB report says.

EPA's guidance lays out a five-step process for developing numeric nutrient criteria. The first step is using exploratory analysis and data visualization tools to select variables that appropriately quantify the stressor, such as excess nutrients, and the response. The second step is assessing the strength of the cause-effect relationship through conceptual models, existing literature and other methods. Step three is analyzing the data, estimating the stressor-response relationship and identifying thresholds that may be used to derive water quality criteria. Step four is evaluating estimated stressor-response relationships. And step five is evaluating candidate stressor-response criteria by predicting conditions that might be expected after implementing different criteria.

But SAB presents an entirely different process, with SAB members noting during the teleconference that EPA's approach has serious flaws because it is not iterative and never asks whether other approaches to criteria development should be considered.

SAB's process starts with developing a conceptual model during the problem formulation stage, followed by a second step of selecting and preliminarily evaluating data. Step three of the SAB approach is evaluating the stressor-response approach, including asking whether the stressor-response approach is appropriate. If this is not the best approach, then other methods of developing criteria should be considered.

If the stressor-response approach is appropriate, then the process moves to step four, which is modeling the stressor-response selection. Step five is evaluating candidate stressor-response criteria, and step six is using a weight-of-evidence approach to compare the output to the goals developed in step one.

SAB "also recommends that EPA more clearly articulate how the Guidance fits within the Agency's decision-making and regulatory processes and, specifically, how it relates to and complements EPA's other nutrient criteria technical guidance manuals and documents," the draft report says, adding that numeric nutrient concentration criteria and load-response models should be considered as two different approaches for accomplishing the goal of controlling excessive nutrient loadings.

In addition, SAB notes the guidance's methods do not address the problem of excess nutrient enrichment downstream from the waters for which the criteria are being developed -- a key issue EPA is trying to tackle in first-of-a-kind numeric nutrient criteria in Florida.

Obama Administration Splits With House On Key Security Bill Provisions (*Inside EPA*)

April 2, 2010

The Obama administration is at odds with House Democrats over key provisions in chemical security legislation the lower chamber passed that would allow citizen suits to enforce the bill and also give the Department of Homeland Security (DHS) and EPA authority to impose inherently safer technologies (IST) at regulated facilities.

Department of Homeland Security' (DHS) Rand Beers said March 18 that the White House is crafting a legislative proposal to overhaul and make permanent DHS' chemical security rules that "will look somewhat different" from a House-passed security bill. DHS has "probably more in common with the legislation than differences, but our proposals will be different," said Beers, the under secretary for the National Protection and Programs Directorate.

While the administration is not endorsing the citizen suit or IST provisions in the House bill, H.R. 2868, Beers said that the White House and Congress are "fairly close" on ensuring that security legislation ends wastewater and drinking water facilities' current exemption from DHS' Chemical Facility Anti-Terrorism Standards (CFATS).

Beers told an Association of Metropolitan Water Agencies (AMWA) event in Washington, DC, that the administration has told Congress it wants authorization to make permanent the interim DHS security program, "but we want to have the time to provide our own thinking to this process, which is what our draft legislation is about." Beers said that the White House intends to release its draft chemical security legislation "in the not-too-distant future."

CFATS regulates high-risk chemical facilities, but exempts water utilities. It was first authorized as a temporary program in the fiscal year 2007 Homeland Security appropriations bill, and reauthorized for another year in the DHS FY10 appropriations law. The interim program does not require facilities to consider IST, for example switching from chlorine to "safer" chemicals that pose less of a risk if released due to a terrorist attack.

H.R. 2868 would make CFATS permanent and gives DHS first-time authority to regulate wastewater facilities. The bill also includes a provision giving DHS the authority for the first time to require facilities that pose the greatest risk to population centers to switch their manufacturing processes to IST where available. The bill would also give EPA authority to create a similar first-time security program for drinking water facilities.

Republicans -- who strongly oppose IST mandates -- and some Democrats in the Senate are floating a competing bill, S. 2996, which would simply extend DHS' program another five years.

The Congressional Research Service Feb. 16 released a report on the options for chemical security legislation in the 111th Congress, including maintaining the existing CFATS program or overhauling it. The report outlines a number of policy issues to consider, including whether the federal government allocates sufficient resources to implementing the program. *The report is available on InsideEPA.com.*

Beers said that the Obama administration wants permanent authorization of the program but highlighted key areas where the White House is at a divergence with the House legislation.

For example, he said, “If you want to talk about inherently safer technology, well, we have laid out where we would like to go. I think our draft will look somewhat different” from the House bill.

Speaking to a March 3 Senate Homeland Security & Governmental Affairs Committee hearing, Beers said that the administration’s priorities include requiring the highest-risk facilities to adopt IST. Beers and EPA water chief Peter Silva said the administration would like a reauthorized security program to include the authority for DHS and EPA to require IST at facilities that are assessed as being in the two highest-risk of four risk categories. The facilities would be allowed to consider factors such as cost, effectiveness and practicality in meeting an IST mandate.

The two lower-tiered facilities, by contrast, could be issued recommendations on technological switches that they could undertake to reduce their risks from an attack, Beers and Silva suggested in their testimony. But it is unclear to what extent the administration’s outline for IST differs from that in the House-passed bill.

Sen. Frank Lautenberg (D-NJ) is said to be leading Senate efforts to craft security legislation similar to H.R. 2868. Lautenberg reiterated his commitment to IST and passing a chemical security bill in a March 18 press statement, saying water treatment facilities and chemical plants have routinely demonstrated that IST is possible and debunking claims by industry that such a mandate would represent outrageous costs to the already flagging chemical industry.

“Many of the highest risk facilities have not taken even the least expensive and already available steps to reduce their attractiveness to terrorists by using safer chemicals or processes,” Lautenberg said. “To do just that, I will soon introduce” legislation, to be called the Secure Chemical and Water Facilities Act.

Beers also said at the AMWA event: “With respect to the issue of civil suits, in the protection of information, we have feelings in DHS that are different, but the administration hasn’t yet taken a position on the civil suit issue that was in the House legislation.” The House bill -- passed Nov. 6 by a 230-193 vote -- would give citizens the authority to file lawsuits against DHS and EPA to enforce provisions of the legislation.

DHS has raised concerns about the citizen suit provision before. During a a June 16 House Homeland Security Committee hearing on H.R. 2868, Philip Reitinger, DHS deputy under secretary for the National Protection and Programs Directorate, raised “significant concerns” about the provision, saying that it could lead to the disclosure of sensitive or classified information in such proceeding.

Rick Hind, Greenpeace's legislative director, said at a March 18 press event in Washington, DC, that EPA officials have expressed reservations about the citizen suit provision to a coalition of environmentalists and unions who have been pushing for a permanent chemical security bill that includes IST.

Republicans strongly contested the citizen suit provision during markup of H.R. 2868, and the House-passed bill scaled back the scope of the language by restricting the use of citizen suits against non-compliant private companies. The bill as amended and passed by the House late last year now only allows citizens to sue DHS or EPA for failing to compel companies to comply with facility security requirements. -- *Erica Martinson & John Heltman*

EPA proposes water-quality standards for Florida (*Nursery Management & Production*)

4/1/2010
Action would decrease amount of phosphorus and nitrogen pollution
EPA has proposed numeric nutrient water quality standards for lakes and flowing waters, including canals within Florida. The federal agency has proposed regulations to establish a framework for the state to develop "restoration standards" for impaired waters.The determination states that numeric nutrient water quality standards for lakes and flowing waters and for estuaries and coastal waters are necessary for Florida to meet the requirements of Clean Water Act section 303(c).
The proposed rule was published in the Federal Register on Jan. 26. The agency held public hearings in Florida in February and is planning to hold three additional public hearings in April to receive more input from Floridians on the proposed standards. EPA has extended the public comment period for the proposed rule to April 28, 2010.
A 2008 Florida Department of Environmental Protection report assessing water quality for Florida revealed that approximately 1,000 miles of rivers and streams, 350,000 acres of lakes and 900 square miles of estuaries are not meeting the state's water quality standards because of excess nutrients. These represent approximately 16 percent of Florida's assessed river and stream miles, 36 percent of assessed lake acres and 25 percent of assessed estuary square miles. The actual number of miles and acres of waters impaired for nutrients is likely higher, as there are waters that have not yet been assessed.

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