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ADMINISTRATOR JACKSON

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Policy, industry divisions tackled at ACE conference (*Ethanol Producer Magazine*)

By Holly Jessen
Posted Aug. 5, 2010
The U.S. EPA isn't slow walking on the E15 decision, said Ron Lamberty, vice president and director of market development for the American Coalition for Ethanol. The EPA is moon walking—going backwards—on the E15 decision.

Lamberty was one of the speakers Aug. 4 at ACE's 23rd annual Ethanol Conference & Trade Show. The event, held in Kansas City, will conclude Aug. 5. Another hot topic at the conference was ethanol tax incentives, including whether legislators will extend the Volumetric Ethanol Excise Tax Credit and what to do about an industry seemingly split by differing opinions.

Brian Jennings, ACE's executive vice president, singled out VEETC and the blend wall as the two most important policy challenges facing the industry. Although the renewable fuels standard signals the industry to produce more ethanol, there's a 30-year-old limit in the Clean Air Act that restricts ethanol blending to E10.

The EPA has been considering the E15 waiver for a year and a half now and, in June, delayed the decision for the second time. Now there are rumors that E15 will be approved only for model years 2007 and newer, although the ethanol industry has maintained that the blend is safe for all vehicles, no matter what year. ACE has calculated if the EPA goes through with the model year limit it would open up E15 to only two out of every 10 cars on the road. "It sounds like a solution that only a government bureaucrat could come up with," he said.

In late July, ACE joined with the National Corn Growers Association and the Renewable Fuels Association in sending a letter to the EPA's Administrator Lisa Jackson. The groups encouraged the EPA to formally approve the use of E12 for all vehicles immediately, while the final decision on E15 is waited for. This was based on the EPA's delay on E15 and concern about restricting the use of E15 to newer cars. The groups have repeatedly pointed out that fuels with oxygen content equivalent to E12 were previously approved.

VEETC, the second big topic at the ACE conference, is certainly a topic of debate, Jennings told the crowd. The industry can debate about how many jobs would be lost and how many plants would close if it is allowed to expire at the end of the year. "The fact of the matter is that both those things would happen," he said, adding that the price at the gas pumps would go up for the consumer.

Although there are 150 days left in 2010, there are only 20 days left for voting on the Congressional calendar, Jennings said. Legislators will take a break during August, returning home to stop by state fairs and campaign. This is a great opportunity for those in the ethanol industry to make their voices known. He encouraged those in the audience to invite legislators to tour ethanol plants and meet with the board of directors. “The very best ethanol lobbyists are sitting here,” he said.

During a frank discussion about the perceived industry split, Jennings and Darrin Ihnen, president of NCGA, reaffirmed the two groups’ support of extending the ethanol tax incentive, including the tariff. Although Growth Energy and it’s Fueling Freedom Plan was not specifically mentioned by name, Jennings and Ihnen both said that after talking to legislators, it was determined it was too late in the legislative session to change course radically. “Timing is everything in Washington, it genuinely is, and the time for us to introduce a bold new approach should have been a long time ago,” Jennings said, acknowledging that perhaps, in hindsight, it would have been a good idea to approach Congressional leaders with a new strategy some time ago.

Growth Energy’s plan calls for transitioning VEETC payments from a blender’s credit to building up ethanol infrastructure with blender pumps and ethanol pipelines, plus requiring 100 percent of new vehicles to be flex-fuel vehicles (FFV), which, the organization said, would help the ethanol industry compete in an open market.

There are portions of that plan that are “incredibly appealing, incredibly attractive,” Jennings said. The industry needs to encourage long-term discussion on ethanol’s access to the marketplace, and do so in an intelligent and careful way—avoiding mixed signals. “Our job is to put our representatives in Congress in a position to win for us,” he said.

A question was asked from the audience, if pursuing an extension of VEETC puts FFVs and blender pumps on the back burner. No, Jennings said, both are important. “We’ve got to walk and chew gum at the same time,” he said.

Raymond Defenbaugh, president, CEO and chairman of Big River Resources LLC in West Burlington, Iowa, commented from the audience that what the industry needs is one voice of support for ethanol from all three groups—ACE, Growth Energy and the RFA. The groups, of which Big River Resources is a member of all three, have different strategies but all are unified in their support of ethanol. Ron Fagen, president and CEO of Fagan Inc., added that while a unified message is important, he didn’t see it as a negative to have three different groups, as each one has different connections in Washington.

Walker blames Barrett for sewage dumps (*Biz Times*)

Published August 6, 2010 - MKE Politics

Milwaukee County Executive and Republican candidate for governor Scott Walker today blamed Milwaukee Mayor Tom Barrett, the Democratic candidate for governor, for the Milwaukee Metropolitan Sewerage District's sewage overflows into Lake Michigan, which has occurred several times during heavy rainstorms.

Walker leveled the criticism as EPA Administrator Lisa Jackson was in Milwaukee today to meet with local leaders, water officials and scientists to discuss water innovation and conservation efforts.

Walker is blaming Barrett for the sewer overflow because his office appoints most of the individuals that oversee the MMSD.

The MMSD is run by a commission made up of eleven members. Seven of the commission members are appointed by the mayor of the City of Milwaukee. The other four commission members are appointed by the Executive Council of the Intergovernmental Cooperation Council (ICC) which is composed of the mayors and village presidents of the Milwaukee County suburban municipalities (excluding South Milwaukee).

8.2 billion gallons of sewage has been dumped into Lake Michigan during Barrett's tenure, Walker's campaign said today.

"It's pure hypocrisy that President Obama's environmental police are coming to town for a photo op with pals Tom Barrett and (Governor) Jim Doyle and the schedule of events doesn't include a tour of the billions of gallons of raw sewage and storm water Barrett's sewerage district dumped into Lake Michigan," said Gilkes. "Tom Barrett is Wisconsin's biggest polluter, dumping over 8.2 billion gallons into Lake Michigan since taking office – polluting our lake with nearly 40 times more pollution than the BP oil spill. It's time to flush out the truth from Barrett about why he's done nothing to stop polluting the lake."

Barrett's campaign said Walker has done nothing to address the sewage dumping problems during his tenure as Milwaukee County Board executive.

"It's ironic that Scott Walker is deciding now to weigh in he has been silent on the issue for years," said Barrett campaign spokesman Phil Walzak. "He's never even bothered to attend the commission meeting to either help solve issues or raise concerns and he is part of the issue as well since Milwaukee county itself owns 39 miles of sanitary sewers which is more than the other communities in the area. And basically he is trying to make an issue out of the fact that this region suffered a 100 year storm three weeks ago he is trying to score political points off that and that is pretty shameless. Also the fact that somebody should ask Scott Walker where his plan is solve this because cost estimates have suggested that this would be about $8 or $9 billion to make the upgrades necessary to stop these overflows and we are all waiting for the Walker plan to fund those repairs for $9 billion. Whenever he gets around to actually offer some real ideas we will be eager to hear them."

After opening the State Fair this morning, Gov. Jim Doyle joined Jackson and Barrett for a lakefront event at Discovery World promoting the city's water innovation and conservation efforts. Organizers of the event touted UW-Milwaukee's School of Freshwater Science and EPA's commitment to protect the nation's waters. Jackson was to sign a research agreement with UWM focusing on cleaning and conserving water.

Jackson joined Doyle, Barrett and UW-Milwaukee Chancellor Carlos Santiago at a press conference to discuss water policy and a budding water tech industry. Jackson also was slated to visit the state fair.

"EPA Administrator Jackson's visit is an excellent opportunity for Wisconsin to showcase its national and global leadership in water quality and water security technology," said Sen. Russ Feingold, D-Middleton. "UW-Milwaukee's School of Freshwater Science is a prime example of how Wisconsin universities, research institutions and small businesses are working to advance our economy and create jobs, while addressing a basic necessity here and abroad – maintaining and protecting clean water. The federal government has an important role to play in helping make sure Wisconsin stays on the cutting edge of this field, including strong investments in the research and development efforts of small businesses, universities and research institutions. Not only would this help address a global need, but it will also help drive job creation in Wisconsin and fuel innovation and long term economic development."
-BizTimes Milwaukee and WisPolitics.com

Residents tell EPA chief no to Pebble Mine (*Juneau Empire*)

Thursday, August 05, 2010
Story last updated at 8/5/2010 - 10:37 am
Residents tell EPA chief no to Pebble Mine
The Dutch Harbor Fisherman
DILLINGHAM - One by one, representatives of a dozen Southwest Alaska communities stood to tell the head of the U.S. Environmental Protection Agency of the threat they feel the massive Pebble Mine prospect would pose to their way of life.

"If you take away who we are, our natural resources, that would be terminating us as a people," Mary Ann Johnson from the tribal council of Portage Creek told EPA Administrator Lisa Jackson last week, during a listening session at Dillingham High School.

"The salmon have saved people from starvation," said Dennis Andrew, of the village of New Stuyahok, noting the importance of the Bristol Bay watershed's abundance to both people and wildlife. "It is so important that they continue to spawn in our waters."

The event, billed by EPA as a listening session on the massive copper, gold, silver and molybdenum deposit that could be mined at the headwaters of the Bristol Bay watershed, attracted only opponents.

Supporters, including representatives of Iliamna Development Corp., who say the prospect poses a tremendous opportunity for economic development, were not in attendance.

Jackson had met earlier in Anchorage with representatives of the Pebble Limited Partnership, which has said it will invest up to $73 million in Alaska this year as part of its ongoing effort to advance the project. According to the Pebble Partnership, the mine prospect has one of the largest concentrations of copper, gold, molybdenum and silver in the world.

Those speaking to the EPA at the listening session spoke of other riches. They are the sons and daughters of Eskimo families who have inhabited this region for thousands of years, engaging in a subsistence lifestyle dependent upon the fish and sea mammals in the waters of Bristol Bay and a land bountiful in wildlife and berries.

"We lead a very rich lifestyle in a resource-rich area," said Tom Tilden, first chief of the Curyung Tribal Council in Dillingham. "We can continue to live in this area as long as the resources are protected."

"Bristol Bay is a national treasure that we must protect," said Robin Samuelsen, president and chief executive officer of Bristol Bay Economic Development Corp. "Bristol Bay is one of those rare areas where we should not mine."

"We believe," said Kimberly Williams, executive director of Nunamta Aulukestai, Caretakers of the Land, "that our life is just so worth protecting. We are not going to go away; we're going to keep fighting" (to protect the Bristol Bay watershed).

Jackson, who holds a master's in chemical engineering from Princeton University, opened the meeting with greetings from President Barack Obama. She told the group that Obama wants his administration to talk with tribes on a government-to-government basis.

She also told several dozen people gathered in the high school gymnasium "that there is no such thing as a choice between a job and clean water. You are entitled to both."

Jackson, who grew up in coastal Louisiana, said life there was tough "but I will take my hat off to the people who make their living here," a reference to the challenges of living in rural Alaska and the subsistence lifestyle.

The speakers' list ranged from Jason Metrokin, president and chief executive officer of the Bristol Bay Native Corp., to Bella Hammond of Lake Clark, widow of former Gov. Jay Hammond, who received a standing ovation.

Others included former Alaska Senate President Rick Halford, a technical advisor to Nunamta Aulukestai and Trout Unlimited; Dillingham city planner Jody Seitz, and Anchorage attorney Jeff Parker, representing the community of Nondalton.

Major concerns voiced were the importance of maintaining pollution-free waters critical to subsistence and the Yup'ik Eskimo culture, as well as the multi-million dollar commercial and sport fishing industry.

Some focused on potential activities at the proposed mine that they believe could forever contaminate the watershed critical to all life in the region. Others contended that activities during the prospect's exploration phase are damaging king salmon runs and causing many animals in the Mulchatna caribou herd to migrate elsewhere.

"Moose and caribou are an important part of our diet," said Peter Christopher of New Stuyahok. Exploration activities at the mine site have scared off 75 percent of the Mulchatna herd, he said.

"The mine could affect the Nushagak, which is our aquifer," Seitz said.

The city of Dillingham opposes Pebble, she said. "Fisheries are a critical piece of the economy."

Many speakers also addressed a need for a closer relationship between the federal and tribal governments, and said the state does not support the tribes.

The listening session was preceded by a potluck luncheon featuring a number of popular area foods, including moose, salmon, duck, muktuk and fried bread, plus salads and large bowls of akutaq - Eskimo ice cream - filled with berries abundant in the region.

The Dutch Harbor Fisherman

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Petition filed to ban traditional ammunition (*Examiner*)

August 5, 2:09 PM · Nick Hromiak - Allentown Outdoor Recreation Examiner
National Shooting Sports Foundation (NSSF), the trade association for the ammunition, shooting and hunting industry, is alerting all gun owners, hunters and shooters that their voice is needed to oppose a petition filed August 3 by the extremist Center for Biological Diversity (CBD) to ban traditional ammunition.

According to NSSF, your right to choose the ammunition you hunt and shoot with is at stake.

NSSF strongly suggests contacting Lisa P. Jackson, Administrator for the U.S. Environmental Protection Agency (ph: 202-564-4700; email: Jackson.lisa@epa.gov and Steve Owens, Administrator, Prevention, Pesticides & Toxic Substances (ph: 202-564-2902; email: Owens.steve@epa.gov) to voice opposition to

The petition seeks to ban the use of traditional ammunition containing lead-core components. This ban would apply to ALL ammo including that used by target shooters.

In their filing, the petition erroneously claims that the use of traditional ammunition posses a danger to 1) wildlife, in particular raptors such as bald eagles that may feed on entrails or unrecovered game left in a field and 2) that there is human risk from consuming game harvested using traditional ammo. Also the petition falsely alleges that this ammo is inconsistent with the Toxic Substance Control Act of 1976 in which Congress expressly exempted ammo from being regulated as a “toxic substance.”

The NSSF states that there is no scientific evidence that traditional ammunition has an adverse affect on wildlife populations that would require banning its use, such as scientifically based restrictions on waterfowl hunting.

There is statistics from the U.S. Fish and Wildlife showing that from 1981 to 2006 the number of breeding pairs of bald eagles in the U.S. has increased 724 percent. And similarly, raptor populations throughout the country are soaring.

A ban on ammunition would severely impact wildlife conservation in that the federal excise tax manufacturer’s pay on the sale of ammo (11 percent), is a primary source of wildlife conservation funding.

NSSF urges all outdoor sportsmen and women to contact the above EPA executives to express opposition to this petition.

To this outdoorsman, CBDs filing is also an around-about way of pursuing gun control.

To automatically receive outdoor news and views from Nick Hromiak, click on the "Subscribe"

EPA & UWM Come to an Understanding (*WUWM News*)

By Susan Bence
August 5, 2010 | WUWM | Milwaukee, WI

EPA Administrator Lisa P. Jackson spent much of the day in Milwaukee, meeting with local leaders and scientists to discuss water innovation and conservation.

The day also included a press conference overlooking Lake Michigan, where Jackson and UWM Chancellor Carlos Santiago signed a Memorandum of Understanding.

Santiago says the university has a new partner in the EPA and they will share expertise in addressing the nation's water issues.

EDITORIAL / OP-ED / COMMENTARY / LETTERS

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Annals of executive overreach (*Washington Post*)

By Charles Krauthammer
Friday, August 6, 2010; A19
Last week, a draft memo surfaced from the Department of Homeland Security suggesting ways to administratively circumvent existing law to allow several categories of illegal immigrants to avoid deportation and, indeed, for some to be granted permanent residency. Most disturbing was the stated rationale. This was being proposed "in the absence of Comprehensive Immigration Reform." In other words, because Congress refuses to do what these bureaucrats would like to see done, they will legislate it themselves.

Regardless of your feelings on the substance of the immigration issue, this is not how a constitutional democracy should operate. Administrators administer the law, they don't change it. That's the legislators' job.

When questioned, the White House played down the toxic memo, leaving the impression that it was nothing more than ruminations emanating from the bowels of Homeland Security. But the administration is engaged in an even more significant power play elsewhere.

A 2007 Supreme Court ruling gave the Environmental Protection Agency the authority to regulate carbon emissions if it could demonstrate that they threaten human health and the environment. The Obama EPA made precisely that finding, thereby granting itself a huge expansion of power and, noted The Post, sending "a message to Congress."

It was not a terribly subtle message: Enact cap-and-trade legislation -- taxing and heavily regulating carbon-based energy -- or the EPA will do so unilaterally. As Frank

O'Donnell of Clean Air Watch noted, such a finding "is likely to help light a fire under Congress to get moving."

Well, Congress didn't. Despite the "regulatory cudgel" (to again quote The Post) the administration has been waving, the Senate has repeatedly refused to acquiesce.

Good for the Senate. But what to do when the executive is passively aggressive rather than actively so? Take border security. Sen. Jon Kyl (R-Ariz.) reports that President Obama told him about pressure from his political left and its concern that if the border is secured, Republicans will have no incentive to support comprehensive reform (i.e., amnesty). Indeed, Homeland Security's abandonment of the "virtual fence" on the southern border, combined with its lack of interest in completing the real fence that today covers only one-third of the border, gives the distinct impression that serious border enforcement is not a high administration priority absent some Republican quid pro quo on comprehensive reform.

But border enforcement is not something to be manipulated in return for legislative favors. It is, as the administration vociferously argued in court in the Arizona case, the federal executive's constitutional responsibility. Its job is to faithfully execute the laws. Non-execution is a dereliction of duty.

This contagion of executive willfulness is not confined to the federal government or to Democrats. In Virginia, the Republican attorney general has just issued a ruling allowing police to ask about one's immigration status when stopped for some other reason (e.g., a traffic violation). Heretofore, police could inquire only upon arrest and imprisonment.

Whatever your views about the result, the process is suspect. If police latitude regarding the interrogation of possible illegal immigrants is to be expanded, that's an issue for the legislature, not the executive.

How did we get here? I blame Henry Paulson. (Such a versatile sentence.) The gold standard of executive overreach was achieved the day he summoned the heads of the country's nine largest banks and informed them that henceforth the federal government was their business partner. The banks were under no legal obligation to obey. But they know the capacity of the federal government, when crossed, to cause you trouble, endless trouble. They complied.

So did BP when the president summoned its top executives to the White House to demand a $20 billion federally administered escrow fund for damages. Existing law capped damages at $75 million. BP, like the banks, understood the power of the U.S. government. Twenty billion it was.

Again, you can be pleased with the result (I was) and still be troubled by how we got there. Everyone wants energy in the executive (as Alexander Hamilton called it). But not lawlessness. In the modern welfare state, government has the power to regulate your life. That's bad enough. But at least there is one restraint on this bloated power: the

separation of powers. Such constraints on your life must first be approved by both houses of Congress.

That's called the consent of the governed. The constitutional order is meant to subject you to the will of the people's representatives, not to the whim of a chief executive or the imagination of a loophole-seeking bureaucrat.

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Nothing new in the pipeline (*Los Angeles Times*)

August 6, 2010 Friday
Home Edition
MAIN NEWS; bad desk code; Editorial Desk; Part A; Pg. 19
Nothing new in the pipeline;
An oil spill in Michigan's Kalamazoo River points out the grave flaws in America's energy policies.

Michael Brune and Anne Woiwode, Michael Brune is executive director of the Sierra Club, the nation's oldest and largest grass-roots environmental organization. Anne Woiwode is director of the Sierra Club's Michigan chapter.

If the BP blowout in the Gulf of Mexico is causing us to reconsider deep-sea drilling, then last week's oil disaster in Michigan should give us pause about constructing new oil pipelines. And taken together, the spills spotlight what's wrong with our nation's energy direction.

Patrick D. Daniel, chief executive of Enbridge Inc., apologized last week for "the mess we made." He was referring to the pipeline rupture that dumped about a million gallons of crude oil into Michigan's Kalamazoo River. Though we're sure that Daniel genuinely regrets that it was his company's turn to advertise the obvious dangers of continuing our nation's dependence on oil, this time, sorry's not good enough.

The immediate consequences of this particular "mess" are bad enough. Thirty miles of the Kalamazoo River were fouled. Birds, fish and other wildlife were killed or oiled. People had to be evacuated from their homes because of high levels of benzene in the air. When the heavy crude passed through the city of Battle Creek, the Kellogg Co. even had to stop making Corn Flakes.

The Kalamazoo empties directly into Lake Michigan. If oil had reached there, it would have been, in the words of Michigan Gov. Jennifer Granholm, "a tragedy of historic proportions." Although the Kalamazoo has come a long way from the days when it was the site for paper mills that dumped chemical waste directly into the river, a stretch of the river is still a **Superfund** site, and scientists warn that the spilled oil could release

pollutants buried in the river's sediment, unleashing even more toxins.

That's more than a "mess." On top of that, this disaster might have been avoided had Enbridge been more responsible. Federal regulators warned Enbridge in January about corrosion in the pipeline, and the company had a history of citations. Needless to say, Daniel's apology didn't include taking responsibility for that negligence.

But what we really can't afford to overlook is that the disaster in Michigan is only the most recent example of a threat that too many Americans don't even know about. The pipe that burst is part of one of the largest pipeline systems in the world. These are the pipes that bring tar-sands oil from Canada to refineries throughout the industrial cities of the Midwest.

To get tar-sands oil, you first clear-cut ancient boreal forest. Then you expend jaw-dropping quantities of energy and water to grind up the earth and extract tiny bits of crude. The process leaves behind toxic lakes so big they can be seen from space.

Now the Obama administration is considering approval of a pipeline that would dramatically expand tar-sands oil distribution. It's called the Keystone XL. If you want a perfect example of what's gone wrong with American energy policy, take a good look at the Keystone XL pipeline. Once built, it would traverse one of the most important aquifers in the country on its way to the Gulf of Mexico. A single spill could threaten the water supply for nearly one-fifth of the wheat, corn and cotton grown and the cattle raised in America.

In light of this, does the company behind the pipeline seem concerned about protecting water and farming communities from this extremely toxic oil? Not exactly. It's requested waivers that would allow it to skirt standard safety regulations. Why take precautions when you can simply apologize after the fact? We've seen this kind of "accidents won't happen" hubris before, and the gulf is still paying the price.

Instead of allowing foreign oil companies to build more pipelines and operate more drilling rigs in the Midwest, the gulf and elsewhere, we should invest in clean, safe, American energy. And before anyone in Washington decides we should approve the Keystone XL, they should see what one small "mess" did to the Kalamazoo.

It's ironic that Michigan must pay the price this time. The state is itching to take the lead in clean-energy technology. In less than a year, 16 electric vehicle technology plants have opened there, and they're projected to create 62,000 new jobs over the next decade. And we could be doing even more.

If not, we'll all be sorry. As this summer has made clear, oil disasters can happen anywhere, and no part of America will be safe as long as we continue subsidizing Big Oil.

Federal bureaucrats bypass Congress to suit their agendas (*Sacramento Bee*)

California
August 6, 2010 Friday
A; Pg. 11
Viewpoints: Federal bureaucrats bypass Congress to suit their agendas
By Charles Krauthammer
Last week, a draft memo surfaced from the Homeland Security Department suggesting ways to administratively circumvent existing law to allow several categories of illegal immigrants to avoid deportation and, indeed, for some to be granted permanent residency. Most disturbing was the stated rationale.

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When questioned, the White House downplayed the toxic memo, leaving the impression that it was nothing more than ruminations emanating from the bowels of Homeland Security. But the administration is engaged in an even more significant power play elsewhere.

A 2007 Supreme Court ruling gave the Environmental Protection Agency the authority to regulate carbon emissions if it could demonstrate that they threaten human health and the environment. The Obama EPA made precisely that finding, thereby granting itself a huge expansion of power and, noted the Washington Post, sending "a message to Congress."

It was not a terribly subtle message: Enact cap-and-trade legislation – taxing and heavily regulating carbon-based energy – or the EPA will do so unilaterally. As Frank O'Donnell of Clean Air Watch noted, such a finding "is likely to help light a fire under Congress to get moving."

Well, Congress didn't. Despite the "regulatory cudgel" (to again quote the Post) the administration has been waving, the Senate has repeatedly refused to acquiesce.

Good for the Senate. But what to do when the executive is passively aggressive rather than actively so? Take border security. Sen. Jon Kyl, R-Ariz., reports that President Barack Obama told him about pressure from his political left and its concern that if the border is secured, Republicans will have no incentive to support comprehensive reform (i.e., amnesty).

Indeed, Homeland Security's abandonment of the "virtual fence" on the southern border, combined with its lack of interest in completing the real fence that today covers only one-third of the border, gives the distinct impression that serious border enforcement is not a high administration priority absent some Republican quid pro quo on comprehensive reform.

But border enforcement is not something to be manipulated in return for legislative favors. It is, as the administration vociferously argued in court in the Arizona case, the federal executive's constitutional responsibility. Its job is to faithfully execute the laws. Non- execution is a dereliction of duty.

This contagion of executive willfulness is not confined to the federal government or to Democrats. In Virginia, the Republican attorney general has just issued a ruling allowing police to ask about one's immigration status when stopped for some other reason (e.g., a traffic violation). Heretofore, police could inquire only upon arrest and imprisonment.

Whatever your views about the result, the process is suspect. If police latitude regarding the interrogation of possible illegal immigrants is to be expanded, that's an issue for the legislative branch, not the executive branch.

How did we get here? I blame Henry Paulson. (Such a versatile sentence.) The gold standard of executive overreach was achieved the day he summoned the heads of the country's nine largest banks and informed them that henceforth the federal government was their business partner. The banks were under no legal obligation to obey. But they know the capacity of the federal government, when crossed, to cause you trouble, endless trouble. They complied.

So did BP when the president summoned its top executives to the White House to demand a $20 billion federally administered escrow fund for damages. Existing law capped damages at $75 million. BP, like the banks, understood the power of the U.S. government. Twenty billion it was.

Again, you can be pleased with the result (I was), and still be troubled by how we got there. Everyone wants energy in the executive (as Alexander Hamilton called it). But not lawlessness. In the modern welfare state, government has the power to regulate your life. That's bad enough. But at least there is one restraint on this bloated power: the separation of powers. Such constraints on your life must first be approved by both houses of Congress.

That's called the consent of the governed. The constitutional order is meant to subject you to the will of the people's representatives, not to the whim of a chief executive or the imagination of a loophole-seeking bureaucrat.

GOP foils regulations (*Kansas City Star*)

Ever since Ronald Reagan was president, the red states and their red senators have fought every regulation and the Environmental Protection Agency's findings. They want business to regulate itself, and they say the market will make sure this happens.

Now big business is wrecking the environment, and thanks to Republicans we have lax or poor regulations protecting America. This is like getting what you voted for.

So quit crying about the slow response from the Obama administration. Look at your own senators' votes for the last 30 years and blame them.

Arnold Mall
Kansas City, Kan.

Who makes the laws, anyway? (Washington Post)

August 6, 2010 Friday
Regional Edition

SECTION: EDITORIAL COPY; Pg. A19
Maryland
Who makes the laws, anyway?
By Charles Krauthammer
Last week, a draft memo surfaced from the Department of Homeland Security suggesting ways to administratively circumvent existing law to allow several categories of illegal immigrants to avoid deportation and, indeed, for some to be granted permanent residency. Most disturbing was the stated rationale. This was being proposed "in the absence of Comprehensive Immigration Reform." In other words, because Congress refuses to do what these bureaucrats would like to see done, they will legislate it themselves.

Regardless of your feelings on the substance of the immigration issue, this is not how a constitutional democracy should operate. Administrators administer the law, they don't change it. That's the legislators' job.

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AIR

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U.S. Changes Plan for Capturing Emissions From Coal (*New York Times*)

August 6, 2010 Friday
Late Edition - Final
Section B; Column 0; Business/Financial Desk; Pg. 2
U.S. Changes Plan for Capturing Emissions from Coal
By MATTHEW L. WALD
WASHINGTON -- The Energy Department abruptly shifted course on Thursday on a flagship federal effort to capture and sequester carbon dioxide from coal-fired power plants, saying it would not finance construction of a new plant in Mattoon, Ill.

Instead of underwriting that project, which would have turned coal into a hydrocarbon gas, filtered out the carbon and burned the hydrogen, the government said it would contribute $737 million to remake an obsolete oil-burning plant in Meredosia, Ill.

In the new design, the plant would be fed pure oxygen and burn coal, and the exhaust gas would consist of almost pure carbon dioxide. That carbon dioxide would then be piped 170 miles east to Mattoon and injected underground, possibly along with contributions from an ethanol plant in Decatur, Ill., and other industrial plants along the way.

It is the latest twist for FutureGen, a federally supported venture to demonstrate the most advanced ways to convert coal to a gas, capturing pollutants and burning the gas for power.

Despite warnings that pollution from power plants contribute to global warming and that the United States should promptly build several prototypes using different technologies,

FutureGen has been repeatedly delayed by drawn-out federal procedures for choosing a site and then by sticker shock in Washington.

The Bush administration cut off money, saying the costs were too high. But President Obama included $1 billion in last year's stimulus bill. Now that there is money in hand, his administration opted to support a more advanced technology that some officials described on Thursday as FutureGen 2.

Although the planned retrofit involves an old oil-burning plant, the new approach could be a way of converting dozens of big old coal plants around the country, said Matt Rogers, a senior adviser to the energy secretary, Steven Chu. If successful, Mr. Rogers said, this would allow the coal industry "to remain competitive on a global basis."

With new Environmental Protection Agency rules scheduled to take effect limiting power plants' emissions of conventional pollutants like nitrogen oxides, mercury and particulates, he said, many older coal plants are candidates for re-powering.

Senator Richard J. Durbin of Illinois, who has been a strong supporter of the Mattoon project, said in a conference call that the gasification strategy no longer made sense because it was no longer the best or newest option. "That happens when you wait six years," he said.

The largest plant for burning oxygen is 10 megawatts; the plant in Meredosia would be 200 megawatts and the first of a commercial scale, officials involved in the project said.

Under the new structure, the original FutureGen coalition would still manage the sequestration portion of the project and would arrange experiments with different types of coals to gain experience that could be useful around the world.

The oil-fired plant belongs to Ameren, which is based in St. Louis. It has not run much in recent years and has not generated any power since 2009, said a spokeswoman, Susan Gallagher. The plant operates in the competitive Illinois market, and any profit or loss would fall to Ameren shareholders and not its customers, she said.

Some of the oxygen will be supplied by the French energy company Air Liquide, which relies on a conventional technology, chilling the air until the oxygen turns to a liquid at 297 degrees below zero Fahrenheit. The energy required to accomplish that has always been considered a drawback to the technology.

Mr. Rogers said the project would also test a membrane that could sort oxygen from nitrogen without consuming much energy. And a plant burning oxygen would not need to use much energy to clean up other pollutants, like nitrogen oxides, which cause smog, and mercury, he said.

Babcock & Wilcox will do the engineering. The project is expected to capture 90 percent of the carbon dioxide, or 1.3 million tons a year.

Two other efforts to capture carbon dioxide from coal burning are under way. Duke Energyis building a coal-fired plant in Edwardsport, Ind., that will cook coal into a gas that is a mixture of hydrogen and carbon monoxide. Tentative plans call for it to be outfitted with equipment that sorts out the carbon dioxide and burns the hydrogen, although there is no firm commitment yet to do that.

And American Electric Power is testing a system at its Mountaineer plant, on the Ohio River in New Haven, W.Va., that uses ammonia to scrub the carbon dioxide out of gas in the smokestack.

The government recently gave a $417 million tax credit to another coal project in Illinois, the Taylorville Energy Center, in exchange for a promise to capture 65 percent of its carbon. That plant would turn coal to natural gas and then burn the natural gas.

Global warming experts say that coal is certain to be burned around the world for decades, and that limiting carbon dioxide concentrations in the atmosphere will depend in part on finding inexpensive ways to capture the emissions from coal-fired plants.

Yet the United States has been off to a slow start in the field. An alternative is switching to natural gas, which has about half as much carbon as coal per unit of energy. But that would be inadequate to reach the goal espoused by President Obama, a reduction of 80 percent in emissions by 2050.

August 5, 2010

EPA: NKY air meets standard (*Cincinnati.com*)

Enquirer staff report
FRANKFORT - The air in Northern Kentucky is cleaner than it was 13 years ago, according to the Environmental Protection Agency.

The EPA announced on Thursday that Boone, Campbell and Kenton Counties have been re-designated as meeting the 1997 eight-hour federal air quality standard for ozone pollution of .08 parts per million.

The Division of Air Quality submitted a request in January to the EPA to recognize the Northern Kentucky counties as meeting the standard.

"This re-designation of attainment clearly demonstrates what can happen when state and local governments, along with industry, work together and bring about a positive solution for everyone," DAQ division director John Lyons said in a press release. "But, we all realize our efforts to make the air in Northern Kentucky cleaner and healthier is a never-ending challenge that we will continue to address."

Boone, Campbell, and Kenton counties have been out of compliance with the standard for a number of years, primarily due to monitored violations in Warren County, Ohio. The Northern Kentucky counties were considered to be partly responsible for the region's air quality problems and were included in the 1997 Ohio/Kentucky/Indiana Metropolitan Statistical Area designation.

Ohio and Indiana counties linked to the MSA have gone through this review process and those counties also have been given designation as attaining the federal standard.

Ozone is a colorless, odorless gas that is formed when emissions from a variety of sources, including internal combustion engines, power plants, factories and homes, react in the presence of sunlight and heat. Reaching its peak levels in the summer, ozone can cause a variety of health problems, including irritation of the eyes and respiratory tract and difficulty in breathing. Children, the elderly and people with heart or respiratory problems are particularly susceptible to high levels of ozone.

EPA sues Michigan utility over coal-fired power plant expansion (*Power-Gen Worldwide*)

5 August 2010-- The U.S. Environmental Protection Agency (EPA) sued DTE Energy seeking to halt an expansion to a coal-fired electric plant that the agency says will worsen air pollution in Michigan, according to an article in The Detroit News.

The lawsuit, filed in federal court in Detroit, alleges DTE replaced two major boiler components in March to Unit 2 at its Monroe Power Plant without first obtaining necessary approvals required under the Clean Air Act. Those approvals included DTE having to install the best available technology to minimize emissions of sulfur dioxide and nitrogen oxides.

The EPA is asking a federal judge to shut down the unit and halt further modifications until DTE complies with the Clean Air Act. It also asks for civil penalties of up to $37,500 per day.

August 06, 2010

Valley sand and gravel plants warned by EPA (*Arizona Republic*)

by Emily Gersema - Aug. 6, 2010 12:00 AM
The Arizona Republic

Seven Valley sand and gravel companies, including Fisher Sand & Gravel, which was forced to shut down its south Phoenix asphalt plant, could be barred from bidding on federal projects or face fines because of dust-related violations found at their sites.

The U.S. Environmental Protection Agency sent violation notices to each company in July after conducting several inspections at sand and gravel plants and has offered to talk about the violations before determining penalties.

According to EPA records obtained by The Arizona Republic, companies that so far have received notices for various failures to control or reduce dust were:

• Fisher Sand & Gravel, a Tempe company with sites in Buckeye, Phoenix and Sun City.

• Kilauea Crushers Inc., a Peoria company with a Buckeye plant.

• Material Delivery Inc. in Glendale.

• M.R. Tanner Mining Inc. in Gilbert.

• National Specialty Aggregates in Mesa.

• Sun Land Materials in Laveen.

• Vulcan Materials Company-Western Division in Phoenix with sites in El Mirage, Laveen and Mesa.

John Brock, an EPA enforcement officer, said inspections took place last spring after the agency adopted a Maricopa County environmental rule for cement, asphalt, sand and gravel operations as a federally enforceable regulation.

The county had put Rule 316 in 1993 as part of its state plan to comply with federal clean-
air standards. It's been revised three times since then, and the EPA adopted it earlier this year so its federal inspectors can enforce it and check plants for compliance.

Dust is a key target for pollution-reduction efforts because research shows repeated exposure can lead to infections and chronic lung problems. It's particularly harmful to the elderly and children whose lungs are not fully developed, Brock said.

State and county officials are battling with federal regulators who have threatened to

withhold federal highway funds to force compliance with the Clean Air Act. Many of the companies, such as Fisher Sand & Gravel, have gravel pits, and cement and asphalt mills at sites along the Salt River, where environmental monitors record some of county's highest levels of dust pollution, county records show.

The industry in that area coexists with homes and apartments. Fisher's south Phoenix plant near 32nd Street and Interstate 17/U.S. 60 has been the subject of neighbors' pollution complaints and lawsuits. The company must dismantle an asphalt mill there that a Maricopa County Superior Court judge this summer determined was built illegally.

Fisher and a few of the other companies issued EPA warnings in July are beneficiaries of millions of dollars in federal highway funds. Building roads, patching them, or selling cement and asphalt for those projects are their bread and butter.

Earlier this summer, Fisher won more than $45 million in ADOT projects backed by federal stimulus money after the State Transportation Board rejected arguments by the Arizona Attorney General's Office that Fisher is an irresponsible contractor.

It's unclear if existing federal contracts would be affected by the latest environmental violations. No penalty has been assessed yet.

Fisher spokesman Karl Gentles said the EPA is focused on the entire sand and gravel industry, not just Fisher. "We addressed each one immediately as we received the notice," he said.

C. William Nichols, president of Kilauea Crushers, said his company tries to comply with the various regulations and curb problems with dust. He added, though, that he feels some of the rules are excessive, especially in a period of low construction when mills are sometimes dormant. "We will have meetings with them and we get everything worked out," he said. "We do the best we can."

Vulcan officials said they are preparing a response to the EPA but say they've been in full compliance. National Specialty Aggregates officials declined to comment. Representatives of the other companies said officials were unavailable for comment.

Brock said based on his 12 years with the agency, it's unlikely the EPA will declare any of the companies ineligible for federal projects as a penalty.

"But it certainly gets their attention, which is really one of the main goals of our effort," Brock said. "So then they'll realize that not only the county is looking but the federal EPA is looking. We feel that by taking these actions that we're strengthening enforcement."

Maricopa County Air Quality records show that companies can be assessed fines of a few thousand dollars for violations of Rule 316. But Brock said fines can be heftier at the

federal level. The fines are determined after the EPA's private discussions with the companies, or if no compromise is reached, by a judge.

"We take these violations very seriously," said Steve Trussell, executive director of the Arizona Rock Products Association trade group. "We'd only be hurting ourselves if we were to jeopardize that highway federal money."

Trussell said he has been meeting with company representatives to discuss enforcement and compliance issues. He said the industry group worked closely with the county for at least eight years on the "interpretation" of Rule 316, and now it will need to start such talks with the EPA.

"Compliance with the county may not always mean compliance with EPA. We'll be working EPA to provide further information to them," Trussell said.

08/06/2010

States Split Over Plans To Implement EPA's GHG Permitting Program (*Inside EPA*)

States are split over EPA's plans to require first-time Clean Air Act greenhouse gas (GHG) permits, with Texas telling the agency it has no intention to implement any GHG permit rules, Florida saying it plans to ask EPA to take over its program, and Wisconsin saying it intends to implement emergency rules as it works to craft a final policy.

The states' plans on their GHG permit rules are contained in recent responses to EPA's request for information by Aug. 2 on their plans for implementing the agency's final tailoring rule, which is intended to ease the regulatory thresholds for permitting stationary sources of GHGs. *Relevant documents are available on InsideEPA.com.*

In addition to the tailoring rule, EPA is also working on a so-called SIP Call demanding that states harmonize their programs to meet the federal requirements. And the agency is working on a related rule that could establish a federal implementation plan (FIP) that will act as a federal "backstop" that will give the agency authority to temporarily take over state GHG permitting if states like Texas and Florida fail to revise their laws and rules in sufficient time to implement EPA's tailoring rule. Both proposals are now pending at the White House Office of Management & Budget.

"There will be a good faith effort by almost every state to comply on time . . . but there will likely be some growing pains associated with the program," says a source with the National Association of Clean Air Agencies, which represents state and local air regulators. The source predicts widely varying state responses on the issue but says the group is still assessing the overall breakdown of responses.

In its Aug. 2 letter to EPA, Texas Commission on Environmental Quality Chairman Bryan Shaw and Texas Attorney General Greg Abbott say, "Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emissions."

Other states have sent wide-ranging responses to EPA on their ability and willingness to implement the tailoring rule, in response to EPA's request in the June 3 tailoring rule to inform the agency of their efforts.

At least one state -- Florida -- is already calling for EPA to take over its stationary source permitting programs for GHGs early next year because it will be unable to make necessary changes ahead of the GHG tailoring rule's trigger date of Jan. 2, 2011. Florida says that a FIP will be needed to allow EPA to take over stationary source permitting.

Florida says in a July 2 letter to EPA that because the state will elect a new governor this year, it will be impossible to estimate when it will be able to finalize rule revisions to incorporate the new thresholds contained in the tailoring rule. As a result, Florida asks EPA to anticipate having to use its FIP authority "for an indefinite period of time" on the issue.

Florida is not the only state that faces varying degrees of difficulty in making regulatory or even statutory changes to its programs. Several state sources cite prior indications that dozens of states may have to make at least some changes, though many of these sources say EPA's final tailoring rule -- which also made changes from the agency's earlier proposal -- helps blunt the impact of the transition for states.

Some states appear on track to finalize new rules ahead of the Jan. 2, 2011, trigger for applying GHGs to Clean Air Act prevention of significant deterioration (PSD) and Title V permits. For example, Wisconsin in an upcoming letter to EPA will voice its intent to issue emergency rules effective no later than Jan. 2 as it pursues permanent rules it says it will need nine to 12 months to finalize.

Meanwhile, several states joined Texas in filing a July 30 petition with the U.S. Court of Appeals for the District of Columbia Circuit challenging EPA's tailoring rule -- which limits the burden of permit requirements to stationary sources that emit more than 75,000 tons per year (tpy) of carbon dioxide (CO2), at least initially. These states include Alabama, North Dakota, Mississippi, South Carolina and Nebraska. Additionally, Louisiana filed a separate suit Aug. 2, the deadline to file independent challenges that are likely to be consolidated.

Two environmental groups are also challenging the rule. The Sierra Club, which supports the premise of the rule, is solely focusing on the agency's definition of "subject to regulation," according to press reports.

The Center for Biological Diversity (CBD), meanwhile, opposes EPA raising the regulatory threshold in the final rule from 25,000 tpy of CO2 in its initial proposal to 75,000 tpy for PSD permits and 100,000 tpy for Title V operating permits.

Though CBD had previously indicated it would not file suit, CBD's Kevin Bundy says the organization changed its mind after EPA raised the regulatory trigger from 25,000 tpy.

"The best way to think about this petition is that we support the idea of a tailoring rule in general, but we are providing a counterbalance to the extreme arguments put forth by industry that EPA can never regulate these large industries," says Bundy. CBD is also seeking "to pin EPA down on a specific time schedule as to when these large polluters will be regulated with regard to their greenhouse gas pollutants." The group is not seeking to extend regulation to "homes, churches, hospitals [or] mom and pop shops," Bundy adds, but rather wants to compel EPA to "regulate those large emitters and regulate them now."

The National Alliance of Forest Owners, an industry group, also filed an Aug. 2 challenge. Others challenging the rule include the Southeastern Legal Foundation, which filed suit June 3 and was joined by 14 House Republicans.

BP SPILL

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Corexit BP dispersant makes oil disappear:Toxic aftermath in food chain, environment to last years (*Examiner.com*)

August 5, 2:54 PM · Maryann Tobin - Political Spin Examiner

Corexit BP dispersant makes oil disappear: Toxic aftermath in food chain and environment to last years

The real damage from the BP Gulf oil spill is in not what is seen, but in what cannot be seen. The unprecedented use of 1.8 million gallons of chemical dispersant has served BP well in hiding the physical evidence of the spill. But what it leaves in it’s wake is more deadly than the oil.

Jeff Goodell of Rolling Stone Magazine claims that since the beginning of the disaster on April 20, 2010, BP has been using an ‘out of sight- out of mind’ strategy. And despite earlier warnings from the US Environmental Protection Agency about the dangers of Corexit, dispersant continued to be pouring into the Gulf of Mexico.

Goodell said, “Oil is highly toxic.” He added, “Saying that dispersants are no worse than oil - is like saying the disease you have is no worse than cancer.”

The dispersant breaks up the oil up into smaller particles that are more “bio available and allows it to be taken in more widely in the food chain,” Goodall added.

Why BP was allowed the continued use of such massive amounts of dispersant after being told by the White House and the EPA to stop is unknown. However, it may have something to do with why the oil and dispersant that was feared dangerous last month, is suddenly being played down as if the entire Gulf oil spill should be considered little more than an inconvenience.

In time, more evidence may emerge confirming the worst fears of those who have claimed that from the beginning, the US government turned a blind eye to the safety of the public and the environment, to favor privilege for BP’s sole interest - their stockholders.

Senator Nelson’s Environmental Grandstanding (*Examiner*)

August 5, 8:50 PM · James Lampe - St. Petersburg Environmental News Examiner
Most people in the Gulf states are happy the oil slick has dissipated so they can focus on finishing their cleanups. Although the final chapter is yet to be written on the efficiency of the dispersants used, it appears that they worked very well in breaking up the massive oil plume.

However, Florida Senator Bill Nelson is concerned about the dispersants producing a “toxic brew.” He also noted, “the EPA allows BP and the company that makes the dispersant to do their own safety checks.” Those claims are a bit alarming, but do they have any merit? Does the EPA really let companies “run their own safety tests?”

Figure 1
1978 EPA report on environmental projects
including use of dispersants.

Dispersants have been around since the late 1970s. The EPA, DOE, NOAA, the Coast Guard, the American Society for Testing Methods (ASTM), state agencies, and hundreds of universities have been studying dispersants for over 30 years!

Figures 1 shows a 1978 EPA report which discussed dispersants, and Figure 2 shows a 1980 FL DEP report on Oil Dispersants.

An ASTM’s 1978 report “Chemical Dispersants for the Control of Spills,” stated, “Controlled application of dispersants to offshore oil spills can result in the least overall environmental damage to the shoreline.”

In 2005, the US Coast Guard presented the “History of Dispersant Development,” at the 2005 International Oil Spill Conference. They note that every region of the US had

EPA dispersants pre-approved by 1988, more than 20 years ago. In addition, “The consensus was, that given the current state of technology, only dispersants had the potential to mitigate large volumes of oil effectively.” (PDF)

1980 FLDEP report on Oil Dispersants

On May 27, 2010, The University of New Hampshire (UNH), NOAA, EPA and the Coast Guard had a meeting to Study Dispersant Use and Ecosystem Impacts of Dispersed Oil in the Gulf. (PDF) Their findings: “Over 50 experts and practitioners from government, academia and industry finished a two day meeting looking at the potential long term impacts of the prolonged use of large volumes of dispersants in the Deepwater Horizon oil spill response efforts in the Gulf of Mexico. This is the third time NOAA and EPA have gathered top scientists to discuss dispersant use since the spill began. EPA and NOAA scientists are conducting rigorous ongoing monitoring and analysis of the effectiveness and toxicity of the dispersants used.”

The EPA also did toxicity testing specifically for the BP oil and dispersants. On June 30, 2010, they announced, “EPA’s results indicated that none of the eight dispersants tested, including the product in use in the Gulf, displayed biologically significant endocrine disrupting activity.” But they did more testing.

On Aug 2, 2010, EPA announced, “The results indicate that the eight dispersants tested are similar to one another based on standard toxicity tests on sensitive aquatic organisms found in the Gulf. These results confirm that the dispersant used in response to the oil spill in the Gulf, Corexit 9500A, is generally no more or less toxic than the other available alternatives.”

The EPA has evaluated the toxicity of dispersants for years, and the data on dispersants are analyzed, validated, and reviewed, before it gets EPA approval. Therefore, it does not appear the Senator’s claim that “the EPA allows BP and the company that makes the dispersant to do their own safety checks” is valid.

Senator Nelson also introduced his “Safe Dispersants Act,” a bill to require companies to disclose chemicals used in future oil spill cleanups. However, since the EPA and OSHA already require this, I am at a loss as to what this bill does. All dispersants must be approved by the EPA before the dispersants can be put on EPA's list of products. The existing law is in the Code of Federal Regulations (40 CFR 900).

Since dispersants are already regulated, why would Senator Nelson hold a press conference to announce a bill to do things already being done? Is he not aware of these regulations? Or is it a knee jerk reaction by someone who thinks government can make any situation better? Why do you think he is proposing such legislation?

CLIMATE CHANGE / GLOBAL WARMING

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Pressure Building on Future of 2 Coal-Burning Power Plants (*New York Times)*

August 6, 2010 Friday
National Edition

Section A; Column 0; National Desk; Chicago ; CHICAGO NEWS COOPERATIVE; Pg. 17A Pressure Building on Future of 2 Coal-Burning Power Plants
By KARI LYDERSEN
Mayor Richard M. Daley has repeatedly billed himself as a green mayor and recently vowed to use "every available tool" to reduce the city's carbon footprint, but critics say City Hall has failed to grapple with Chicago's two most significant sources of greenhouse-gas pollution.

For the past decade, public health and environmental advocates have been trying to force Midwest Generation L.L.C. to reduce emissions from its aging Fisk and Crawford coal-burning power plants in the Pilsen and Little Village neighborhoods, abutting Cermak and Pulaski Roads near the Chicago Sanitary and Ship Canal. Yet Mr. Daley has fought City Council efforts to clean up emissions from the plants and has not said whether he will support a new proposal by Alderman Joe Moore (49th Ward) to force the plants to reduce emissions.

Together, the plants emit an estimated five million metric tons of carbon dioxide a year, according to the federal Environmental Protection Agency. The agency says particulate matter from coal-burning plants poses a serious public health risk for local residents.

On July 21, Mr. Daley spoke at the official opening of the nation's largest urban solar-energy plant in West Pullman, a plant owned and operated by the Exelon Corporation. His pledge that day to use every means to combat heat-trapping gases drew applause from clean-air groups.

But the same groups question why the 2008 Chicago Climate Action Plan -- which committed the city to sharply reducing its carbon output through sustainable development, renewable energy and energy efficiency -- does not deal with carbon-dioxide emissions from the two coal plants. Public health authorities and clean-air groups say they are among the dirtiest for their size in the nation.

"It's just strange the two largest sources of global-warming pollution in the city aren't really addressed," said Brian Urbaszewski, director of environmental health programs for the Respiratory Health Association of Metropolitan Chicago. "They're the elephants in the room."

Critics say the action plan is just one of several instances in which the mayor has failed to address pollution from the plants, which were built in the early 1900s and which now

have operating systems half a century old.

In 2002, Alderman Edward M. Burke (14th Ward) proposed an ordinance that would have forced the plants to cut their sulfur-dioxide and nitrogen-dioxide emissions by up to 90 percent. But, lacking support from the mayor, the measure never made it out of committee.

Now Alderman Moore has introduced a proposed ordinance that could force the plants either to shut down or to convert to cleaner-burning natural gas. Unlike Mr. Burke's proposal, Mr. Moore's addresses carbon dioxide emissions -- which scientists see as the main culprit in climate change -- along with pollutants that pose an immediate health risk.

Midwest Generation said that the city lacked the authority to regulate the coal plants and that only the state and federal government could do so. If the Moore proposal passes, the company will challenge Chicago's regulatory authority in court, said Charley Parnell, a spokesman for Midwest Generation.

While the mayor and top city officials have not taken a public position on the proposed ordinance -- and Mr. Daley declined to comment on the matter -- Mr. Moore said they had indicated they wanted to leave the matter to federal regulators. So far, the ordinance has 14 co-sponsors in the Council, more than half of the votes it needs to pass.

Critics attribute the lack of political support in part to substantial political donations that Midwest Generation and its parent company, Edison Mission Group, have made over the past decade. They include nearly $50,000 to the 25th Ward Regular Democratic Organization of Alderman Danny Solis of Pilsen and more than $10,000 to the campaign fund of Alderman Ricardo Munoz (22nd Ward) of Little Village. The company has also donated to the Democratic Party of Illinois and the Republican State Senate Campaign Committee.

"We participate in the system and support good people who represent the communities in which we operate," Mr. Parnell said.

This week Mr. Munoz signed on as a co-sponsor of Mr. Moore's proposal, and on Wednesday a Pilsen group protested outside a fund-raiser for Mr. Solis, demanding that he support the measure.

Mr. Moore said he hoped that, even without Mr. Daley's support, public concern over climate change and the increasingly understood health effects of particulate matter and other coal-plant pollutants would push more aldermen to support the proposal. He argued that home-rule provisions in the state's Constitution give Chicago the legal authority to limit emissions by the coal plants.

Mr. Parnell, of Midwest Generation, said the proposal could set a dangerous precedent.

"If we start to have a patchwork quilt of CO2 regulations that force the closure of these types of facilities," he said, "we will at some point run into a problem with a reliable, affordable, supply of power around the nation."

Mr. Moore called this "the same crying wolf we hear on the part of industry time and time again" whenever the Clean Air Act or other federal pollution regulations are tightened. "And each and every time," he continued, "they find it within their ability to comply with the regulations and continue to operate profitably."

Other than experimental technologies, which have not been used on a commercial scale, experts say there is no way to sufficiently reduce carbon dioxide emissions from coal-burning power plants to satisfy the proposed ordinance.

Retrofitting the plants to burn natural gas only would be prohibitively expensive, Mr. Parnell said.

"This is a shutdown ordinance," he said. "There's no ifs, ands or buts about that."

There is no shortage of electricity generation in the Chicago area. In fact, Illinois is a net electricity exporter, and Midwest Generation sells power from its Illinois plants to Pennsylvania.

"The reality is the coal comes from Wyoming, other states get the power, Midwest Generation gets the profit, and Chicago gets the pollution and health costs," said Howard A. Learner, executive director of the Environmental Law and Policy Center.

Officials with Midwest Generation and ComEd, an Exelon subsidiary that distributes the electricity, say that the Chicago plants are needed to maintain consistent voltage levels on the local electric grid, and that shutting them down could mean blackouts downtown.

ComEd said it was seeking approval from the Illinois Commerce Commission to spend $178 million on new transmission lines so it could maintain stability on the grid if the Fisk and Crawford Generating Stations were shut down. Bennie Currie, a ComEd spokesman, said the upgrade would entail rate increases of about 20 cents a month for residential customers.

Under a 2006 agreement with the Illinois Environmental Protection Agency, Midwest Generation must reduce nitrogen dioxide, sulfur dioxide and mercury emissions at its six Illinois plants. The company has already made the mercury reductions at the Fisk and Crawford plants, and Mr. Parnell said it was on track to meet the nitrogen-dioxide requirements by 2012. Midwest Generation would have to install "scrubbers" at Fisk by 2015 and at Crawford by 2018 to comply with the sulfur-dioxide limits.

National organizations, including the Sierra Club, Greenpeace and the Natural Resources Defense Council, are backing the proposed Chicago ordinance and see it as

a possible national model.

"The big issue here is, will the mayor support it?" said Bruce Nilles, director of the Beyond Coal campaign at the Sierra Club.

"This is the final moment in his legacy," Mr. Nilles said. "He's done a lot of incredible things for the city, but to continue to have two filthy coal plants in downtown Chicago has him looking a lot less green."

ENVIRONMENTAL JUSTICE

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08/06/2010

EPA Takes Cautious Approach To Streamlining Oil Spill Response Process (*Inside EPA*)

Administration officials are taking a cautious approach to streamlining the approval process for Gulf of Mexico oil spill response activities, saying EPA does not want burdensome procedural requirements to block solutions to the disaster but is reluctant to streamline key measures that protect against adverse impacts from response actions.

The agency's stance comes as members of EPA's National Environmental Justice Advisory Committee (NEJAC) appeared split over the need to streamline the federal approval process for emergency responses. At a July 27-29 NEJAC meeting in Washington, DC, one member said that response streamlining in the wake of Hurricane Katrina might have had adverse environmental impacts while pointing out that faster approval could help reduce the spill's impact.

At the NEJAC meeting, panel member Wynecta Fisher of E2 Inc. asked EPA waste chief Mathy Stanislaus about the apparently slow rate at which the federal government is approving permits for barges that could block oil from the BP spill from reaching wetlands. The government has approved several barges that can collect oil.

Still, Fisher expressed some concern about streamlining National Environmental Policy Act (NEPA) reviews of operations in the wake of Hurricane Katrina and urged the administration not to do the same for the response to the oil spill.

Stanislaus, head of EPA's Office of Solid Waste & Emergency Response, said, "One of the things that we're trying not to do is let process get in the way of solutions. . . . I'm not sure that we want to waive underlying substantial requirements" for permitting oil spill response actions. "There has to be a balance," he said later.

Stanislaus said EPA has taken a balanced approach weighing the need for quick approval of response actions with ensuring that those actions will not cause further environmental or public health risk, pointing to the agency's approval of dispersants for use in the Gulf, which act like dish soap to break up oil slicks.

The issue of dispersant use represents a "trade-off between two bad choices," Stanislaus said, because EPA has to decide whether to allow dispersants even though questions remain about the chemicals' risks and impacts on aquatic life, or alternatively not approve dispersants and instead risk oil reaching the coastline.

Instead of quickly approving dispersants, Stanislaus said that the administration as a first step emphasized skimming to recover oil, then emphasized "in situ burning" of the oil, and only after that allowed dispersants.

Even then, Stanislaus said, the agency conducted a series of tests on the novel use of the chemicals under the ocean surface. "Only upon the fourth test . . . did we we concur conditionally on the use of sub-sea dispersant," he said, adding that the administration has told the Coast Guard that there is still no such thing as "pre-approval" for sub-sea use. "You have to make a daily demonstration that you don't have other options," he said.

EPA is also trying to take the same cautious approach for disposal of waste from oil spill cleanup operations, Stanislaus said. Although waste management is largely the regulatory purview of state governments, EPA felt it was necessary to have direct oversight of waste from response activities. "To date, the waste has been sent to non-hazardous landfills, but we're going to continue this [testing] program as long as we need to," he said.

NEJAC members during a June 15 teleconference criticized EPA's decision to allow waste from the Gulf Coast oil spill -- including oil-soaked cloths and other material -- to be disposed of in landfills as solid waste rather than hazardous waste subject to strict disposal controls. But on that call, Stanislaus said the agency has a stringent plan to ensure against adverse impacts, particularly on equity communities near disposal sites.

Meanwhile, Stanislaus said EPA is also conducting stringent oversight of the air quality impact from in situ oil burning. He said workers are generally discouraged from using respirators because of the region's high heat index, but that operations are halted if there are exceedances of health-based exposure standards for volatile organic compounds. Such emissions can pose a long-term cancer risk as well as short-term respiratory effects.

Stanislaus said that while the administration is "still in response mode," long-term remediation is a concern, and EPA is weighing the adverse impacts of those strategies against the benefits as well.

Stanislaus cited wetlands restoration as an example of a long-term response, saying the agency's preliminary conclusion from its panel of experts on the subject is that "physical restoration of wetlands is probably more harmful than applying some kind of bioremediation strategy." EPA on its website defines bioremediation as "microbiological cultures, enzyme additives, or nutrient additives that are deliberately introduced into an oil discharge and that will significantly increase the rate of biodegredation to mitigate the effects of the discharge." -- *Molly Davis*

08/06/2010

EPA Opts Against Value For Diesel Cancer Risk Sought By Equity Advisers (*Inside EPA*)

EPA has decided against developing a numerical value to quantify the cancer risk from diesel exhaust emissions associated with goods movement, reflecting the agency's long-running struggle to put a number on diesel's carcinogenicity despite calls from EPA's environmental justice advisers to develop the risk unit.

EPA officials told members of the agency's National Environmental Justice Advisory Committee (NEJAC) at a July 28 meeting that scientific limitations are frustrating the ability to define a diesel exhaust cancer risk number, which NEJAC members called for in a 2009 report. But EPA said it is taking other steps to cut air pollution from freight activity that impacts equity communities, such as adopting NEJAC's request for more monitoring.

But the agency's decision not to develop a quantitative estimate of the carcinogenic potency of diesel exhaust will be a disappointment for environmental justice advocates, who say that diesel emissions have disproportionate adverse impacts on low-income and minority communities located near goods-movement hubs.

"Ultimately the panel of experts we convened found that there wasn't any new information that was different at this point that will allow us to quantify cancer risk," said Gay MacGregor of EPA's Office of Transportation & Air Quality.

Democrats have long tried to develop a diesel exhaust risk number, but scientific hurdles to crafting a number have repeatedly proven too high to overcome.

The Clinton EPA developed a draft diesel exhaust health assessment that was rejected by the agency's Clean Air Scientific Advisory Committee three times in the late 1990s. The panel eventually approved a final version in May 2002, agreeing with EPA that both qualitative and quantitative approaches be taken to characterize the cancer risk. The final version concludes that chronic diesel exhaust inhalation exposure poses a "likely" cancer hazard -- less severe than a "highly likely" ranking -- and did not include a numeric unit for cancer risk potency.

Still, the assessment recognized the need to re-evaluate the emissions characteristics of diesel once new technology required under tailpipe regulations is widely implemented in the national fleet. That review served as the basis for new emission rules for heavy-duty vehicles, non-road equipment, locomotives and marine vessels.

But the concept of crafting a diesel exhaust risk number largely lay dormant until NEJAC released a report in 2009 titled "Reducing Air Emissions Associated With Goods Movement: Working Towards Environmental Justice." The committee cited cancer and other health risks associated with diesel emissions -- including hazardous air pollutants and particulate matter (PM) components of exhaust -- and called on the agency to reassess the health risks.

NEJAC argued that it is possible to develop a risk number, citing in the report efforts by California's Air Resources Board to develop a risk value for diesel exhaust PM, a value that the board used to quantify the cancer risk from diesel exhaust in communities near the ports of Los Angeles and Long Beach.

The agency's full response to the report, released July 27, says that EPA convened technical experts from its Office of Research & Development and Office of Air & Radiation, some of whom were involved in the 2002 assessment, to consider the calls for a cancer risk unit in the context of current research.

"At this time, no new information has become available which could be used to estimate the cancer potency for diesel engine exhaust," EPA says. "Without new information, EPA would not be able to develop a unit cancer risk estimate for diesel." *Relevant documents are available on InsideEPA.com.*

The response echoes comments by EPA in recent years about the difficulties in characterizing diesel exhaust's cancer risks. For example, when the agency last year released its national assessment of air toxics emissions from 2002, the agency did not include a cancer risk number for diesel exhaust PM, saying the data are not sufficient to develop a quantitative standard.

EPA is also declining to revisit risk conclusions in the 2002 report to reassess the risk from diesel exhaust following a national fleet turnover and wider use of emissions control technologies. EPA says vehicle rules enacted in the last decade "have changed and will continue to change the characteristics of diesel exhaust for newer engines."

Although EPA is once again declining to issue a cancer risk number for diesel exhaust, the agency says it is taking steps to implement other provisions of the 2009 NEJAC report on goods movement.

For example, the NEJAC report is influencing EPA as it develops priorities for its 2010-2012 air quality strategy for ports, according to MacGregor's presenation. Priorities for the sector include addressing air quality and climate, healthy communities, and the global environment, echoing priorities that NEJAC focused on its report. -- *Molly Davis*

FUEL

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Officials to inspect ruptured Mich. oil pipeline (*Associated Press*)

By JOHN FLESHER (AP)
TRAVERSE CITY, Mich. — A ruptured section of pipeline that spewed hundreds of thousands of gallons of oil into a southern Michigan river will be ready for inspection and removal shortly, officials said Thursday.

The damaged segment has been hard to reach since the spill was reported July 26 because it's in a marshy, oil-covered area of Calhoun County. It will be examined in the ground at first and eventually cut out and shipped to a National Transportation Safety Board lab for tests, regulators said.

Officials with Enbridge Inc. and government agencies said the cleanup of the Kalamazoo River and other polluted waterways was going well, as crews continue removing tainted water and placing boom material as needed to contain and absorb the oil.

Contaminated soil and leaked crude have been removed from 2 acres of the 5-acre zone closest to the spill site, said Mark Durno, the Environmental Protection Agency's deputy incident commander. Over 2.5 million gallons of oily water have been sucked out, he said.

"We're moving from crisis to cleanup slowly, day by day," Durno said.

Residents of the Battle Creek area have reported seeing increased amounts of oily sheen recently, but that's because rainfall has washed oil from the riverbanks and wetlands, said Susan Hedman, the EPA's regional chief.

"That is a way of capturing the oil and cleaning the shoreline in a very efficient manner," Hedman said.

She said the EPA had approved the portion of Enbridge's cleanup plan dealing with health and safety.

The 30-inch pipeline, laid in 1969, carries about 8 million gallons of oil daily from Griffith, Ind., to Sarnia, Ontario. Up to 100 feet of pipeline could be removed for the leak investigation, said Steve Wuori, an Enbridge executive vice president.

Enbridge reported the leak to federal officials July 26, although U.S. Rep. Mark Schauer, a Battle Creek Democrat, contends it began the previous night when the Canadian company shut down the pipeline for maintenance.

Schauer has accused Enbridge, based in Calgary, Alberta, of violating federal regulations by taking too long to report the spill, which the company denies.

The EPA has said more than 1 million gallons of oil leaked, while the company estimates the total at 820,000 gallons.

A state official said Thursday that hundreds of fish and some mussels were killed when water levels were lowered in a downstream reservoir called Lake Allegan to help contain the oil spill.

Carp, largemouth bass and bluegills were among fish stranded by the 2-foot drop in levels, said Jim Dexter of the Michigan Department of Natural Resources and Environment.

Seven types of freshwater mussels, two of which are on the state list of endangered and threatened species, were found on the newly exposed shoreline. But many will live long enough for the levels to return to normal, Dexter said.

A Battle Creek couple filed a federal lawsuit against Enbridge last week and requested status as a class-action case that other area residents could join. The Great Lakes Environmental Law Center has threatened a suit alleging Clean Water Act violations.

"Lawsuits are launched in order to recover damages," said Patrick Daniel, Enbridge's chief executive. "We're indicating there is no need for lawsuits because we will pay for all damages related to the spill."

Less oil, but familiar plot Focus on company, regulators after pipeline accident (*Washington Post*)

August 6, 2010 Friday
Met 2 Edition
A-SECTION; Pg. A03
Maryland
Echoes of gulf spill in Michigan;
Less oil, but familiar plot Focus on company, regulators after pipeline accident
By: Kari Lydersen and David A. Fahrenthold
MARSHALL, MICH.

In the Summer of the Spill, history is already repeating itself, this time in Michigan.

An oil spill in the Kalamazoo River has set off a small-scale reenactment of the Gulf of Mexico's drama in farm country 100 miles west of Detroit. The villain is different: a broken pipeline, not a blown-out well. The oily birds are Canada geese, not pelicans.

But other plot points are eerily similar: A large company with safety violations. Regulators who didn't act fast enough. Claims centers. Containment boom. Broken equipment that everybody's waiting to examine.

And now, questions about how much of the oil is gone and how much is just unaccounted for.

"The pattern that we see here is a pattern of inadequate oversight and supervision [in government] and an industry that appears to cut corners," said the National Wildlife Federation's Tim Warman, who helped write a report documenting hundreds of accidents in the oil and gas industry in the past decade.

It went to the printer last month, two days before the Michigan spill began.

"The pattern suggests that we're going to see more of them," Warman said.

The Michigan spill appears to have begun late July 25 when something broke in a 30-inch pipeline that carries oil from Canada to Midwestern refineries.

The leak wasn't noticed until 11:45 the next morning. By then, an estimated 19,500 barrels (819,000 gallons) had escaped. That isn't much compared with the gulf spill, in which 4.9 million barrels (205.8 million gallons) escaped, according to an analysis this week. But it was enough to turn tiny Talmadge Creek into a stream of oil and make a section of the larger Kalamazoo River run black.

An Environmental Protection Agency official on the scene said it was the most destructive oil spill ever in the Midwest.

"I don't know if we'll feel safe ever again. That's the mind-set this gives you," David Orban, who lives on the creek, said at a public hearing Monday. Nearby homes were evacuated, and residents were left worrying about tainted air and drinking water.

As in the gulf, scrutiny has fallen on an obscure federal agency charged with preventing this kind of calamity. There, it was the Minerals Management Service. Here, it is the Pipeline and Hazardous Materials Safety Administration, an arm of the Transportation Department.

In January, that agency's regulators had sent a "warning letter" to Enbridge Inc. about the pipeline, Line 6B. The agency says the pipeline, where 250 "anomalies" had been found the previous June, lacked some working monitors intended to detect internal corrosion.

In February, the agency said, it met with Enbridge's leaders to complain about larger safety problems. On July 15, Enbridge asked for an extension on its deadline to repair Line 6B. Before the agency could reply, the pipe apparently broke. It's still unclear what, precisely, caused the problem; the faulty pipe has not been removed from the scene.

This week, the agency defended itself, saying it only has the power to shut down a pipeline with "immediate integrity issues." Enbridge's pipeline didn't qualify, the agency said in a written statement, because the company appeared to be working to fix the problems.

"Under the Obama Administration, we have worked aggressively to restore oversight and ensure that safety is the number one priority," said a statement from John Porcari, deputy secretary of transportation. "That's why we repeatedly pushed Enbridge to address the safety and performance of its entire Lakehead Pipeline system." That system is the one that includes Line 6B.

In an interview Thursday, Enbridge Executive Vice President Stephen J. Wuori rejected the idea that this spill should merit the same kind of reaction as the BP spill, which sparked a federal moratorium on deep-water drilling and tougher scrutiny from regulators.

"I don't think the answer is more government oversight or the need for new regulations," Wuori said. "We will discover exactly what caused this and put that into [lessons] we can apply."

After the leak was discovered, it followed an arc familiar from the gulf spill, though significantly sped up because the gulf's lessons were fresh. In the early days of the spill, Michigan Gov. Jennifer M. Granholm (D) blasted the federal government and Enbridge for their "inadequate" response.

But since then, 99,000 feet of boom have been laid and millions of gallons of an oil-and-water mixture have been vacuumed up. In all, an EPA official said, the cleanup could cost more than $100 million, paid by Enbridge.

Now, authorities say, the majority of the oil in the water has been cleaned up. "We got 'er, but we still have to be constantly on guard," said Mark Durno, the EPA's incident commander here.

For the area's residents, as for those near the gulf, the disappearance of floating oil is not the signal that normal has returned. Cindy Hayes, who lives along the river, said she had felt empathy for the gulf spill victims but never imagined something similar could happen to her, 1,100 miles away.

After the spill, family members began vomiting from the oily fumes and had to flee to a hotel. Now they're back, and the spill is making them nauseated again.

"We had a nice community, a great place to raise a family, to go fishing by the bridge," said Hayes, 50. "That's all over for a long time now."

Freelance writer Lydersen reported from Michigan. Staff writer Fahrenthold reported from Washington.

HAZARDOUS WASTE

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General Dynamics to pay EPA penalty to settle hazardous waste violations (*Reliable Plant*)

General Dynamics Ordnance and Tactical Systems Inc. has agreed to pay a $38,500 civil penalty to settle alleged violations of hazardous waste regulations at its ordnance projectile, housing and parts manufacturing facility in Red Lion, Pa.

The U.S. Environmental Protection Agency cited General Dynamics for violating the Resource Conservation and Recovery Act (RCRA), the federal law governing the treatment, storage and disposal of hazardous waste. RCRA is designed to protect public health and the environment, and avoid costly cleanups, by requiring safe, environmentally sound storage and disposal of hazardous waste.

Following a facility inspection, EPA cited the company for RCRA violations involving hazardous waste stored at the building including:

* Operating a hazardous waste storage facility without a permit;
* Failure to make hazardous waste determinations;
* Failure to submit an exception report when the facility did not receive a fully signed manifest from the designated disposal facility;
* Storing hazardous waste in containers that were not kept closed during storage;
* Failure to perform required weekly container storage area inspections;
* Failure to minimize the possibility of any release of hazardous waste;
* Failure to properly store university waste lamps and mercury-containing devices.

The $38,500 settlement penalty reflects the company’s compliance efforts, and its cooperation with EPA in the investigation and resolution of this matter.

In addition to the penalty, as a part of the settlement, General Dynamics Ordnance and Tactical Systems Inc. has certified its compliance with all applicable RCRA requirements.

For more information about hazardous waste and RCRA, visit http://www.epa.gov/epawaste/hazard/indix.htm

PESTICIDES

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Determining dangers of DEET (*Star Tribune*)

DEET may be safe to spray on your skin, but not to swallow in drinking water.

To see how safe or unsafe it is, the Minnesota Department of Health has picked the popular insect repellent ingredient as the first of seven "chemicals of emerging concern" to assess during the next year.

"We shower, it goes down the drain, and it ends up in wastewater that goes into rivers," said state toxicologist Helen Goeden.

Like many compounds, there are no state or federal standards for DEET, yet it has been detected in water samples nationwide, including Minnesota.

Examining DEET is part of a broader state effort to track dozens of chemicals in the environment, such as synthetic hormones, pesticides, pharmaceuticals and personal care products. Little is known about their potential effects on the environment or human health, so researchers must piece together whatever information is available, chemical by chemical.

For DEET, they will assemble data about where it has turned up in Minnesota waters and at what concentrations.

Goeden said there's no evidence of DEET in drinking water here, but it may be only a matter of time.

"It meets our definition of a potential chemical of concern," she said, given how frequently it's used and how often it shows up in rivers, especially downstream of wastewater treatment plants.

Researchers will also review what's known about the toxicity of the chemical from laboratory exposures. The main objective is to calculate a "safe" level of exposure -- usually in the low parts per billion in concentration -- in case DEET shows up in drinking water supplies. That's the level "that could be ingested on a daily basis and would not result in adverse health effects," Goeden said.

She expects the Health Department report on DEET to be ready within a year. Research money comes from the Clean Water Fund, established by a special tax that voters approved in 2008 as a constitutional amendment.

40 years of use

At Hyland Lake in Bloomington last week, Gao Moua was sitting in the shade, watching her brother, husband, children and relatives fishing from shore.

Moua said her family spends as much time as possible outdoors, "anything to get the kids away from electronics."

They use insect repellent when the bugs are out, usually on camping trips or hikes in woody areas.

"We try to use 100 percent DEET just to be on the safe side," she said. "It lasts longer and that way we don't have to keep applying it."

Moua said she would switch to different repellents if DEET proves to be a problem for groundwater.

Federal Environmental Protection Agency officials estimate that about a third of the U.S. population uses DEET products each year in a variety of liquids, lotions, sprays and impregnated materials such as wristbands. About 40 companies had registered 140 DEET products with the EPA in 2007.

The Centers for Disease Control and others say that DEET products have been available for more than 40 years, and are safe when used according to directions. Side effects are rare, and the chemical is effective in repelling biting pests like mosquitoes that can transmit West Nile Virus and ticks that may carry Lyme disease. Federal agencies have also approved repellents with natural products such as oil of lemon eucalyptus.

The Health Department study will not address DEET's use as a repellent, only whether it's a concern if ingested in drinking water.

Not from natural sources

In a 2004 study by the U.S. Geological Survey, DEET was one of the 10 most frequently detected compounds in water taken from 65 sampling sites across Minnesota. Scientists identified 74 compounds in all, including household, industrial and agricultural chemicals and their breakdown products. There are few aquatic or human health standards for the compounds, it concluded, and "the risks to humans or aquatic wildlife are not known."

Kathy Lee, one of the study's authors, said that DEET was also found in about a third of 43 sites sampled in 2006 as part of a broader study along the Mississippi River in Minnesota. Yet another study of 12 Minnesota lakes and four rivers, published last year by the Minnesota Pollution Control Agency, detected DEET in all of its samples.

"It showed up just about everywhere," said MPCA environmental research scientist Mark Ferrey.

Because DEET is a manmade chemical and does not occur naturally, Ferrey suspects that what's been found in the lakes comes from swimmers, or from homes.

The MPCA has begun another study to analyze DEET and more than 100 other chemicals in waters near 25 wastewater plants, Ferrey said.

The focus is on potential ecological effects, not human health, he said, and includes Geological Survey researchers and St. Cloud State University scientists.

"We're just trying to understand how widespread it is, where you find it and where not, and in what concentrations," Ferrey said. "Without that information we can't determine what kind of problem it is."

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08/06/2010

EPA Sends Nanomaterial Disclosure Policy To White House For Review (*Inside EPA*)

EPA has sent for White House Office of Management & Budget (OMB) review a first-time policy that would require industries to provide more information than they currently do about nanoscale ingredients in pesticides, a move that industry fears could stigmatize the products.

The agency's notice, submitted to OMB July 30 by EPA's Office of Chemical Safety and Pollution Prevention, is expected to outline the agency's plan to use its existing regulatory authority to require pesticides manufacturers to disclose more information about the use of nanoscale ingredients in their products than current rules require.

EPA intends to use section 6(a)(2) of the Federal Insecticide, Fungicide & Rodenticide Act, which dictates that pesticide registrants must submit any information concerning "adverse effects" of their products, to require registrants to report the inclusion of nanoscale ingredients, Bill Jordan, a senior official for EPA's Office of Pesticide Programs (OPP), said at an April 29 presentation to the Pesticide Programs Dialogue Committee.

Jordan said the new policy was prompted by concerns about potential harmful effects of nanomaterials on human health and the environment, but industry groups balked at the

proposed move, saying it was too broad and could potentially taint all nanomaterials as having "adverse effects."

Industry representatives later lobbied EPA and other high-level Obama administration officials to urge the agency to amend the policy, saying officials could require the data in a more targeted way using other data requirements contained in EPA's pesticide rules that would not paint the materials as harmful.

The agency's policy is also expected to include OPP's new "working definition" of nanomaterials as ingredients that contain particles intentionally produced to have at least one dimension ranging in size between approximately 1 and 100 nanometers, according to Jordan's presentation. Jordan also said any pesticide containing a nanoscale material as either an active or inert ingredient would be considered new and therefore subject to more agency scrutiny, meaning the widely used ingredient nanosilver would be considered new although silver is already registered as a pesticide ingredient.

SUPERFUND

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Cancer-cluster theory on paper, rage in his heart (*Washington Post*)

August 6, 2010 Friday
Met 2 Edition
METRO; Pg. B01
Maryland
Cancer-cluster theory on paper, rage in his heart
By Petula Dvorak
It began with a neighbor dying, then an uncle who lived down the street, then all the livestock on one Maryland farm fell dead, one cow after another.

And then it hit closer to home -- a wife fell terminally ill and a young daughter was gone.

The pattern became familiar, the stories swapped between neighbors sounding more and more alike: cancer, tumors, non-Hodgkin's lymphoma, leukemia.

The Rice family has lost 12 members to leukemia alone.

"That's not counting brain, breast, all of those other cancers," said Diane Rice, 55, who survived breast cancer. "You just know that's not right. Something is not right."

Over their fences, at community picnics but mostly at funerals, the people of one

Frederick neighborhood near Fort Detrick wondered whether it was just a horrible coincidence that so many of them had cancer.

It's become a familiar scenario. Cinematic, even, thanks to the amazing story of Erin Brockovich, who helped prove that a utility company had been poisoning the water supply of Hinkley, Calif., for more than 30 years. A small town's residents soaked in grief and armed to the teeth with lab reports, statistics and analyses step forward to prove that they are, in fact, a cancer cluster and not just an unfortunate collection of tragedies.

And, of course, following close behind them are the cluster-busters.

"There have only been a few reported cancer clusters that have proven to be real clusters," Melissa Bondy, a professor of epidemiology at the University of Texas MD Anderson Cancer Center in Houston, wrote in the Journal of the National Cancer Institute. "People get alarmed when they hear about cancers at various sites in an area. There have been some that epidemiologists have been able to untangle, but most cancer clusters have not been well documented. They usually don't pan out to be anything."

Try telling that to Randy White, whose 30-year-old daughter died of brain tumors in 2008. Now his ex-wife has stage four renal cancer, and another daughter has stomach tumors.

White grew up in Frederick and raised his family there. But when the Whites moved to Florida and began getting sick, a doctor looked collectively at their illnesses and told them that they weren't genetic, they were environmental.

They immediately looked to their former next-door neighbor, Fort Detrick, where **anthrax** and Agent Orange were studied for decades and where about 400 acres known as Area B were used for storage and dumping. The **EPA** put it on its **Superfund** cleanup list last year, and the Army has been spending millions of dollars in the past decade to clean up its harrowing waste pits.

Because carcinogens have contaminated wells, "A lot of people still get bottled water delivered to them by the Army," Rice said.

White's family used the city's water system, so it shouldn't have consumed contaminated tap water. But scientists determined that vapors rising through the ground from the discarded chemicals had seeped into the Whites' home.

"Vapor intrusion, dioxins, Agent Orange," White said.

Enraged, he formed the Kristen Renee Foundation, named for his late daughter. In the past two years, he has plowed about $200,000 of his own money into the effort to link the chemicals dumped at Fort Detrick to decades of deaths in the community.

He hired researchers, doctors and chemists to prove his hunch that his home town is host to one of America's largest cancer clusters. Over the years, cancer has been found in 400 people within two miles of White's former home in Frederick, he learned.

Some of them have shown up at community forums, sharing their stories, comparing notes, demanding that the U.S. Army help pay their medical bills and clean up their land.

Now Barbara Brookmyer, Frederick County's health officer, is investigating whether there is a cancer cluster near Fort Detrick. A community forum will be held Thursday to hear residents' stories.

Chuck Gordon, a spokesman for Fort Detrick, said the base is cooperating with her efforts.

"It's not Fort Detrick's place to delve into public-health issues," he said. "We fully support the Frederick County Health Department as lead agency for public health and are urging anyone who approaches us with any such info to follow the proper chain and work with Dr. Brookmyer."

White, however, thinks the Army, rather than a county doctor, should step in.

A charismatic megachurch pastor with spiky blond hair and funky eyeglasses that proclaim him hipper than most men of the cloth, White holds up reams of reports when he talks about the research he's done. He stands beside a huge picture of his smiling, champagne-blond daughter, Kristen.

"This is an environmental disaster much larger than the gulf spill," said White, who is considering a class-action lawsuit against the Army.

But even if he's able to prove that the cancer cluster exists, and even if he succeeds in holding the Army accountable, it can't change the terrible health consequences for hundreds of devastated families. Including his own.

E-mail me at dvorakp@washpost.com

Emotions high as EPA lays out plan for Koppers Superfund site (*Gainesville Sun*)

The meeting drew a full house at Stephen Foster Elementary School.
By Chad Smith
Staff writer
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Outside Stephen Foster Elementary School on Thursday evening, just in time for rush hour, dozens of residents waved signs criticizing the Environmental Protection Agency's plan to clean the Superfund site half a mile away.

"EPA: PROTECT US," one read.

A passerby in a minivan joined in, yelling, "We don't want Chernobyl in Gainesville."

While comparing the Cabot-Koppers Superfund site to the Ukrainian power plant explosion in 1986 is an exercise in hyperbole, the amount of dissatisfaction and, in some cases, anger toward the EPA was unmistakable at a meeting Thursday, when agency officials presented their plan to clean up the polluted former wood-treatment plant.

In a 25-minute presentation to a full house in the school's auditorium, Scott Miller, the EPA's project manager for the site, went through the various technologies he is proposing to employ to prevent the spread of contamination from the site, either through dust in the air or seepage into the aquifer.

The plan, released July 15, calls for quarantining a 32-acre portion of the 90-acre site that was the most heavily polluted by putting a 65-foot-deep wall around that area. Contaminated soil from the rest of the site would be placed on top of that 32 acres, buried underneath a low-permeability cap and a layer of top soil.

Chemicals would be injected to fortify the soil, preventing contaminants - including dioxin and arsenic - from spreading deeper into the earth.

Several of the roughly 200 in attendance Thursday night called the plan a "cover-up" as opposed to a cleanup.

One of those solutions that will be injected into the soil is called in-situ biogeochemical stabilization (ISBS), and resident David Pace said he doesn't trust that it would be effective.

"I note the B.S. is appropriate in both contexts," Pace said.

Miller said the stablilization technique has been in use for about 20 years, noting there are measures in the plan to test its effectiveness and to go with a back-up plan if need be.

Still, witticisms like Pace's were interspersed in several comments over the 2 1/2 hours of public input - byproducts of the resentment built up since the site was added to the Superfund list in 1984.

Pat Cline, an environmental analyst hired by a citizen group with an EPA grant to digest the plan, said the agency needed to provide the community with more data about how much pollution is on the site before releasing its final decision, which could come as early as next month.

In its current form, the remediation would cost the company that owns the property, Beazer East, about $65 million.

More thorough cleanups - like excavating the soil, cleaning it and replacing it - could cost as much as $190 million.

In his presentation, Miller explained that cost is one of the factors the agency has to consider before picking a plan.

It was clear, though, that what is proposed won't cut it for some.

During Cline's talk, one man burst out of his seat, yelling that the community wants all the pollution removed.

David Keefer, the chief of the Superfund remedial branch in the agency's Southern region, said that while the Koppers response has been large, the passion hasn't been extraordinary.

"It's always passionate, even if it's a fifth the number of people," Keefer said.

Gainesville Mayor Craig Lowe said he has told the EPA that the City Commission meets on the first Thursday of the month and asked officials to reschedule Thursday night's meeting, but they didn't.

Audience members hissed.

"The city of Gainesville is in the process of reviewing the proposed remediation plan, and staff does have serious concerns and we will be filing detailed objections and we are listening to the community's concerns," Lowe said, adding that he will ask the agency to grant more time for public comment and to hold another meeting.

Keefer seemed to get that message.

"We clearly need to have a longer dialogue with this community about this cleanup plan," he said.

TOXICS

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08/06/2010

States Weigh Bid For EPA To Cut Threshold For Triggering Mercury MACT (*Inside EPA*)

State air officials are weighing whether to ask EPA to dramatically lower the threshold for facilities to trigger strict maximum achievable control technology (MACT) requirements to cut mercury emissions, a move states say would help to secure cuts in mercury pollution from currently unregulated sources of the air toxic.

Under a plan crafted by the National Association of Clean Air Agencies (NACAA), EPA would use Clean Air Act authority to lower the existing 10 tons per year (tpy) mercury emissions threshold for defining "major" sources subject to stringent MACT requirements down to between 10 and 20 pounds per year (lbs/yr) of mercury per facility. NACAA, which represents state air regulators, discussed the issue at a July 31-Aug. 2 board meeting in Vermont.

A lower threshold could capture a slew of facilities that qualify as "area" sources subject to weaker emission controls because they emit mercury emissions below the 10 tpy threshold. Area sources are those emitting less than 10 tpy of a single hazardous air pollutant (HAP) or less than 25 tpy of any combination of HAPs.

Lowering the major source threshold for mercury emissions could help address industry sectors that have "fallen through the cracks" and are not required to cut mercury, according to a draft NACAA paper. A lower threshold would also lead facilities to develop better mercury emission estimates, which would help states write water rules to cut the amount of mercury that falls into water and contaminates fish, according to the draft paper. *Relevant documents are available on InsideEPA.com.*

While EPA has, or is writing, MACTs for mercury and other air toxics from major industrial mercury emitters, such as power plants and cement kilns, the NACAA draft paper argues that a lower threshold would require mercury controls for significant unregulated sources such as phosphate and iron mining, sewage sludge incinerators and manufacturing facilities.

One state source says that while the recommended threshold may seem like a drastic change, it will not have a big impact on industry. "It sounds like a huge tightening . . . but as far as adding sources to the permitting process as a result of this change, I would say say it doesn't add any mercury sources that shouldn't already be in there," the source says.

One environmentalist who supports the idea of lowering the threshold says that an even more stringent threshold may be necessary because mercury is toxic at very low levels. For example, just one teaspoon of mercury is enough to contaminate a 20-acre lake, the source says.

One industry source says the effort would not have a practical impact on the utility industry because EPA is already crafting rules for the sector. However, industry has raised concern about the difficulty in measuring mercury concentrations at very low levels in both air and water, the source says.

The NACAA board was slated to vote at the meeting whether to ask EPA to revise the mercury MACT threshold. At press time, a NACAA source had not responded to a request about the outcome of the vote.

The draft paper says section 112 (a)(1) of the air act allows EPA to set a lower major source threshold if an air toxic is especially potent, persistent or has the potential to bioaccumulate in the food chain. Section 112(c)(6) of the air act requires EPA to develop emission standards for 90 percent of emissions from all sources of certain air toxics, the draft paper says.

The draft paper argues that the toxicity of mercury warrants action under these sections of the law. Mercury concentrations in the air may be low, but once it is deposited into water, even small quantities can bioaccumulate in fish and wildlife, the paper says. Consumption of fish then exposes children and developing babies to neurodevelopmental effects, and all 50 states now have fish consumption advisories due to mercury, the paper says.

A new threshold is also significant because there is no statutory backstop to require mercury cuts from unregulated sources, the draft paper says. Prior to 1990, the air act required facilities emitting more than 200 lbs/yr of mercury to install best available control technology as part of their so-called prevention of significant deterioration permits. However the 1990 amendments to the air act said this requirement no longer applied, the draft paper says.

A lower threshold would also help states gather emission information needed to set water limits for mercury, the draft paper says. States have struggled to obtain accurate mercury estimates because many sources are well below the permitting threshold and do not need to measure emissions to show that they are exempt from rules, the draft paper says. However, if the threshold is lowered, many more sources would need to measure their emissions, which would help states set water limits, or total maximum daily loads, for mercury, the draft paper says.

States, especially in the Northeast, have faced difficulty in reducing mercury levels in their waterbodies, in part due to a lack in mercury limits for power plants and in part because of pollution that is blown into the region from other states. Seven states in the northeast recently began trying to use the Clean Water Act to cut mercury emissions by setting in 2007 a regional total maximum daily load for mercury. States in the area also successfully petitioned EPA to convene a meeting in June with 11 upwind states to discuss the issue.

The draft NACAA paper recommends a new threshold in the range of 10-20 lbs/yr, a level the paper argues is reasonable because new EPA MACT rules will reduce emissions from many sectors to around 25 lbs/yr.

The paper cites a similar approach in a 2009 draft paper on mercury issued by the Great Lakes Regional Collaboration, which recommended a threshold in the range of 3-25 lbs/yr.

In addition, the Maine Department of Environmental Protection requires a mercury reduction plan for sources that emit more than 10 lbs/yr of mercury, and the New Jersey Department of Environmental Protection requires mercury controls on all sources with the potential to emit more than 20 lbs/yr, the draft paper says. -- *Kate Winston*

08/06/2010

Unlikely Passage Of TSCA Reform Spurs State Push On Chemical Safety (*Inside EPA*)

With congressional passage of broad Toxic Substances Control Act (TSCA) reform legislation appearing increasingly unlikely this year, state lawmakers are planning to ramp up their efforts to address chemical safety concerns in their legislatures -- a move that activists hope will continue to pressure industry to negotiate TSCA reforms in the future.

In lieu of the federal bill's passage in the 111th Congress, environmentalists say they expect some states to push through bills banning individual chemicals, such as the plastic ingredient bisphenol-A (BPA), or measures to create toxics management programs emulating efforts in Minnesota and Maine.

That could help states to achieve at least some of the goals of TSCA reform bills in the House and Senate that would overhaul federal toxics law in order to tackle chemicals of concern and bolster toxics management, sources say.

State efforts "are just going to keep proliferating next year," Andy Igrejas, director of the Safer Chemicals, Healthy Families coalition of environmental, health and public interest groups, told *Inside EPA* after a July 29 House Energy & Commerce Committee hearing on toxics law reform, particularly if TSCA legislation does not move.

A source with the National Caucus of Environmental Legislators (NCEL) says new state toxics management proposals "will be -- if not at the same level -- at least a continued push." The source says, "Legislators are very aware of the lack of progress [at the federal level] and the momentum they can bring to the federal debate."

Over the past few years, actions by states such as California, Minnesota, Maine and others have prompted industry fears of a "patchwork" of state toxics laws and fueled a push by companies for a "modernization" of TSCA to create a uniform federal chemicals program.

Environmentalists are also seeking reform of TSCA because, they say, the law does not allow EPA to adequately regulate chemical safety.

But initial efforts to negotiate a deal on TSCA reform are floundering. At the July 29 hearing, Cal Dooley of the American Chemistry Council (ACC) said there is "much more that needs to be done" to improve TSCA reform legislation introduced by House energy committee Chairman Henry Waxman (D-CA) and commerce subcommittee chair Bobby Rush (D-IL).

And House energy panel ranking member Joe Barton (R-TX) said at the hearing that it is unlikely the TSCA reform bill would move forward in the current session, given the August recess and upcoming campaign season, but added that the bill "probably sets the floor for the discussion in this area in the next Congress."

That echoes EPA toxics chief Steve Owens' comment to state environmental regulators earlier this year that it is "unlikely" that the 111th Congress will pass TSCA reform legislation (*Inside EPA*, March 26).

But sources say they now expect states to again take up the issue. States continue to move ahead with their own chemicals laws "in advance or maybe in spite of the failure of the feds to move forward," says one industry source who tracks the issue.

Earlier this summer, Minnesota released as part of its ongoing chemicals program a list of chemicals state officials could draw from for substances warranting targeted action, a universe of substances that borrows heavily from a similar effort by Maine. The industry source says programs such as Minnesota's effort encourage product deselection as the programs can have an impact on state- and municipal-level purchasing habits.

Although sources say it is too early to tell which states will pursue more bills, states such as Illinois or Oregon could opt to develop comprehensive chemicals programs, the NCEL source says. States may also choose to reintroduce single-chemical bans, targeting chemicals such as BPA, that failed to pass in earlier state legislative sessions. The NCEL source estimates some 20 states have introduced bills restricting the use of BPA in products in the 2009-2010 session, with states like Connecticut and Minnesota and municipalities like Chicago and New York's Suffolk County approving bans in recent years.

Even though observers downplay the prospects for Congress passing TSCA reform legislation this year, there are signs House Democrats continue to push the issue. For example, Rush at the recent energy panel hearing vowed a markup of his toxics law reform bill "sometime in the future," and some sources have said House

Democrats could be gearing up for a September vote on the bill. It is unclear when or if the Senate might act.

Waxman is also continuing to push for more industry data on chemicals' risks, which could echo language in his toxics law reform legislation that would shift the burden from EPA to industry to prove that chemicals are safe before they can be used in commercial products. For example, Waxman sent an Aug. 2 letter to the Kellogg Company requesting information on risk studies that the company performed on 2-methylnaphthalene, which was recently found off-gassing from cereal boxes, triggering a recall of 28 million boxes of Corn Pops, Honey Smacks, Fruit Loops and Apple Jacks. *The letter is available on InsideEPA.com.*

States could also ramp up their calls for Congress to move TSCA reform legislation next year, by becoming as vocal on the issue as several states have been in urging lawmakers to pass a climate bill, the NCEL source says. "[TSCA reform] is next on their priority list as far as environmental health issues," the source adds.

Further, the source says states could also pursue official resolutions supporting the need for TSCA reform, similar to a resolution passed by the National Conference of State Legislatures in its 2010-2011 set of policy positions. The statement will now inform the policy position of the group, the source points out.

Industry's lingering concerns over existing TSCA reform legislation could also increase the likelihood that Congress will not pass a toxics law reform bill before next year, sources say.

Representatives from ACC and the Society of Chemical Manufacturers & Affiliates said at the July 29 hearing that issues such as the safety standard, the process for new chemicals and the confidential business information protections in the House bill are "unworkable."

Dooley, for example, said that while improvements were made on the draft bill, the safety standard still requires companies to prove that aggregate exposure of all uses of a substance would not pose harm, in addition to considering cumulative effects of the substances. "I am not sure how industry or the EPA would be able to gather enough information to meet this aggregate exposure standard for each and every chemical," he said at the hearing.

But activists are questioning industry's commitment to reform in the wake of the hearing. At a press event after the hearing, Igrejas referred to the chemical industry's "blatant hysteria . . . about the dangers of reform."

And in a July 30 blog post, Richard Denison of the Environmental Defense Fund described Dooley's reaction to the bill at the hearing as "more loud and long complaints aimed at every aspect of the bill; placing the worst possible interpretation on any provision subject to interpretation; playing the China and job-loss cards over and over;

and last but not least, offering not a single constructive proposal of his own for reform." -- *Aaron Lovell*

WATER
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08/06/2010

Industry Lawsuits Test Scope Of Water Permit Waivers For Some Farmland (*Inside EPA*)

Pending litigation filed by several industry groups could test the scope of joint EPA-Army Corps of Engineers rules exempting "prior converted croplands" from dredge-and-fill permit requirements -- one of the few regulatory exemptions that regulators have crafted from the controversial water permit requirements.

The agencies' 1993 regulations hold that "prior converted croplands" that became agricultural land before Dec. 23, 1984, are exempt from federal oversight and need not obtain a permit under section 404 of the Clean Water Act, which requires permits for dredging and filling of wetlands and other marginal waters.

But industry groups, including the American Farm Bureau Federation (AFBF) and the National Association of Homebuilders, are suing the Corps, charging the agency is implementing provisions in a 2005 guidance that industry says unlawfully narrowed the exemption by barring its application for non-agricultural uses.

The suits, *New Hope Power Company, et al. v. U.S. Army Corps of Engineers* and *AFBF v. U.S. Army Corps of Engineers*, stem from a 2009 paper issued by a Jacksonville, FL, Corps district office, and backed by Corps' headquarter. The paper found that farmland in the Everglades Agricultural Area (EAA), a region in Florida that has been drained since the mid-1900s for farming, loses its water permit exemption if it is used for non-agricultural purposes. *Relevant documents are available on InsideEPA.com.*

New Hope plans to expand a biomass energy facility located on a sugarcane farm, while U.S. Sugar Corps, the co-plaintiff in the AFBF case, plans to lease its land for -- and receive royalties from -- mining on its land. The groups argue the land should retain its exemption from the water act even if it is no longer used for farming.

However, environmentalists back the Corps' policy that non-agricultural uses should be subject to water act requirements. An attorney familiar with the issue says there is no

definitive evidence to back industry's argument that the 1993 rulemaking exempted the land even when it is not used for crops.

The U.S. District Court for the District of Columbia ruled July 20, over industry objections, that both cases should be moved to a district court in Florida. The Corps requested that the cases be consolidated, but the district court ruled that a federal court in Florida should decide that issue.

But the issue is complicated. Industry argues that in some instances the Corps has agreed that the land is exempt from permit requirements, even when it is not being used for crops. For example, New Hope applied for a permit to build the biomass facility in 1993 and the Corps determined that a permit was not necessary because the land was prior converted cropland. But the 2009 Corps' Jacksonville issue paper found that land in the EAA that is planned for non-agricultural purposes is not exempt from wetland permitting.

The Jacksonville district office said in a 2009 memo to Corps headquarters that the issue had national significance and may require an agreement between the Corps and EPA or a special determination by EPA to resolve the issue. "We presume this is an issue of national importance and will likely only be resolved by a joint Corps/[EPA] interpretation," according to a memo to New Hope describing the policy. The Corps district office also notes that EPA Region IV appears to be considering making determinations in the EAA a "special case," a designation that gives EPA the final say in the matter, the memo says.

Corps district officials referred inquiries to the Department of Justice, which did not respond to a request for comment by press time.

Environmentalists fear a court ruling in industry's favor would mark a significant expansion of the exemption -- one of the few regulatory exemptions EPA and the Corps have granted under rules to implement section 404 of the Clean Water Act (CWA), the attorney familiar with the case said. As a result, groups are weighing whether to seek involvement in the cases, the attorney says.

Some Democratic lawmakers have also suggested codifying the 1993 regulatory exemption for prior converted cropland -- as well as a similar exemption for waste treatment systems -- though environmentalists have strongly opposed such approaches. Meanwhile, several GOP lawmakers recently introduced legislation revoking EPA's role in the 404 permitting process (*see related story*).

As a result, legislation on the issue is unlikely to pass in this Congress, raising the stakes of a potential court ruling, the attorney says.

At issue in the suits is the local Corps office's 2009 issue paper outlining its approach for determining jurisdiction for projects in the EAA. The paper argues that due to the policy of Agriculture Department's Natural Resource Conservation Service

(NRCS), land in the EAA that is used for non-agricultural purposes, it no longer classifies the area as prior converted croplands.

A 2005 joint guidance between NRCS and the Corps found that land that is no longer used for agriculture loses its water act exemption.

The Jacksonville office developed the paper to address a number of pending jurisdictional determinations for planned mining operations, but the office said the policy would also apply to the New Hope project.

The district then asked the Corps headquarters to review the issue paper, and the national office supported the district's approach. Headquarters said in an April, 30, 2009, memo to the district said it agreed that the prior converted cropland exemption would no longer apply.

Now, industry in the lawsuits is arguing the Corps headquarters, in approving the Jacksonville issue paper, unlawfully set national policy without a notice-and-comment rulemaking, which is required under the Administrative Procedure Act.

The groups argue that the 1993 rulemaking specifically said that non-agricultural uses of prior converted croplands continued to be exempt from the act. AFBF in its complaint cites a section of the rule that says, "[i]n response to commentors who opposed the use of [prior converted] croplands for non-agricultural uses, the agencies note that today's rule centers only on whether an area is subject to the geographic scope of CWA jurisdiction. This determination of CWA jurisdiction is made regardless of the types or impacts of the activities that may occur in those areas."

And industry argues the Corps has unlawfully tried to revise this policy through informal guidance, citing both the 2005 joint Corps/NRCS guidance and the 2009 Jacksonville issue paper. The groups say that in approving the 2009 issue paper, the Corps headquarters set a new national rule.

Industry also argues that the Corps illegally applies a portion of a 1987 manual to determine whether cropland used for non-agricultural purposes is subject to the water act. In this case, the Corps is using the provisions immediately to determine whether under "normal circumstances" the land is cropland, and whether, in "atypical situations," the Corps can ignore the absence of wetland indicators, such as wetland indicators, to declare jurisdiction over an area.

In the EAA, the Corps argues that the constant draining of the land is not a normal circumstance and argues the land will eventually return to wetlands even if crop vegetation, not wetland vegetation, is currently present in the area.

The Corps, in an answer filed June 7 in the AFBF case, does not detail its rebuttal to industry's arguments, and instead says that it denies the allegations to the extent that the plaintiff's arguments are inconsistent with regulations. The Corps in its March 3

motion to move the New Hope case to Florida argues that headquarters played only a minimal role in the events that led to the suit. -- *Kate Winston*

08/06/2010

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

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

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

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

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

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

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

In the suit, the plaintiffs sought a revocation of Florida's delegated authority and for EPA to issue its own numeric nutrient criteria for the state, which EPA ultimately agreed to do

in their consent decree. EPA subsequently reached a settlement in 2009 with Florida and environmentalists setting a deadline for issuing criteria.

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

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

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

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

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

In the letter, lawmakers do not ask for a specific date for EPA to have completed the review, but argue that if SAB review is necessary for those waters and it is necessary to take extra time to get those criteria right, then the same should be true of those criteria the agency is slated to publish later this year. The letter also urges EPA to make adjustments to its proposed criteria to account for suggestions SAB may ultimately make.

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

EPA should adjust its rulemaking in accordance with the peer review analysis and recommendations."

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

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

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

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

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

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

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

Environmentalists and other stakeholders tracking the development of the criteria expressed surprise that EPA was issuing a NODA so close to the date of final publication. Both environmentalist and industry sources, speaking prior to the NODA's

publication, say they were not contacted by EPA about the NODA and the agency has not briefed them on what data may be made available through it.

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

08/06/2010

EPA Guidance Leads Crackdown On Chesapeake Bay Stormwater Permits (Inside EPA)

EPA in a just-released guidance document for the Chesapeake Bay is telling states to revise already-issued stormwater permits to include stringent new requirements, expand permit coverage to previously unregulated areas and require clearer accountability through enforcement driven by inspections and audits.

Region III's "Urban Stormwater Approach for the Mid-Atlantic Region and the Chesapeake Bay Watershed," released Aug. 3, is designed to help states use stormwater permits to meet the Bay-wide pollution load the agency plans to implement in December and calls on states to report to the agency how they will eliminate permit backlogs as well as strengthen existing permits. The guidance comes as the region's states are preparing Watershed Implementation Plans (WIPs) to demonstrate how they will comply with EPA's new stringent pollution load limit for nitrogen and phosphorus in the six-state Chesapeake Bay watershed. *The guidance is available on InsideEPA.com.*

Repeatedly citing a 2009 National Research Council report, which found EPA's stormwater program is not meeting the objectives of the Clean Water Act (CWA), the agency says that although it is in the midst of a stormwater rulemaking, there are changes that can be made to municipal separate storm sewer system (MS4) permits "within the context of current national regulation."

EPA says its call for stringent requirements in current MS4 permits is backed by language in the preamble to the Phase II stormwater rule, which governs MS4 permitting for municipal areas with less than 100,000 people, noting that the rule "requires continual improvements in the program in order to obtain water quality standards."

Other permit requirements outlined in the guidance include the use of "post-construction" performance standards for newly developed and redeveloped sites, retrofits for existing discharges, reductions in the amount of fertilizer used on turf

grasses and more specific monitoring provisions. The guidance also asks states to extend permits to previously unregulated entities using "residual designation authority," and file with EPA plans to eliminate the backlog in issuing stormwater permits.

The post-construction performance standards should focus on "restoring site hydraulic condition as necessary to attain water quality standards in receiving waters" and should account for discharge rates, volume, and duration, the guidance says.

States should also re-evaluate permit limits to be sure the effluent limitations are stringent enough to meet new strict load limits for nitrogen and phosphorus, EPA says. Permit writers should also include a "long term retrofit strategy" with "enforceable interim milestones." Retrofitting can include such actions as developing green roofs and streets, planting trees and management practices, the guide says.

Reducing the amount of fertilizer used on turf grasses should also be considered, even if only through education campaigns, the agency says. But permits need to clearly describe expected reductions with a clear baseline year, and EPA suggests a 5 percent reduction over 5 years as an appropriate objective.

Beyond more specific and stringent permits, the agency says permits should have better monitoring provisions, and that all provisions in the permits should be "clear, objective, specific, measurable, and enforceable."

"Vague phrases such as 'as feasible' and 'as possible' and 'practicable' are to be avoided in a permit because such caveats allow subjective interpretation, result in inconsistent implementation by permittees, and create difficulties in permit authority oversight and enforcement," the guidance says.

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Landmark CAFO Ruling Holds Industry Liable For Contractor's Discharges (*Inside EPA*)

A federal court has backed environmentalists' claims that major livestock processors are potentially liable under the Clean Water Act (CWA) for their contract growers' discharges -- a victory for environmentalists who hope their novel suit will lead to regulators using a similar legal approach to holding the farming industry liable for pollution.

The U.S. District Court for the District of Maryland ruled July 21 in *Assateague Coastkeeper, et al. v. Alan & Kristin Hudson Farm, et al.* that Perdue Farms Inc. could be jointly responsible for animal waste allegedly discharged into the Pocomoke River -- a tributary to the Chesapeake Bay -- by its contract grower, Hudson Farms, in violation

of the contractor's National Pollution Discharge Elimination System (NPDES) permit. *The ruling is available on InsideEPA.com.*

Perdue indicated in a statement that it would fight the liability claims at trial. "This is a very narrow ruling on a routine procedural motion. The ruling has nothing to do with the merits of the case. We are looking forward to prevailing once the case itself is argued in the courtroom," Michael Schatzow, a company attorney, said in a statement following the ruling.

Environmentalists have said that they hope the Maryland lawsuit could lead EPA and state regulators to use a similar legal approach toward holding major farming companies liable for their contractors' environmental violations. In that vein, Environment Maryland July 29 unveiled a petition to Gov. Martin O'Malley signed by 55 organic and other local farmers asking him to ensure state plans to clean up the Chesapeake Bay, which would hold processors like Perdue and Tysons liable for their contractors' releases.

"If you required poultry processors in Maryland to be responsible for their pollution, they would have a tangible incentive to help their growers manage the animal manure properly. This would help level the playing field for those who are already engaged in more sustainable farming practices," the petition says.

But such an approach is expected to prompt strong opposition from Perdue and others in the industry, who have pushed back against environmentalists' efforts. Shortly after the suit was filed, Perdue founder James Perdue lobbied state lawmakers to cut funds from the University of Maryland environmental law clinic -- which is litigating the case on behalf of the plaintiffs.

The state Senate earlier this year passed a budget bill that would withhold $250,000 in funding for the University of Maryland environmental law clinic until the clinic hands over information on how it has spent its funds and on which clients over the last two years. But the language did not make it out of the state House.

Environmentalists had argued in their complaint that because Perdue essentially controls the contractor's operations, it should be liable for unpermitted releases.

But Perdue argued in a May 17 motion to dismiss that its contractual relationship with the Hudson Farm is not enough to make Perdue potentially liable under the CWA. So-called "integrators" like Perdue that hire independent concentrated animal feeding operations (CAFOs) like Hudson to raise their livestock cannot be liable for the CWA violations of its contractors, because the contractor, not the integrator, holds the NPDES permit, the company argued.

In its July 21 ruling, however, the court notes that the CWA "clearly makes violations by 'any person' unlawful, not solely permit-holders" and that other courts "have held that

'the CWA imposes liability both on the party who actually performed the work and on the party with responsibility for or control over performance of the work.'"

"Defendant Perdue's argument that it cannot be held liable solely because it is an integrator stems from decisions by EPA and [the Maryland Department of the Environment (MDE)] that integrators do not need to be co-permitees with their contractors' chicken operations," the court notes. "Defendants' contention is overstated, however, because having a permit is not the basis of an integrator's potential liability. Rather, an integrator's liability is determined on the basis of its level of control over their contractors' chicken operations."

The court said that "EPA acknowledged this basis of liability for integrators in its 2001 Proposed CAFO Rule, in which it stated that "under the existing regulation and the existing case law, integrators [that] are responsible for or control the performance of the work at individual CAFOs may be subject to the CWA as an operator of the CAFO." The court ruled that had "the EPA and MDE wanted to preclude integrators from liability for CWA violations, they could have written their regulations to make that explicit, but they did not do so. Instead, they have acknowledged that an integrator may be held liable for its CAFO's violations."

Missouri group alleges lax waterway protection (*St. Louis Post Dispatch*)

BY GEORGINA GUSTIN • ggustin@post-dispatch.com > 314-340-8195 | Posted: Friday, August 6, 2010 12:20 am
A Missouri environmental group sued regulators Thursday, charging the government with failing to protect 80 percent of Missouri's waterways from pollution.

The Missouri Coalition for the Environment filed a lawsuit in federal court accusing the U.S. Environmental Protection Agency of failing to apply standards to roughly 150,000 miles of Missouri streams and rivers.

"The condition of our water today is a result of the fact that we've ignored water quality standards on 80 percent of the waterways in Missouri," said Kathleen Logan Smith, the group's executive director. "We can't afford to continue down this path."

Under the 1972 Clean Water Act, states are required to give permits for the discharge of pollution. In Missouri, state regulators give discharge permits in larger, classified waters — the Mississippi and Missouri rivers, for example — and unclassified waters, such as Ballwin's Kiefer Creek. Permits issued for unclassified waters, however, don't have specific discharge limits and are difficult to enforce or patrol.

"They're not enforced as a routine matter," Logan Smith said.

As a consequence, the larger, classified bodies of water in the state are receiving water from tributaries where pollution standards aren't being adequately policed, Logan Smith said. The majority of discharges in the state go into these unclassified waters, later ending up downstream.

"If you're dumping into streams, then it's not going to be good downstream," Logan Smith said. "People tell me stories about how they used to swim here, and, quite frankly, you can't do that anymore."

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