U. S. Environmental Protection Agency
E-Clips
Prepared by the Office of Public Affairs

Friday, February 15, 2013

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(BNA articles can be viewed online http://Intranet.epa.gov/desktop/news.htm

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ADMINISTRATOR JACKSON

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With Alex fading, Gulf crews set sights on oil cleanup efforts (*CNN*)

By the CNN Wire Staff
STORY HIGHLIGHTS
NEW: EPA administrator headed to Gulf states Friday
House passes bill that would allow more damages paid to victims' families
Coast Guard directs BP on how to manage waste from cleanup
Heavy seas affect cleanup and containment on several fronts
New Orleans, Louisiana (CNN) -- Now that former Hurricane Alex has lost nearly all of its punch, many in the Gulf states were hoping that Friday would be the day that they could get back to cleaning up the massive oil spill.
The dangerous storm had created choppy seas in the Gulf of Mexico and caused hundreds of oil skimmers to be docked.
"We had to stand down because of the storm activity. Now that oil has been spewed all over the Chandelier Islands," Craig Taffaro, the president of St. Bernard Parish in Louisiana, said Thursday. "We are going out again (Friday) to start cleaning it up. We have to go back out, basically start over."

Also in the area Friday will be Environmental Protection Agency administrator Lisa P. Jackson. Jackson is headed back to the Gulf Coast, a day after her agency gave BP a new directive on how to deal with the cleanup of the massive oil spill.

Jackson will hold a town hall meeting in New Orleans, Louisiana, and tour areas of Pensacola, Florida, on Friday. It will be her sixth trip to the area since the April 20 oil disaster, the EPA said.

On Thursday, the EPA and the U.S. Coast Guard issued a directive to BP on how the company should manage recovered oil, contaminated materials and waste recovered in cleanup operations in the Gulf of Mexico.

Among other requirements, the directive requires the oil giant to give the EPA and state agencies access to any waste storage site and to provide specific plans, waste reports and tracking systems for liquid and solid waste.

"While the states of Louisiana, Alabama, Mississippi and Florida are overseeing BP's waste management activities and conducting inspections, this action today is meant to compliment their activities by providing further oversight and imposing more specific requirements," the Coast Guard said Thursday. "Under the directive, EPA, in addition to sampling already being done by BP, will begin sampling the waste to help verify that the waste is being properly managed."

Waste sampling to date has been done in compliance with EPA and state regulatory requirements, the Coast Guard said.

Lawmakers on Thursday also sent a message to BP.

The House of Representatives passed a bill that removes limits on financial damages that can be awarded for accidents off the U.S. coastline, such as the explosion of the Deepwater Horizon oil rig that killed 11 workers.

The bill updates maritime laws that have been on the books since the mid-1800s and early 1920s. Those laws restricted the amount of money families could obtain to compensate for lost wages and funeral expenses. The bill passed Thursday by the House would allow compensation for non-monetary losses such as pain and suffering.

A similar measure awaits action in the Senate.

Meanwhile, rough seas caused by Hurricane Alex, now nothing more than a blustery low pressure system, kept oil-skimming boats out of the Gulf on Thursday and could keep many tied to the dock through the weekend, said Thad Allen, the retired admiral in charge of the federal response to the Gulf oil disaster.

Allen said seas over 5 feet hinder the effectiveness of most boats used to scoop oil. All but the largest vessels will likely be idled until the weekend, he said.

Alex hit the Mexican coast, more than 600 miles from the center of the Gulf disaster, on Wednesday night with 105 mph winds. It had diminished to a tropical storm by Thursday afternoon, but it continued to stir up seas of 6 to 8 feet around the site of the 10-week-old disaster.

The system's prevailing winds have affected the direction of the oil slick, steering it away from the western Florida Panhandle toward the environmentally sensitive areas off the coast of Mississippi and Louisiana.

Researchers have estimated that between 35,000 barrels (about 1.5 million gallons) and 60,000 barrels (about 2.5 million gallons) of oil have been gushing into the Gulf every day since April 20, when the Deepwater Horizon rig exploded and sank off the coast of Louisiana.

07/02/2010

People On The Move (*Inside EPA)*

Ray Spears, a deputy chief of staff in EPA Administrator Lisa Jackson's office, has announced his retirement after more than three decades at the agency, effective Dec. 31. In a June 25 memo to staff, Spears writes, "After more than 36 years of federal service, I feel the time is right for me to step back from the day-to-day pace of work and

to begin the exploration of other avenues of interest." Spears says his years at EPA have "allowed me to interact with some of the most talented and extraordinary individuals on a range of fascinating and important issues." The recruitment process to find his replacement has begun, and EPA intends to have the new deputy in place by Oct. 1.
Meanwhile, the Senate June 23 by unanimous consent approved the nomination of Malcolm Jackson to be the new assistant administrator in EPA's Office of Environmental Information. The office "manages the life cycle of information to support EPA's mission of protecting human health and the environment," according to the agency's website, and manages the Toxics Release Inventory, among other databases. Jackson's nomination was the last remaining slot at EPA headquarters awaiting a Senate-confirmed head.

07/02/2010

EPA Biofuel Rule Could Hint At Agency Stance In Biomass Climate Debate (*Inside EPA*)

EPA plans to issue later this year a final rule determining whether biofuel from pulpwood reduces greenhouse gases (GHGs) sufficiently to win credits under the agency's renewable fuel standard (RFS), a move that could reveal the agency's stance in an ongoing debate about the climate impact of burning biomass for energy.
EPA's eventual position on the climate impact of biomass could be important because it could help determine whether facilities burning biomass must apply for GHG permits, and it could also influence Congressional debate over how to treat biomass under pending energy and climate legislation. Depending on what position EPA ultimately takes, the rule could even spur biomass proponents to have an energy bill state that biomass is carbon neutral.

EPA announced in its Action Initiation List of regulatory efforts launched in May that it is assessing whether biofuels made from a number of feedstocks qualify for RFS credit, a process that requires EPA to assess the direct and indirect climate impact of a fuel, including emissions from international land use change. In addition to biofuel made from pulpwood, the agency is assessing fuel made from palm oil, canola oil and grain sorghum.

Depending on what the rule says about biomass, it could reveal EPA's stance in a brewing fight over the climate impacts of biomass, which proponents say does not produce any net GHGs but which critics say could increase GHGs in the short term because of the amount of time it could take to grow plants to reabsorb emissions from its combustion.

Biomass industry associations and lawmakers are already criticizing EPA's recently finalized GHG "tailoring" air permit rule for finding that GHG emissions from burning

biomass should count towards a facility's total emissions for the purposes of determining whether the facility triggers first-time requirements for GHG permit limits.

Biomass proponents say international climate organizations and EPA in the past have deemed emissions from biomass to be carbon neutral, since re-growth of plants to replenish biomass supply takes up the CO2 that is emitted when biomass burned.

EPA in its tailoring rule said it decided to not exempt biomass from GHG permitting at this time because industry did not show the exemption was necessary due to "administrative necessity" or to avoid "absurd results," the legal doctrines the agency used to justify raising the permitting threshold for GHGs.

However, the agency said industry's comments "warrant further exploration," and the agency plans to seek further comment on the legal and policy issues raised by the approach, possibly in another rulemaking.

Lawmakers' reactions show that there is some support in Congress for the argument that biomass is carbon neutral. For example, a bipartisan group of 63 House members sent a June 16 letter to EPA Administrator Lisa Jackson, arguing that the possibility the tailoring rule could subject biomass to possible GHG limits "contradicts federal precedent and clear congressional intent regarding carbon neutrality," and "will discourage the responsible development and use of renewable biomass which could and should play a more significant role in our nation's energy policy."

And a coalition of industry groups also sent a June 18 letter to EPA criticizing the tailoring rule for not exempting biomass. "This is a significant shift in federal policy, contrary to the country's renewable energy objectives, and lacks an adequate explanation in the record," the letter says.

The letters are the latest in a series of objections from Hill lawmakers and the biomass industry to what they say are Obama administration rules adversely impacting the biomass sector. For example, Sen. Susan Collins (R-ME) vowed support for a subsequently defeated proposal by Sen. Lisa Murkowski (R-AK) to nullify EPA's endangerment finding and block the agency from issuing GHG rules, citing her concerns about the tailoring rule's impact on biomass.

However, environmentalists are pushing back against these arguments and urging lawmakers to weigh the climate impact of biomass, because they say trees may not grow back quickly enough to prevent climate tipping points. Activists are urging lawmakers to ensure EPA has a role in setting the accounting rules for bioenergy in a climate bill.

An EPA spokeswoman says the agency cannot comment on the pending RFS rules because they have not yet been proposed. However, regarding the agency's stance on biomass in the tailoring rule, the spokeswoman says, "EPA's tailoring rule did not reverse the position that biomass combustion is carbon neutral. In separate legal contexts, EPA has ignored the greenhouse gas emissions of biomass facilities, partly

under the rationale that some portion of the carbon dioxide emissions is canceled out in the immediate term by re-growing the fuel."

EPA plans to seek comment on "the carbon neutrality of biogenic carbon dioxide emissions and then make an assessment on that issue," the EPA spokeswoman says. "Next, we will examine how we might address such emissions under the Clean Air Act's permitting programs. We are currently determining our options for the timing and form of these activities," the spokeswoman says.

While it is unclear where EPA is in its process of assessing the lifecycle of biomass fuel under the tailoring rule, the agency's recently updated Action Initiation List shows that EPA is beginning work assessing the climate impact of at least one biomass-based fuel -- ethanol from pulpwood. And the final rule regarding the fuel, which the agency says it will release in early November, may hint at the agency's stance on biomass more generally.

EPA said in its March 26 RFS rule that the agency received information during its rulemaking process on a number of biofuel feedstocks that the agency projects will be used in meeting the standard, but did not have enough time to complete the lifecycle analysis of the GHG impact of the feedstocks. The agency said it would issue determinations within six months of whether the feedstocks -- grain sorghum ethanol, woody pulp ethanol and palm oil biodiesel -- would meet the GHG thresholds to receive credit under the standard. The agency will determine whether woody pulp ethanol meets the threshold for cellulosic biofuels, which must reduce GHGs by 60 percent compared to gasoline.

The agency's role in approving new biofuels pathways under the RFS is significant for the administration's broader approach to biofuels. For example, the Agriculture Department (USDA) in its June 23 report, "A USDA Regional Roadmap to Meeting the Biofuels Goals of the Renewable Fuel Standard by 2022," said EPA's petition process for reviewing new biofuels is essential to promoting new technology and a range of feedstocks. *The report is on InsideEPA.com.*

"The petition process exists to embrace the possibilities of technological advances and research evolution. In order to be successful in the implementation of a domestic biofuels industry this flexibility should be utilized in considering all the feedstock resources that America has to offer that meet the greenhouse gas requirements and other restrictions of the RFS2," the report says.

While the Action Initiation List says EPA will issue the determinations in direct final rules -- an approach EPA typically takes for non-controversial rules -- one environmentalist says the pulpwood rule could be somewhat controversial because there has been little research on the international climate impacts of using forest products for fuel.

The source says EPA's analysis for the pulpwood rule would differ from the work EPA did in its RFS rule released earlier this year, which looked at whether demand for food crops for biofuel leads other countries to clear land to replace the crops, releasing

GHGs. Any analysis of the international impact of increased pulpwood demand for fuel would look at forest product markets instead of food crop markets, the source says.

EPA's approach to assessing the climate impact of international land use change caused by corn ethanol proved to be highly controversial. Lawmakers and industry raised strong objections to EPA's proposed RFS rule, which found that corn ethanol would not meet the requirement that the fuel reduce GHGs 20 percent compared to gasoline. EPA's final rule found some types of corn ethanol would meet the threshold.

The source says environmentalists hope EPA will be somewhat consistent in its approach to assessing the climate impact of biomass whether it is used for biofuels, as it would be under the pulpwood rule, or for energy, as it would be under the tailoring rule. Environmentalists have been considering asking the agency to clarify whether its decision on the tailoring rule shows it is taking this kind of consistent approach -- not looking only at smokestack emissions but also not assuming "that biomass is somehow magically carbon neutral," the source says. -- *Kate Winston*

07/02/2010

Advocates Urge DOJ To Pursue Civil Rights Claims As EPA Efforts Languish (*Inside EPA*)

Environmental justice advocates are turning to key Justice Department (DOJ) officials and urging them to aggressively enforce Title VI of the Civil Rights Act -- which bars discrimination by recipients of federal funds -- as EPA's efforts to accelerate its own Title VI investigations and complaints continues to languish.
DOJ Assistant Attorney General for Environment & Natural Resources Ignacia Moreno and Assistant Attorney General for Civil Rights Thomas Perez met June 17 with activists from the Lawyers' Committee for Civil Rights Under Law, the Sierra Club, the Center for Race, Poverty & Environment, WE ACT for Environmental Justice and other individuals and groups who pressed for DOJ to directly step up civil rights enforcement.

Also at the meeting was Lisa Garcia, a senior environmental justice adviser that EPA Administrator Lisa Jackson brought into the agency last year as part of a broader effort to overhaul EPA's Office of Civil Rights (OCR). But critics say that effort is taking too long even as a slew of Title VI complaints remain unresolved.

As a result, environmental justice advocates want to elevate Title VI complaints filed with EPA by having DOJ pursue some of the claims. Typically, agencies review Title VI claims and then refer them to DOJ for prosecution, but activists want to leapfrog that step.

But another source says that the approach may not change the outcome, given the difficulty in proving Title VI claims, and suggests that DOJ should instead pursue targeted enforcement in environmental justice communities.

One source familiar with the recent DOJ meeting says that the Obama EPA's ongoing plans to overhaul OCR and speed up the handling of Title VI complaints are welcome, "but we want DOJ to do enforcement on this. If EPA can refer some of these complaints to DOJ, we want DOJ to enforce. . . . There is no way else to say it."

An environmental justice advocate says some existing Title VI petitions "may rise to the occasion of having not just EPA looking into it, but also DOJ," as a strategy to have them more effectively handled, given EPA's track record -- criticized in federal appeals court and elsewhere -- of taking too long to respond to the petitions.

The meeting was the second activists have had on the issue with DOJ this year, and followed the release of a June 9 report by the Lawyers' Committee, which includes recommendations to improve the handling of Title VI complaints, including calling for DOJ to implement guidelines to address equity in emergency response situations. *The report is available on InsideEPA.com.*

At the DOJ meeting, environmental justice activists highlighted a 16-year-old Title VI complaint filed with EPA over the siting of hazardous waste landfills in California that still has not been resolved. "Sick babies born [when it was filed] are now sick high school kids, and all of the hazardous waste sites in California are still located in predominantly rural Hispanic communities," the source familiar with the meeting says. "It's the same situation."

In fact, advocates June 18 filed a new petition on the issue of hazardous waste landfill siting in California, this time asking the Department of Transportation to investigate discrimination in the approval of the expansion of a landfill in Kettleman City. They say Spanish-speakers were discriminated against at hearings on the proposal, allowed 2-1/2 minutes each to speak compared to five minutes allowed for English-speakers. Additionally, documents were not translated into Spanish. Environmental groups also filed a separate lawsuit seeking to block the expansion following the December 2009 approval alleging civil rights violations.

More broadly, the groups are pushing for a legislative fix to resolve a 2001 Supreme Court ruling in *Alexander v. Sandoval* that set a high bar for private legal action in pursuing Title VI complaints.

But as congressional efforts remain stalled, "We want DOJ to support more litigation opportunities to enforce Title VI. They could write *amicus* briefs [in cases filed by others]. They could do a lot," the source says, adding that DOJ could use the Americans with Disabilities Act as an enforcement model because of its success in granting access to all. "We need consistent application of enforcement of civil rights law by DOJ."

The source says advocates at the meeting encouraged DOJ to include equity in its ongoing civil and criminal probe of the BP Gulf of Mexico spill, in particular focusing on worker health and safety protection and whether minorities are being disproportionately affected.

Additionally, in response to the June 14 release of an EPA Inspector General report largely rejecting activist claims of criminal and civil discrimination against environmental justice communities within EPA Region IV, advocates are considering pushing for greater DOJ involvement. "The criminal investigations . . . may be something that the U.S. DOJ should be involved in, in tandem with EPA," another equity source says.

DOJ did not return requests for comments. Advocates say a third meeting is planned in the coming weeks where they will push DOJ for a formal response to their concerns.

EPA has already agreed to take steps to overhaul its Title VI process in response to the landmark federal court ruling last fall criticizing EPA for "a pattern of delay" in addressing Title VI claims. As part of a settlement following the decision in *Rosemere Neighborhood Association v. EPA*, OCR agreed to provide a quarterly update to Rosemere of the status of its Title VI work. The first spreadsheet, released in April, shows EPA continues to investigate about 30 complaints, including the first one it ever received dating from 1994 (*Inside EPA*, April 16).

Last month, EPA also announced that OCR director Karen Higginbotham is leaving the office and being replaced in the interim by Rafael DeLeon, who served in the same interim director position during the Clinton administration. Sources say EPA will conduct a nationwide search for a new OCR head (*Inside EPA*, June 18).

But one knowledgeable source says that winning greater DOJ involvement in EPA's attempts to invigorate Title VI complaints handling is not likely to produce different results because of the difficulty in showing that state and local agencies discriminated, particularly in making routine permitting decisions.

Title VI petitions "are difficult claims. When you talk about a disparate impact, there won't be a correlation necessarily provable between [pollution] releases and exceedances . . . and illness in a community," the source says, adding the cases are also expensive. "And at the end of the day it is not entirely clear what the remedy would be, since [agencies] are also constrained within the mandates of the statutes themselves which set [release] levels. If [a facility] is in compliance with all of its discharge permit numbers, I'm not sure" a Title VI petition would be effective.

Instead, the source suggests a more productive strategy would be for advocates to press DOJ for more community-focused enforcement, where equity communities are identified with tools such as DOJ's Environmental Justice Strategic Enforcement Screening Tool (EJSEAT) and then targeted for enforcement.

In particular, the source says past DOJ efforts to require industry to implement supplemental environmental projects in equity communities that actually improve on-the-ground conditions have been highly successful and should become models.

"Title VI claims are not nearly as effective as trying to get EPA and DOJ to use EJSEAT to identify [equity] communities and say they will inspect twice a year rather than once every three years," the source says. "EPA should develop a plan to leverage state enforcement capacity to make sure they are guaranteeing compliance in communities

that have the most number of potential violations. It seems you would get more concrete benefits than by asking for a strategy that is expensive, complicated and has an unclear reward."

Meanwhile, the Lawyers' Committee report outlines recommendations for the Obama administration to use existing law to eliminate disparities in environmental protection efforts.

Key recommendations in the report, "Now is the Time: Environmental Injustice in the U.S. and Recommendations for Eliminating Disparities," in addition to seeking DOJ emergency response guidelines, include calling on EPA "emphatically and resolutely embrace" a strong definition of environmental justice that prevents, reduces and eliminates disproportionate environmental burdens on equity communities; asking EPA to make full use of existing legal authority to address equity; and asking EPA to establish federal guidelines for school indoor air quality and other school-building issues. -- *Dawn Reeves*

EDITORIAL / OP-ED / COMMENTARY / LETTERS

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Carbon pricing won't achieve emissions goals (*Washington Post*)

July 2, 2010 Friday
Regional Edition
EDITORIAL COPY; Pg. A21
Maryland
By : Vinod Khosla
If our goal is carbon reduction, a cap-and-trade or carbon-pricing bill, with its likely compromises, would be worse right now than no regulation. Pricing carbon below $40 per ton will not change how industry does business or drive adoption of new technologies. With legislation unlikely to support such prices, uncertainty is better than a low price that disincentivizes the development of technologies that have radically less carbon.

Much as Craig Venter used tools for genome sequencing to outrace the larger, longer and costlier government-sponsored human genome project, it makes more sense to focus over the next five years on the development of carbon-reduction technologies rather than on maximizing short-term emissions reduction. Cherry-picking reductions of 5 to 10 percent through low-hanging efficiency upgrades could distract from developing technologies that reduce emissions 80 percent. By focusing instead on the large wedges that account for 75 percent of carbon emissions -- electricity and transportation -- we could achieve the lion's share of our goals with a small fraction of the complexity.

If we develop low-cost, high-efficiency technologies upfront, we can spark a wave of

adoption and create companies and jobs -- the Googles of the energy sector. Innovation is America's natural advantage, one whose fruits we can export worldwide as other countries seek to adopt cost-effective technologies.

Well-designed legislation to reduce carbon emissions in electricity and petroleum could enable the development of substantially better alternative technologies for 70 percent of our carbon emissions, reducing our largest energy security risks. Consider: Sen. Jeff Bingaman (D-N.M.) has proposed requiring electricity providers to use a minimum percentage of energy from renewable sources. If this standard were modified to allow low-carbon electricity from any source, not just renewable, with carbon emissions that are 80 percent lower than coal, it could get support from nuclear, natural gas and even coal advocates. Opening the playing field like this would increase competition and drive down prices. This would encourage coal with sequestration and nuclear technologies to accelerate development to compete.

Bipartisan support for such standards is possible because this proposal is not dramatically different from ones by Bingaman, as well as by Sens. Lamar Alexander (R-Tenn.), Jim Webb (D-Va.) and Richard Lugar (R-Ind.). If the proposal passed, we would achieve a technology-neutral, market-based win for climate legislation by reducing emissions from our largest source of carbon. The United States could aim to get 20 to 25 percent of our electricity from sources that use 80 percent less carbon than benchmark coal by 2020, which would meet or exceed the standard set by the House bill passed last June. For utilities, it would reduce uncertainty and encourage investment.

Importantly, a low-carbon electricity standard would be superior to a utilities cap. A cap can easily be met in the next 10 years by incremental adjustments to existing assets (such as repowering coal power plants with natural gas and shutting the most inefficient plants). In contrast, a low-carbon electricity standard can be met only by the rapid development of radically low-carbon technology; these technologies can then be exported to India and China, which deploy much of the coal-fired electricity. Such a standard would build low carbon capacity the fastest and give the United States a competitive advantage in the emerging low-carbon economy.

The renewable-fuels standard could likewise be modified to a more technology-neutral low-carbon fuels standard, which would reduce concerns about the impact on the food supply, such as corn vs. ethanol, through diversification. Adopting this standard, as California has, would increase energy security and reduce oil risk -- no small feat in light of the threats posed by oil spills and petro-dictators such as Venezuela's Hugo ChÃ¡vez or Iran's Mahmoud Ahmadinejad.

Meanwhile, regulating cars in technology-neutral effective grams of carbon emitted per mile, instead of miles per gallon, would allow more efficient engines to compete with electric cars. And compete they should, as some engine technologies may deliver more carbon savings at a fraction of the cost of electric vehicles and hybrids. Furthermore, producing non-food biofuels could be the largest source of new jobs and gross domestic

product growth in rural America.

Efficiency is another big lever. Why not set up a "fee-bate system" in which rebates go to those who purchase items that are among the most energy-efficient, be they refrigerators, cars or lighting, while the most inefficient pay fees to fund the rebates? Efficiency standards could update automatically every few years based on the top-tier performers, whose economics and consumer acceptance have been demonstrated.

Most important, Washington must stop "picking winners." Tax credits and loan guarantees should be equally available to all low-carbon technologies, be they carbon capture and storage, solar, wind or nuclear. Focus on electric cars and hybrids has already decreased investor interest in more-efficient engines. "Natural gas" trucks are an example of Washington favoring technologies when better paths exist. Why force "repowering" of coal plants with natural gas when one can be technology-neutral, specifying a certain amount of carbon per megawatt hour, or prefer electric hybrids over more cost-effective and efficient hydraulic hybrids?

Between cleaner electricity and transportation, we can start addressing 75 percent of our sources of carbon emissions, while efficiency improvements will reduce emissions in the remaining 25 percent. In the meantime, we can increase energy security and create competitive American companies and sustainable jobs. **Climate change** may be uncertain to some, but if we take steps to ensure against nuclear attacks, the disruption of oil supplies and acts of terrorism, why not ensure against climate risk? Such actions would increase competition and decrease long-term energy costs.

The writer is founder of the venture capital firm Khosla Ventures, which has interests in several aspects of clean technology, including solar, wind, batteries, carbon sequestration, nuclear, geothermal and biofuels, as well as in energy-efficiency technologies such as engines, electric motors, lighting, air conditioning and the smart grid.

JULY 2, 2010

Why Is the Gulf Cleanup So Slow? (*Wall Street Journal*)

There are obvious actions to speed things up, but the government oddly resists taking them.
By PAUL H. RUBIN
Destin, Fla.
As the oil spill continues and the cleanup lags, we must begin to ask difficult and uncomfortable questions. There does not seem to be much that anyone can do to stop the spill except dig a relief well, not due until August. But the cleanup is a different story. The press and Internet are full of straightforward suggestions for easy ways of improving the cleanup, but the federal government is resisting these remedies.

First, the Environmental Protection Agency can relax restrictions on the amount of oil in discharged water, currently limited to 15 parts per million. In normal times, this rule sensibly controls the amount of pollution that can be added to relatively clean ocean water. But this is not a normal time.

Various skimmers and tankers (some of them very large) are available that could eliminate most of the oil from seawater, discharging the mostly clean water while storing the oil onboard. While this would clean vast amounts of water efficiently, the EPA is unwilling to grant a temporary waiver of its regulations.

Next, the Obama administration can waive the Jones Act, which restricts foreign ships from operating in U.S. coastal waters. Many foreign countries (such as the Netherlands and Belgium) have ships and technologies that would greatly advance the cleanup. So far, the U.S. has refused to waive the restrictions of this law and allow these ships to participate in the effort.

The combination of these two regulations is delaying and may even prevent the world's largest skimmer, the Taiwanese owned "A Whale," from deploying. This 10-story high ship can remove almost as much oil in a day as has been removed in total—roughly 500,000 barrels of oily water per day. The tanker is steaming towards the Gulf, hoping it will receive Coast Guard and EPA approval before it arrives.

In addition, the federal government can free American-based skimmers. Of the 2,000 skimmers in the U.S. (not subject to the Jones Act or other restrictions), only 400 have been sent to the Gulf. Federal barriers have kept the others on stations elsewhere in case of other oil spills, despite the magnitude of the current crisis. The Coast Guard and the EPA issued a joint temporary rule suspending the regulation on June 29—more than 70 days after the spill.

The Obama administration can also permit more state and local initiatives. The media endlessly report stories of county and state officials applying federal permits to perform various actions, such as building sand berms around the Louisiana coast. In some cases, they were forbidden from acting. In others there have been extensive delays in obtaining permission.

As the government fails to implement such simple and straightforward remedies, one must ask why.

One possibility is sheer incompetence. Many critics of the president are fond of pointing out that he had no administrative or executive experience before taking office. But the government is full of competent people, and the military and Coast Guard can accomplish an assigned mission. In any case, several remedies require nothing more than getting out of the way.

Another possibility is that the administration places a higher priority on interests other than the fate of the Gulf, such as placating organized labor, which vigorously defends the Jones Act.

Finally there is the most pessimistic explanation—that the oil spill may be viewed as an opportunity, the way White House Chief of Staff Rahm Emanuel said back in February 2009, "You never want a serious crisis to go to waste." Many administration supporters are opposed to offshore oil drilling and are already employing the spill as a tool for achieving other goals. The websites of the Sierra Club, Friends of the Earth and Greenpeace, for example, all feature the oil spill as an argument for forbidding any further offshore drilling or for any use of fossil fuels at all. None mention the Jones Act.

To these organizations and perhaps to some in the administration, the oil spill may be a strategic justification in a larger battle. President Obama has already tried to severely limit drilling in the Gulf, using his Oval Office address on June 16 to demand that we "embrace a clean energy future." In the meantime, how about a cleaner Gulf?
Mr. Rubin, a professor of economics at Emory University, held several senior positions in the federal government in the 1980s. Since 1991 he has spent his summers on the Gulf.

Does our country want to take over oil industry? (*Eastern Arizona Courier*)

Editor:
It seems most people are ready to blame the Gulf of Mexico oil disaster on BP (British Petroleum). Yes, it is BP's rig that is leaking oil into the Gulf of Mexico, and BP has stepped up to the plate from day one, saying it will cover the entire cost of the cleanup and cover all financial loss that will occur to the states and their people. Yet this administration is demonizing BP in every way possible. Why? Is this another industry that our country wants to take over?
Let's take a look at why BP was drilling in such deep water in the first place. Let's go back to December 2, 1970, when the Environmental Protection Agency was born. Ever since that date, our government has imposed more and more regulations on our cities and states to clean up our rivers and lakes. Many of these regulations were good for our environment, but then over the years, the agency has been taken over by radical environmentalists.

Then came the takeover of the forest. We had to save the trees, or we had to save the owl, the red squirrel, the minnow, etc. Millions of acres are closed each year to mining, drilling, etc., to save this or that. The EPA will claim an endangered species on the land, then close it off without the need of any proof that it does damage to the certain species or the land.

Soon the oil drillers ran out of land to drill on, so they moved to the waters. Then they said the oil rigs look unsightly along the shoreline, so they moved them farther offshore and now were polluting the very waters we took 40 years to clean up.

We wonder why so many of our businesses move to foreign countries or why a new car costs so much. There is only one answer: EPA has too much power. Because of EPA and environmental kooks, it takes about 10 years of paperwork and millions of dollars to start a new mine or build a new power plant.

We have two good examples right here in our area. JoBi's and a York area gas station claim to be contaminated. So millions of taxpayer dollars will be spent to dig out the contaminated dirt and haul it to another area to contaminate that area. Makes sense,

doesn't it? Yes, fix the leaky tank, but leave the dirt there; it does no harm. If leaky gas or oil was harmful, then all mechanics are in deep doo-doo.

Lorren Behmlander

Safford

EPA is correct to require Texas to clean up its air (*Houston Chronicle*)

July 1, 2010, 8:11PM
As legislators in Austin and Washington, D.C., we know that breathing clean air should not be a partisan issue. As a result, we urge the Environmental Protection Agency not to allow Texas' election-year partisan politics to interfere with the agency's legally mandated task of enforcing the Clean Air Act — a law that is integral to protecting Texans from the health risks associated with air pollution.

Recently, the EPA took some important steps to address shortcomings in Texas' air permitting program by requiring three Texas facilities with deficient air quality permits to seek federally authorized permits directly from the EPA. This action was the end result of years of attempted negotiation between the federal agency and its state counterpart, the Texas Commission on Environmental Quality (TCEQ), over numerous controversial aspects of Texas' air permitting program.

As a result, some have questioned whether the EPA's actions represent an unprecedented interference in a state's right to enforce its own air-permitting program. Others have claimed the EPA is seeking a power grab for the sake of power only.

The EPA, however, is simply weighing in on whether Texas is properly exercising the federal authority the agency delegated to the state to issue air permits, authority Texas has only because of this delegation. Further, the action taken was not the EPA's choice. Congress has very clearly spelled out the steps the agency is required to take. By federal law, when the EPA finds that a state-issued operating permit fails to meet minimum requirements of the Clean Air Act, the agency "shall object to its issuance." If the state agency fails to correct the deficiencies within 90 days, then the EPA "shall issue or deny the permit."

By law, the EPA could have simply denied the facility's operating permit. Instead, the agency has taken a more lenient approach, committing federal resources to write a new permit that complies with the Clean Air Act.

Indeed, the EPA's actions are not about the EPA taking over a state agency, but about deficiencies in state regulations that ought to protect our health by ensuring we all have clean air to breathe. Not having a federally approved permitting program jeopardizes the hardworking Texas employers who want to follow the law, as businesses are well aware that their facilities must comply with both state and federal regulations. Air that is

unhealthy to breathe endangers the lives of the 25 million Texans who live here, resulting in a poorer quality of life and increased health care costs that show up in insurance premiums and tax rates.

The previous presidential administration recognized this as well. In fact, under President George W. Bush, the EPA sent a letter to permit holders in 2007 regarding one of the more disputed portions of Texas' air permitting program, the so-called flexible permit. The letter specifically stated that "permits issued under these flexible permit rules reflect Texas state requirements and not necessarily the federally applicable requirements." The letter went on to remind permit holders that they "are obligated to comply with the federal requirements applicable to [their] plant, in addition to any particular requirements of [their] flexible permit."

TCEQ is entering the Sunset Advisory Commission process later this year. This routine review process of state agencies will present the Texas Legislature with a unique opportunity to examine TCEQ programs and ensure that the agency's air permitting program best protects the health of all Texans, as well as the environment. While we know that our colleagues in the Texas Legislature look forward to that discussion, we fully expect TCEQ to have corrected any outstanding issues regarding its compliance with the Clean Air Act long before then.

As representatives of the people of Texas, it is our responsibility to ensure that the state fulfills its responsibility to all Texans so that we may enjoy the same protections afforded to other Americans under the Clean Air Act. The environmental regulations in the Clean Air Act better all of our lives, and it is to everyone's benefit that they be enforced.

This column was written by U.S. Rep. Llloyd Doggett, of the 25th Congressional District of Texas; U.S. Rep. Eddie Bernice Johnson, of the 30th Congressional District; state Sen. Leticia Van De Putte, of state Senate District 26, and state Sen. Rodney Ellis, of state Senate District 13.

EPA extends deadline to comment on Sudbury River plan (*MetroWest Daily News*)

By Staff reports
The MetroWest Daily News
Posted Jul 01, 2010 @ 04:28 PM

The U.S. Environmental Protection Agency has extended the deadline for public comments on its plan to address mercury contamination in the Sudbury River.

The comment period, which began last Friday, will now end Aug. 26. The original cutoff was July 25. Community groups requested the extension.

The plan is meant to address mercury contamination left by the old Nyanza dye company in Ashland, which closed in 1978, which renders fish in the river unsafe to eat.

The EPA's proposal calls for laying a six-inch layer of sand over roughly 84 acres of the bottom of Framingham Reservoir No. 2 on the river, where some of the highest mercury concentrations are found.

The agency also calls for monitoring of mercury levels elsewhere in the river and community outreach about the danger of fish.

Check out the links on the right to read more about the proposal. Send comments to:

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Dr. Ruth S. Hertzberg: Don't equate George III with EPA (*Summit Daily News*)

Dr. Ruth S. Hertzberg
Copper Mountain,
Following the advice of Morgan Liddick in his article of Tuesday, June 29, I have spent a lot of time reading and rereading that hallowed document, the Declaration of Independence. The most important part of this document is its political philosophy and not the “injuries and usurpations” imputed to George III of England.

This famous political philosophy is etched in my brain. “We hold these truths to be self-evident; that all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these rights are life, liberty and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed ...”

I have always tried to be sure that my students understood the implications of this political philosophy, asking them, (1) What is meant by “All men are created equal?” (2) What are the rights of all men? (3) What is the purpose of government? (4) Where do governments get their power?

This same very famous passage has been quoted to me by students in China and in Bulgaria. It appears in Lincoln's Gettysburg Address and was alluded to by Martin Luther King in his “I Have A Dream” speech. Surely it is the most famous part of the Declaration to be found in the annals of U.S. history. If we are going to talk about the

Declaration of Independence, we must honor its most quoted parts.

But what really bothers me about Mr. Liddick's flawed analysis of the Declaration of Independence is his attempt to identify the wrongs of George III and the British government with persecutions we are suffering today at the hands of our present government. I would remind Mr. Liddick that both President Barack Obama and Governor Ritter were elected by overwhelming numbers of our people (consent of the governed). The EPA and the IRS are are hardly harassing our people and eating out their substance, and Governor Ritter's fees upheld by the Supreme Court of Colorado are not examples of excessive taxation.

I fear Mr. Liddick is identifying with the “tea-baggers” — nutcases, in my opinion — and moreover in support of a new revolution against our properly constituted, elected government.

Oil and gas drilling incidents in Colorado (*Denver Post*)

Re: “Spill risks hit home in Colo.; Environmentalists worry about buildup of small leaks; energy firms trumpet safety, quick cleanup,” June 28 news story.

According to The Denver Post, about 264 oil and gas spills in Colorado have contaminated surface and groundwater over the last 2K years. Additionally, based on Environmental Protection Agency data, in 2007 more than 3.3 million pounds of toxic chemicals were discharged into Colorado waterways. Please, read both those statistics again, and let it sink in. When our waterways are loaded with millions of pounds of toxic chemicals (not just trash or other types of pollution, but toxic chemicals) and about one-fourth of gas and oil spills in Colorado have reached water sources, I think that proves that we're being too reckless with our water.

As a headwaters state, millions of people depend on our rivers and streams for drinking, agriculture and recreation. We need to tighten regulations on industries that continue to pollute our waters at unsafe levels. I hope that all Colorado's representatives will restore protection to Colorado's waters.

Lynn Spishak, Denver

This letter was published in the July 2 edition. For information on how to send a letter to the editor,

There are more than 70,000 Coloradans working in the oil and gas industry for whom preventing spills and addressing them quickly and comprehensively is a matter of pride. Safety and environmental protection for the communities within which we live and work is a priority for all of us in this industry. When there is an incident, the industry works closely with state and local officials and any other stakeholders in order to fashion the

best possible solution and remediation plan for that particular incident.

Many of the spills reported in Weld County were part of the proactive identification and remediation of historic sites. The production of all forms of energy has environmental effects. We continue to work diligently to protect our environmental resources and provide responsible, clean, domestic resources for Colorado's energy needs.

Tisha Conoly Schuller, Denver

The writer is president of the Colorado Oil & Gas Association.

This letter was published in the July 2 edition. For information on how to send a letter to the editor,

We commend The Denver Post for exposing the dark side of oil and gas operations in our state. Oil and gas development poses serious risks to our health, wildlands, clean air and pure drinking water. Some places are too sensitive to drill and should be off limits, like watersheds and backyards. Every place else, we need strong regulations and enforcement in place to protect our health and environment. As the spills in Colorado illustrate — as does the tragic Gulf of Mexico spill — without strong oversight, corners will be cut and safety will be compromised.

The new Colorado oil and gas rules are helping to restore a balance between protecting the public and letting industry do its job. They are a good first step and should be strengthened. Those calling for weakening of these regulations are misguided.

Amy Mall, Boulder

The writer is a senior policy analyst for the Natural Resources Defense Council.

This letter was published in the July 2 edition. For information on how to send a letter to the editor,

AIR

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Administration ramps up the apps (*Washington Post*)

July 2, 2010 Friday
Regional Edition
METRO; Pg. B03
Maryland

Smartphone addicts, rejoice: Are you counting calories? Concerned about unsafe toys? Worried about tan lines or airport security lines? There's a (government) app for that. The Obama administration unveiled four new apps for mobile phones on Friday, allowing tech-savvy people to check nutritional information for more than 1,000 foods through Agriculture Department data, monitor the wait times at Transportation Security Administration airport checkpoints, track the UV Index and air-quality ratings with the Environmental Protection Agency, and get alerts on product and food recalls from the Consumer Product Safety Commission.

The rollout is part of the redesigned USA.gov, the federal government's online home for government services.

Agencies have already developed apps to track the FBI's Ten Most Wanted, to locate U.S. embassies and to find military grave sites.

Some apps are downloadable via the Web, while others are available for either iPhone or Google phones. Access them at http://apps.usa.gov.

-- Ed O'Keefe

July 2, 2010

EPA is correct to require Texas to clean up its air (*Houston Chronicle*)

As legislators in Austin and Washington, D.C., we know that breathing clean air should not be a partisan issue. As a result, we urge the Environmental Protection Agency not to allow Texas' election-year partisan politics to interfere with the agency's legally mandated task of enforcing the Clean Air Act — a law that is integral to protecting Texans from the health risks associated with air pollution.

Recently, the EPA took some important steps to address shortcomings in Texas' air permitting program by requiring three Texas facilities with deficient air quality permits to seek federally authorized permits directly from the EPA. This action was the end result of years of attempted negotiation between the federal agency and its state counterpart, the Texas Commission on Environmental Quality (TCEQ), over numerous controversial aspects of Texas' air permitting program.

As a result, some have questioned whether the EPA's actions represent an unprecedented interference in a state's right to enforce its own air-permitting program. Others have claimed the EPA is seeking a power grab for the sake of power only.

The EPA, however, is simply weighing in on whether Texas is properly exercising the federal authority the agency delegated to the state to issue air permits, authority Texas

has only because of this delegation. Further, the action taken was not the EPA's choice. Congress has very clearly spelled out the steps the agency is required to take. By federal law, when the EPA finds that a state-issued operating permit fails to meet minimum requirements of the Clean Air Act, the agency "shall object to its issuance." If the state agency fails to correct the deficiencies within 90 days, then the EPA "shall issue or deny the permit."

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Indeed, the EPA's actions are not about the EPA taking over a state agency, but about deficiencies in state regulations that ought to protect our health by ensuring we all have clean air to breathe. Not having a federally approved permitting program jeopardizes the hardworking Texas employers who want to follow the law, as businesses are well aware that their facilities must comply with both state and federal regulations. Air that is unhealthy to breathe endangers the lives of the 25 million Texans who live here, resulting in a poorer quality of life and increased health care costs that show up in insurance premiums and tax rates.

The previous presidential administration recognized this as well. In fact, under President George W. Bush, the EPA sent a letter to permit holders in 2007 regarding one of the more disputed portions of Texas' air permitting program, the so-called flexible permit. The letter specifically stated that "permits issued under these flexible permit rules reflect Texas state requirements and not necessarily the federally applicable requirements." The letter went on to remind permit holders that they "are obligated to comply with the federal requirements applicable to [their] plant, in addition to any particular requirements of [their] flexible permit."

TCEQ is entering the Sunset Advisory Commission process later this year. This routine review process of state agencies will present the Texas Legislature with a unique opportunity to examine TCEQ programs and ensure that the agency's air permitting program best protects the health of all Texans, as well as the environment. While we know that our colleagues in the Texas Legislature look forward to that discussion, we fully expect TCEQ to have corrected any outstanding issues regarding its compliance with the Clean Air Act long before then.

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Lehigh Cement unveils plan to reduce emissions by 25 percent (*San Jose Mercury News*)

Lehigh Permanente cement plant announced June 23 that it has installed equipment to reduce mercury emissions by 25 percent.

The move is in preparation for tough new federal emission standards that the Environmental Protection Agency plans to announce by Aug. 3. The standards, which will set the nation's first limits on mercury emissions from existing cement plant kilns, could require some facilities to cut mercury emissions by more than 80 percent by August 2013.

Lehigh officials are unsure now just how much further the cement plant on Stevens Creek Boulevard will have to curb emissions. Tim Matz, director of environamental affairs for Lehigh, said the company is certain, however, that the 25 percent reduction will not address all of the EPA's forthcoming rules.

Matz, who is also member of the Portland Cement Association, a group that meets regularly with the EPA to discuss the new standards, said three years is the absolute maximum amount of time the EPA could give cement producers to comply with the new standards.

Lehigh's new system takes mercury, a natural component of cement production, and binds it with limestone particles, essentially trapping the mercury inside the finished cement product rather than emitting it into the air. The system was tested and installed over the last few months.

The company has been working the last two years preparing and testing the technology, according to plant manager Henrik Wesseling

who has worked at the plant since 2008.

"This project has been my top priority since my first day on the job," Wesseling said.

The announcement of better emission controls comes less than three months after the EPA issued a Notice of Violation to the cement plant for allegedly violating the Clean Air Act. According to the EPA, Lehigh made illegal physical changes to its plant operations in the 1990s that could have resulted in increased emissions like nitrogen dioxide and sulfur dioxide. Lehigh officials said the changes were made before Lehigh took over the operations and are looking into the situation.

The EPA violation could result in civil and possibly criminal penalties pending the investigation.

Many nearby neighbors have been critical of the cement plant that has operated there since 1939, saying they are fearful of the affect that possible emissions could have on their health.

Resident Bill Almon, who heads the Lehigh watchdog group Quarry No, said the community is worried about mercury lingering in the environment.

"The goal should be that no mercury falls on residents but as Lehigh states, it is in the limestone. [It is] hard to get rid of. Hopefully the 25 percent reduction will actually occur," Almon said.

Cupertino Mayor Kris Wang was optimistic about the announcement.

"This marks an important step for Lehigh in meeting new, stricter, clean air requirements and good news for all of us breathing the air in Cupertino," Wang said. "I applaud their efforts to put innovative clean-air technology to work and thank them for helping to bring creative new solutions to their work in our community."

The Cupertino City Council is scheduled to review a report from the Bay Area Air Quality Management District and discuss air quality regulation, standards and monitoring issues relating to Lehigh Cement during a study session July 20 at 3 p.m. at the Cupertino Community Center.

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EPA halts imports of Chinese ATVs, off-road motorcycles (*Christian Science Monitor*)

Four Chinese ATV and motorcycle manufacturers lost permission to import. The EPA found their certificates of compliance with air-quality standards had false or incomplete data.
Temp Headline Image
ATV riders ride the dunes in Pismo Beach, Calif., in February. On Wednesday, EPA halted imports of ATVs and off-road motorcycles from four Chinese companies because their products may not meet clean-air standards. But consumers who have already bought the products can continue using them.

By Mark Clayton, Staff writer
posted July 1, 2010 at 9:58 am EDT

Chinese off-road cycle and all-terrain vehicle manufacturers hit a big pothole Wednesday as the Environmental Protection Agency withdrew permission to import and sell up to 200,000 such vehicles because they may pollute more than had been claimed.

After a lengthy investigation, the agency said it had found that certifications of compliance with US air-quality rules submitted in 2006 and 2007 actually "contained false or incomplete information" about pollution levels from the vehicles.

It was the first time the agency has ever voided certificates that had already been issued. The certificates had been issued to the US subsidiaries of four of China's largest ATV manufacturers: Hensim USA (City of Industry, Calif.); Loncin USA (Hayward, Calif.); Peace Industry Group (Norcross, Ga.); and Seaseng (Pomona, Calif.).

The certificates were issued, based on applications compiled by MotorScience Enterprise, a consultant to the companies, the agency said in a statement. The EPA also said it believes "MotorScience Enterprise intentionally submitted false or incomplete emissions information."

EPA said it is considering enforcement action that "could lead to significant financial penalties against the businesses that manufactured or imported these types of recreational vehicles."

While the move affects manufacturers and retailers, it does not affect consumers who have already purchased the models involved, the agency said.

"A consumer who owns a model that was covered by these voided certificates is not responsible for these companies' wrongdoing and can continue to use the vehicle," Cathy Milbourn, an EPA spokeswoman, said in an e-mail.

The EPA, she said, is considering enforcement action under the Clean Air Act, "which could lead to significant financial penalties against the businesses that manufactured or imported these types of recreational vehicles."

Since the manufacturers did not properly test the emissions from their product, the EPA said in its statement, it could not assess whether the vehicles met US emission standards or not. Recreational vehicles can emit substantially more volatile organic compounds, nitrogen oxides, and other pollutants than permitted under EPA standards unless they have proper controls, the agency noted.

Riders seemed ready to take the bump in their stride.

"Certainly our members are always looking for a wide variety of products," said Peter terHorst, a spokesperson for the American Motorcyclist Association and All Terrain Vehicle Association. "But as an association, we feel there has to be a minimum standard for performance when it comes to emissions standards."

Representatives for MotorScience Enterprise did not return phone calls.

EPA Upsets Texas in Clean Air Showdown (*Austinist*)

The Environmental Protection Agency ("EPA") yesterday broke up what had been one helluva ride for emissions-producing companies in the state, by announcing final disapproval of the Texas Commission on Environmental Quality's ("TCEQ") flexible permit program.

The "flexibility" comes from the ability of companies to report multiple emissions under a single limit, rather than reporting individual emissions and risk violating the Federal Clean Air Act (specifically Title I).

"Today's action improves our ability to provide the citizens of Texas with the same healthy-air protections that are provided for citizens in all other states under the Clean Air Act," said Al Armendariz, EPA Regional Administrator (Texas is in Region 6, by the way). He continued by stating, "EPA will continue working closely with Texas, industry, environmental organizations, and community leaders to assure an effective and legal air permitting system."

The flexible permit program has been around since 1994 -- created under the administration of Democratic Governor Ann Richards -- but the program never received federal approval. In fact, the EPA has been warning Texas for five years or more that it was violating the Clean Air Act.

Environmental groups such as the Lone Star Sierra Club have long criticized TCEQ for its allegedly lax nature in enforcing federal clean air standards, most recently in an early

June press release -- so it is likely some did not lose any sleep last night over the announcement.
July 1, 2010 2:00 PM

Flexible emissions disallowed (*San Antonio Express-News*)

The U.S. Environmental Protection Agency on Wednesday threw out one of Texas' key air quality permitting processes, sparking complaints from representatives of the petrochemical industry who called the move a "backdoor" attempt to bring state facilities under greenhouse gas regulation.

EPA Regional Administrator Al Armendariz invalidated all 122 flexible air quality permits issued by the Texas Commission on Environmental Quality since the 1990s, leaving the facilities to apply for new ones. Most of the permits were issued to oil and chemical refineries.

There are three flexible permit holders in Bexar County Motiva Enterprises, the Flint Hills San Antonio terminal and the UT Health Science Center's main campus, which has permits for three boilers for heating and equipment sterilization.

None of the facilities will be required to shut down while seeking new permits.

"We're going to transition these facilities from these flexible permits to standard permits and, by doing so, lower emissions and improve public health," Armendariz said.

Gov. Rick Perry blasted the move.

"The EPA's irresponsible and heavy-handed action not only undermines Texas' successful clean air programs, but threatens thousands of Texas jobs, families, businesses and communities throughout our state," Perry said. "It will also likely curtail energy supplies and increase gasoline prices nationwide."

Armendariz said the TCEQ will remain the point agency handling permits under the federal Clean Air Act.

TCEQ Chairman Bryan Shaw defended the state program as effective in improving Texas' air quality. He said the agency tried to resolve EPA concerns with a series of new rules June 16.

Armendariz said some permits can be upgraded administratively, but others will require a review process that may require installation of updated clean air technology.

San Antonio's CPS Energy does not have plants that operate under the TCEQ's flexible permit rule, said Scott Smith, director of environmental planning and compliance.

"We are closely monitoring the situation," Smith said, and will work with both the EPA and TCEQ "to ensure that all of our facilities stay in compliance."

Petrochemical industry representatives fear a lengthy permitting process will result in most of the permits not being issued until new EPA greenhouse gas regulations take effect in January.

"Everyone knows that's part of the game plan," said Patricia Braddock, a Fulbright & Jaworski lawyer who represents refineries in environmental lawsuits. She said if the permitting is slowed down, it will be a "backdoor" method of bringing the greenhouse gas rules into play.

Climate change legislation has failed to pass Congress, but the EPA is moving forward with regulations under the Clean Air Act.

Braddock said many of the facilities added modern air control technology under state flexible air quality permits issued during the administrations of Presidents Bill Clinton and George W. Bush without objection from the EPA.

She said the EPA move means the companies could have to upgrade to "control technology that the Obama administration wants," costing millions of dollars for each company.

Debbie Hastings with the Texas Oil and Gas Association said the impending greenhouse gas regulations are "the principal concern" to the industry.

"Some of the controls that would have to go into place have not even been invented yet. We'd have to operate out of compliance," Hastings said. "We'd be faced with a decision of whether we need to shut down our facilities."

Armendariz said the greenhouse gas regulations will not affect most of the flexible permit holders because the regulations are being phased in, with the first affected being new facilities or those with major modifications.

"We started taking this action back in 2007, long before there were any greenhouse gas rules," Armendariz said, adding his action "has absolutely no connection to the federal efforts to reduce emission of greenhouse gases."

Armendariz said some of the Texas facilities could be covered by the greenhouse gas rules if it is learned they used the flexible permitting program to circumvent Clean Air Act requirements.

"If we come across a facility that should have installed new technology in the past and failed to do so, we will engage in discussions with those facilities about upgrading technology," he said. "That discussion could include new technology, including

greenhouse gas technology."

The Texas flexible permit system was adopted in 1995 to give facilities greater latitude in controlling air emissions. One portion of a facility could pollute more than another as long as the overall emissions did not violate federal air standards.

Armendariz earlier this year vacated 271 "qualified facility" permits, which essentially were amendments to existing air quality permits. Texas Attorney General Greg Abbott has sued to block that action.

Houston-area flexible permit holders include Exxon Mobil's Baytown facility, Shell Oil's Deer Park refinery, Chevron Phillips' Pasadena plastics complex, BP's Texas City refinery and Valero's Texas City refinery.

Express-News Staff Writer Vicki Vaughn contributed to this report.

EPA Disallows Texas Air Permit Program (*Sustainable Business.com*)

07/01/2010
SustainableBusiness.com News
The U.S. Environmental Protection Agency on Wednesday announced final disapproval of the flexible air quality permit program that the Texas Commission on Environmental Quality has used for the last 16 years.
EPA determined that the program does not meet Clean Air Act requirements. It allows companies to lump together emissions from multiple units under a single “cap” rather than setting specific emission limits for individual pollution sources.
As a result of the decision, about 140 refineries and petrochemical plants in the state will have to apply for new air permits.
The issue has become a major flashpoint for states' rights advocates. Texas Governor Rick Perry insists the Obama administration is overreaching it authority.

EPA voids air-quality permits for Texas firms (*Boston Globe*)

HOUSTON — The US Environmental Protection Agency yesterday officially overturned a 16-year-old Texas air permitting program it says violates the Clean Air Act, leaving some of the country's largest refineries in a state of limbo.

The move comes after years of backdoor bickering, negotiations, and public arguments between the EPA and Texas. The argument recently escalated from a battle over environmental issues into a heated political dispute over states' rights.

Governor Rick Perry has been using the disagreement to drive home his contention that

President Obama's administration is overreaching, and he said in a statement yesterday that “Texas will continue to fight this federal takeover of a successful state program."

The EPA's decision, announced in a statement, will force some 125 refineries and petrochemical plants to invest millions of dollars to get new permits. Many of the plants may also have to invest in updates to comply with federal regulations.

The decision did not come as a surprise to Texas or the industries. Al Armendariz, EPA regional director, has said for months he would disapprove the permits if Texas did not comply with the Clean Air Act.

Bryan Shaw, chairman of the Texas Commission on Environmental Quality, insisted yesterday that the state's permitting program complies with the Clean Air Act and has improved air quality in Texas. However, in an effort to satisfy the EPA's concerns, Shaw said, the commission recently changed the rules but apparently the EPA “did not take them into consideration."

Texas can challenge the ruling in court (*Associated Press*)

Story also appeared: *Evansville Courier & Press*

Posted July 1, 2010 at 9:12 p.m., updated July 1, 2010 at 9:12 p.m.
A Henderson metal processing plant has agreed to pay $200,000 in fines for violations of the federal Clean Air Act as part of a settlement with the U.S. government and state of Kentucky.

Audubon Metals in Henderson, the U.S. Environmental Protection Agency and the state filed the settlement Thursday afternoon, just hours after the government sued the company in federal court.

Under the terms of the settlement, Audubon Metals does not acknowledge wrongdoing, but agreed to pay the penalty to resolve allegations that it did not properly design and install a capture and collection system for exhaust at the plant in 2007. The company takes automobile shredder residue, processes, dries, melts and alloys it, then delivers the material to diecasters throughout the Midwest.

07/02/2010

EPA Issues Final Rule Expanding GHG Reporting Mandate To New Sectors (*Inside EPA*)

EPA has signed its final rule for expanding greenhouse gas (GHG) reporting requirements to several industry sectors -- underground coal mines, magnesium production facilities and industrial waste landfills -- not originally included in the agency's first-time GHG registry issued in late 2009.
Separately, the agency has also released a proposed rule seeking public comment on which industry data could be withheld from the public as confidential business information (CBI). Under the Clean Air Act, all emission data are public, but EPA is seeking input on whether some non-emissions data submitted to the agency under the GHG registry could qualify as CBI.
EPA's new final rule signed June 28 would require industrial wastewater facilities, industrial landfills, underground coal mines and magnesium production facilities to report their GHG emissions to EPA's registry. EPA's proposed version of the GHG registry included subparts for the four sectors but its final rule issued Oct. 30 did not include reporting mandates for them. *Relevant documents are available on InsideEPA.com.*

EPA's rule took effect Dec. 29 and requires suppliers of fossil fuels or industrial GHGs; manufacturers of vehicles and engines, and facilities that emit 25,000 metric tons or more per year of GHG emissions to submit annual reports to EPA, with the first reports due March 31, 2011.

The final rule is designed to collect data from the four new sectors to "provide a better understanding of GHG emissions and will help EPA and businesses develop effective policies and programs to reduce them," according to a June 29 agency press release. The four new source categories will begin collecting data beginning Jan. 1, 2011, with their first annual reports due March 31, 2012.

EPA is not including ethanol production and food processing as distinct subparts in the GHG reporting program, according to the agency's website. The rule also does not include coal suppliers "at this time."

It is unclear whether the final rule will resolve all of industry and environmentalists' concerns with the GHG registry. Several groups sued over other aspects of the registry beyond those addressed in EPA's new final rule, though the lawsuit was put in abeyance so the agency could seek to administratively address the concerns. The agency has separately begun work crafting a proposed rule that will try to resolve outstanding legal and administrative challenges, though EPA cautions its upcoming proposal will not "fundamentally" change the original final rule.

Meanwhile, EPA June 29 also released a proposal -- signed one day earlier by EPA Administrator Lisa Jackson -- to seek comment on when CBI should apply to data that industry submits to EPA in order to meet the requirements of the GHG reporting registry. The agency will take comment on the proposal for 60 days following its publication in the *Federal Register*.

07/02/2010

Oil-Gas Sector, EPA Clash Over Reach Of GHG Reporting Rules In Gulf (Inside EPA)

EPA and the oil and gas sector are clashing over the agency's proposal to require greenhouse gas (GHG) emissions reporting from offshore energy production facilities in the Gulf of Mexico, with industry claiming EPA's proposal intrudes on Department of Interior (DOI) primary authority over offshore facilities in the central and western Gulf. The clash is part of a broader debate over the supplemental proposal issued by EPA in April to extend the scope of its existing GHG reporting requirements to include the oil and gas industry.

The sector is already under increasing public scrutiny as a result of the massive Gulf oil spill. Industry is arguing that EPA's attempts to require reporting throughout the Gulf overstep the authority of the DOI's Minerals Management Service (MMS) -- the same embattled agency that the Obama administration is now reorganizing as the renamed Bureau of Ocean Energy Management & Enforcement in the wake of MMS permitting failures uncovered by the spill.

EPA April 12 proposed to extend GHG reporting requirements to the petroleum and natural gas sector, including onshore facilities as well as those sited on the Outer Continental Shelf (OCS).

The proposal is one of several pending EPA efforts to broaden an existing reporting rule, published last October, to cover more source categories. The other proposals include industries that emit fluorinated GHGs, and facilities that inject and store carbon dioxide (CO2) underground to either sequester it or use it to boost oil and gas recovery. *Relevant documents are available on InsideEPA.com.*

Industry in recent comments submitted on the oil and gas proposal broadly calls for EPA to exempt areas in the western and central Gulf of Mexico from the reporting requirements.

For example, the American Petroleum Institute (API) in June 11 comments says the exemption is necessary because EPA lacks authority to regulate those areas of the Gulf. The group cites language in both the Clean Air Act and Outer Continental Shelf Lands Act that it says grants DOI exclusive authority to regulate air emissions in that region.

According to API, the 1990 air act amendments generally established EPA's authority to regulate air emissions on the OCS, but in the Gulf it limits the agency's authority to the eastern region, specifically east of a certain longitude line -- 87 degrees and 30 minutes. This leaves DOI with exclusive jurisdiction west of that point, API says.

"The platforms in the western and central Gulf of Mexico should be excluded from the reporting rule because the MMS has jurisdiction for air emissions from facilities on the Outer Continental Shelf," API says.

But EPA's proposed rule -- issued April 12, just one week prior to the start of the Gulf spill -- anticipates the argument, noting that the industry raised similar objections during earlier consideration of the agency's initial reporting rule which ended up not including the sector.

In the new proposal, EPA essentially sidesteps the issue of its precise regulatory authority to curb emissions in the Gulf, but asserts that section 114 of the air act -- a broad information collection provision -- provides authority to get information even from sources not directly subject to emissions regulation under that act.

On a separate but related front, EPA notes in the draft oil and gas rule that it is also proposing a revision to the definition of United States to clarify that it includes "territorial seas," a change the agency says would clarify that facilities in numerous source categories are subject to reporting requirements. Among the impacts of this proposal is that it would ensure reporting from facilities injecting CO2 below the sea floor, the agency says.

Environmental groups are strongly backing EPA's position on the scope of Clean Air Act section 114, arguing that the agency has broad authority to impose offshore reporting reporting requirements.

In joint June 11 comments, Sierra Club, Clean Air Task Force, Environmental Defense Fund and Natural Resources Defense Council say section 114 gives the agency reporting authority over "any person who owns or operates any emissions source" and that "nothing in this statute indicates this power stops at the beach."

07/02/2010

EPA Opens Door To Including Transportation GHGs In Air Quality Plans (*Inside EPA*)

EPA will soon release guidance for state and local governments on strategies for reducing greenhouse gas (GHG) emissions from transportation -- a possible precursor to the agency formally incorporating GHG-reducing transportation control measures (TCMs), which are part of federally enforceable air quality plans.
An EPA official speaking during a June 22 webinar said the agency's effort includes working with local officials to ensure that transportation planning measures required under the Clean Air Act achieve overarching federal goals to reduce GHGs and promote clean-energy alternatives.

A local government's TCMs are part of their state implementation plans (SIPs), which are enforceable blueprints for how an area will meet national ambient air quality standards (NAAQS).

While EPA has no NAAQS for GHGs -- and is not expected to impose one, though is facing a petition to do so -- the effort is the latest example of the agency moving forward

under its existing air act authority to reduce GHGs, as Congress continues to struggle with passing climate change legislation.

EPA's discussions with local governments are focused on reducing vehicle miles traveled (VMT), and improving roadway design and operations as ways to reduce climate change emissions. The transportation sector is responsible for just under one-third of all domestic GHG emissions.

EPA is seeking to reduce some of those emissions by imposing first-time GHG limits on new vehicles, issuing a final rule earlier this year that will take effect with 2012 model year vehicles and that triggers regulatory GHG limits at major stationary sources in 2011.

With the fate of economy-wide climate legislation in doubt -- and with lawmakers and the Obama administration openly mulling piecemeal approaches to addressing the threat of global warming -- state and local-level actions to reduce emissions from transportation may gain heightened importance as part of the administration's regulatory efforts to cut the emissions.

As the EPA official hinted during the webinar, strategies to reduce transportation-related GHGs could ultimately be incorporated into SIPs, though the enforceability of those measures is unclear.

Emma Zinsmeister, an official with EPA's state and local climate and energy program, said the agency within "weeks" will release a TCM strategy guide for state and local governments on reducing VMTs and GHGs.

The guide will detail possible emissions-cutting measures for state and local officials to adopt, ranging from congestion pricing and gas taxes, to strategies for promoting biking and carpooling, she said.

Zinsmeister added on the webinar that state policies to reduce transit-related pollution may already be incorporated into SIPs. In a PowerPoint presentation, she pointed to the legal definition of a TCM as "any measure that is specifically identified and committed to in the applicable implementation plan . . . for the purpose of reducing emissions or concentrations of air pollutants from transportation sectors by reducing vehicle use or changing traffic flow or congestion conditions."

Additionally, "conformity, for the purpose of a SIP, means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the" NAAQS. Conformity is a separate air law requirement that transportation improvement plans "conform" to emissions budgets set in SIPs.

A source with the Center for Clean Air Policy says there appears to be no sign that EPA will move to incorporate GHGs -- or transportation-related efforts to reduce them -- into SIPs, though some states with their own climate laws may choose to do so. That said, "It's certainly one logical way to" address GHGs, as "everything's set up for it and it wouldn't take a lot of new administrative work to make [them] fit in," the source says.

However, the source also notes "differences between how GHGs and criteria pollutants are emitted," that could complicate existing SIP strategies to reduce them. For example, GHGs are more prevalent and emitted by a wider range of sources than criteria pollutants, and EPA is "by no means required" to incorporate them into SIPs.

07/02/2010

Cement Industry Makes 11th-Hour Pitch For Weaker EPA Air Toxics Rule (*Inside EPA*)

With EPA poised to send its final strict air toxics rule for the cement sector to the White House for review, the cement industry is outlining a last-minute pitch for the Obama administration to adopt a more flexible, more lenient approach than EPA proposed and may seek to drum up support from other agencies to help push for the weaker rule. The Portland Cement Association (PCA) held a June 28 online presentation to detail its preferred approach for EPA's pending national emission standards for hazardous air pollutants (NESHAP) for the sector.

PCA officials during the presentation said EPA will soon send the final rule to the White House Office of Management & Budget (OMB) for review, a necessary step before its expected publication in the *Federal Register* sometime in August. PCA will lobby OMB and federal agencies to try and win last-minute changes to soften the rule.

EPA's May 6, 2009, proposal would require new or tighter controls on the industry's emissions of mercury, total hydrocarbons, particulate matter and hydrochloric acid, PCA says. In comments filed on the proposal and during the presentation, PCA questioned the feasibility and economic impact of the controls.

PCA instead is advocating a less stringent final rule that would provide maximum flexibility in meeting emission limits far weaker than those in EPA's proposal. PCA in particular says it objects to EPA's pollutant-by-pollutant approach to regulating cement plant emissions, which the association claims would produce standards so strict that no real plant could meet them. *The presentation is available on InsideEPA.com.*

PCA has warned of the adverse economic consequences of EPA's proposed rule, which the association claims could result in the closure of 30 U.S. cement plants. The closure of plants would produce a rise in foreign imports and possibly a rise in cement prices just as the U.S. construction industry is trying to get back on its feet, PCA says.

The group will approach other agencies, such as the Federal Highway Administration, to lobby EPA and OMB and warn against a rule that could impose a price hike adversely impacting federally funded road building and infrastructure projects. PCA will also seek meetings with OMB officials reviewing the final rule to urge them to make significant changes in order to address their concerns over the stringency of EPA's proposal, officials say.

PCA says that EPA in its proposed NESHAP fails to make allowance for natural variability in the chemical content of limestone, the base ingredient of cement, as plants' emissions are determined to a large extent by the chemical composition of the limestone. Plants are usually located close to a limestone quarry and cannot easily source less-polluting limestone from elsewhere, PCA officials said during the presentation.

PCA wants a highly flexible approach that would see emissions limits set far above those proposed by EPA. For example, new facilities using low-mercury limestone would see mercury emissions limited at 25-30 pounds per million tonnes (lbs/mt) of raw material feed, and 60-76 lbs/mt for existing plants, depending on the plant type. This compares to a simple 8.4 lbs/mt for new plants and 26.2 lbs/mt for existing facilities under EPA's proposal.

For high-mercury limestone, with a mercury content above 250 parts per billion, PCA argues only for an 85 percent reduction in mercury emissions below existing levels, whereas EPA makes no special provision for such limestone.

PCA also argues for limits on total hydrocarbons and particulate matter that are weaker than EPA's proposal. For example, existing plants would have limits of 0.092 lbs/mt feed for particulate matter, rather than the 0.048 lbs/mt proposed by EPA. For hydrochloric acid, PCA rejects a sector-based approach entirely, in favor of site-specific limits.

One PCA official during the presentation said that EPA's plans to strictly regulate the industry's emissions during periods of startup, shutdown and malfunction are unnecessary, saying "there are more appropriate means to get at emissions during those periods," and arguing that less-onerous existing provisions will suffice.

PCA is also making the case that some changes proposed by EPA would result in higher greenhouse gas (GHG) emissions just as the cement sector is bracing itself for possible EPA GHG regulation. Specifically, EPA's proposal would require many plants to install regenerative thermal oxidizers to reduce total hydrocarbon emissions, and this could pump up GHG emissions from plants, which are already major emitters of GHGs.

07/02/2010

EPA Rejects Key Texas Air Permit Program But May Reconsider Decision (*Inside EPA*)

EPA has finalized its rejection of Texas' "flexible" air permit program for violating the Clean Air Act by allowing industry to avoid new source review (NSR) requirements, but the agency says it is open to reconsidering its decision after it reviews the state's plan to revise the program that Texas says addresses EPA's concerns.

In the interim, EPA says that following its decision June 30 to issue a final disapproval of the flexible permit it is reaching out to industry, the environmental community and Texas to "discuss how to convert flexible permits into more detailed permits that comply with the Clean Air Act." Among the options is EPA's June 17 proposal for a voluntary program under which already-permitted facilities would agree to have EPA review their permits.

Texas has approved proposed revisions to the state's flexible permit rules and will take comment on them from July 2 through Aug. 2. The state must then submit the plan to EPA for possible approval, and if the agency agrees that Texas has resolved its concerns one possible outcome is that EPA could reinstate the flexible permit program.

"EPA will examine the new rules when submitted but believes that public health and federal law require disapproval of the existing program without further delay," according to a June 30 EPA press release. However, EPA did not explain that a consent decree with industry imposed a June 30 deadline for a final decision on the flexible permits.

The Texas Commission on Environmental Quality (TCEQ) in a statement following EPA's announcement reiterated its claim that the flexible permitting program complies with the Clean Air Act and that it has contributed to improving air quality in the state. The state agency also cited its recently proposed amendments to the flexible permit program and questioned EPA's decision not to factor that proposal into the disapproval decision.

"The EPA has not acted on these newly proposed rules changes, and as far as we know, did not take them into consideration in today's action," said a TCEQ spokesperson. "And while final denial of our current flex permit program was expected, it continues to be a frustration to learn of EPA actions through the media."

One industry legal source also expresses frustration that EPA has refused to delay the rejection of the flexible permit program or even analyze the state's recent proposal, especially since the federal agency may reconsider once the state finalizes its changes and submits them to EPA for approval. "Why go through the disapproval . . . when, again, they've waited for 15 years, if it's going to be fixed in 6 months? . . . That's game-playing," the source says, but adds that at least EPA isn't barring facilities with flexible permits from continuing to operate.

The program is just one of several Texas permitting programs to implement the federal Clean Air Act that the Obama EPA has suggested may not meet the requirements of the Clean Air Act. The flexible permit program crafted by Texas allowed facilities to adopt plant-wide pollution caps and then make modifications without triggering federal NSR requirements, which can result in mandates for strict new emissions controls.

TCEQ submitted the flexible permit program to EPA in 1994 as an amendment to its state implementation plan (SIP), an air quality blueprint for meeting federal air standards.

Industry eventually sued because of EPA inaction on the SIP submission, filing the suit *BCCA Appeal Group, et al. v. EPA* in the U.S. District Court for the Northern District of Texas. That suit resulted in a consent decree setting deadlines for EPA to act on several different Texas permitting programs submitted through SIPs to EPA.

The industry petitioners in *BCCA Appeal Group* had earlier this year sought an extension to the consent decree in order to give Texas time to amend the flexible permit program in order to comply with the law and avoid EPA's rejection. And TCEQ on June 16 proposed to amend its flexible permit program in order to make changes that could stave off the agency's final decision rejecting the program.

The proposed state rulemaking would add various clarifying provisions to the current rule, including language to emphasize that applicants may not use the program to circumvent NSR requirements, but EPA decided not to delay on federal disapproval while the state works to fix the flaws EPA found in the program.

To "minimize disruption" following the final decision, EPA will now rely heavily on its pending proposal allowing already-permitted facilities to conduct voluntary audits, a move that would bring in a third party to help permitted facilities identify flaws and remedy them. EPA is taking comment on that plan until July 2.

"The program will expedite efforts to identify emission limits, operating requirements and monitoring, reporting and recordkeeping data," according to EPA's press release. -- *Molly Davis*

07/02/2010

EPA Rebuffs OIG Call To Address Key Flaws In Broad Air Toxics Strategy (*Inside EPA*)

EPA is rebuffing calls from its Office of Inspector General (OIG) to address flaws in its approach to reducing risks from air toxics emissions, downplaying OIG's criticisms that the agency has failed to implement key Clean Air Act requirements to cut air toxics 10 years after issuing a broad strategy for reducing toxic air pollution.
The 1990 Clean Air Act amendments required EPA to develop an Urban Air Toxics Strategy to reduce public health risks from toxics emissions in urban areas, and the agency's 1999 plan outlines activities it would undertake -- including establishing baseline risk data to measure progress in reducing air toxics risk from all smaller air toxics sources, known as "area" sources of pollution. *The report is available on InsideEPA.com.*

But OIG in a June 24 report said EPA has not implemented these and other "key requirements" -- such as developing emission standards for area sources -- of the air act mandate to reduce air toxics, and recommends that EPA this year submit to

Congress a second version of the report that details how the agency intends to address these flaws.

Regina McCarthy, head of EPA's Office of Air & Radiation (OAR), in her response to an earlier draft of the report acknowledged that the agency has not implemented some of the elements of its 1999 plan and its statutory requirements. However, the OIG said EPA did not agree to address all the issues it raised when it submits its second air toxics strategy to Congress. As a result, OIG says that it considers the recommendations in its report "open and unresolved."

Section 112(k) of the 1990 air act amendments required EPA to develop its urban air toxics strategy, identifying no less than 30 hazardous air pollutants emitted from area sources that pose the greatest threat to public health in the largest number of urban areas. The strategy had to include a schedule of specific actions to reduce the public's health risk from air toxics exposure, such as a 75 percent cut in cancer attributable to stationary source air toxics emissions. The air act also required EPA to conduct monitoring and modeling of air toxics in urban areas.

EPA's 1999 strategy -- which it submitted to Congress -- included plans for stationary and mobile source air toxics rules, cumulative risk initiatives, risk assessment approaches, and education and outreach.

But OIG says that air act requirements EPA has not acted on since developing the plan include issuing air toxics standards for all area source categories by Nov. 15, 2000, and submitting a second report to Congress by 2002 on actions taken to reduce risks posed by urban air toxics from area sources, according to the report.

OIG also says EPA has failed to implement specific actions outlined in the strategy, including determining whether EPA has statutory authority to require state and local agencies to implement a federal risk-based program; measuring and tracking progress in meeting the strategy's goals, and defining the term "substantial reduction" -- a definition that would be used to track progress in reducing non-cancer health impacts of stationary source air toxics emissions.

The OIG report, titled "Key Activities in EPA's Integrated Urban Air Toxics Strategy Remain Unimplemented," says that EPA must determine how it will measure progress in meeting the goals of the strategy, which relate to reducing cancer and other public health risks, and include this in a second version of the strategy.

OIG recommends that EPA submit the required second report to Congress by the end of fiscal year 2010 -- Sept. 30 -- and calls on EPA to disclose the current progress in meeting its air toxics strategy requirements; address the major factors that have kept EPA from fully implementing the strategy and outline how EPA intends to address those factors; outline in detail how EPA plans to meet the statutory requirement that it set aside a minimum of 10 percent of its air toxics program funds to support state or local agencies' efforts to reduce hazardous air pollutant (HAP) emissions from area sources; and disclose any HAP requirements that EPA is unable to meet through its current authorities.

"EPA partially agreed with our recommendations, but did not agree to include the full list of issues in its second report to Congress, or to inform Congress if it decides to measure progress against a baseline other than a 1990 or similar baseline," according to the OIG report, which is dated June 23 but was released June 24.

The baseline issue is significant because EPA is required to track its progress in reducing risk from air toxics emissions, but McCarthy says in her response to the IG report that "a direct measurement of both cancer and non-cancer health effects and associated risks is not feasible for purposes of establishing a baseline" for conditions prior to the 1990 enactment of the air act amendments that created the risk-based phase of the air toxics program.

McCarthy in her response to OIG says EPA has already begun work on the second version of its air toxics strategy and intends to issue it in late summer. McCarthy says the agency will comply with the OIG's recommendations, "but only insofar as it calls for the agency to complete the report" to Congress as required by the Clean Air Act.

McCarthy also offers a defense of EPA's air toxics program, noting that the agency has issued a number of strict rules to cut air toxics emissions from mobile and stationary sources.

ARSENIC

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07/02/2010

Former Advisers Warn EPA Failed To Heed Advice On Key Risk Studies (*Inside EPA)*

Former EPA science advisers are charging that the agency failed to heed their advice when they revised key risk assessments for dioxin and arsenic -- echoing criticisms from industry groups and current science advisers, who are signaling closer scrutiny of the two assessments.
In the case of the arsenic assessment, several members of a 2007 Science Advisory Board (SAB) panel that reviewed EPA's draft assessment of arsenic are charging that EPA did not fully follow their panel's recommendations when they revised the assessment earlier this year -- and are now urging the new SAB panel reviewing EPA's latest draft to consider their concerns, which could weaken EPA's proposed arsenic cancer estimate.

Meanwhile, two former members of the National Academy of Sciences' (NAS) panel that reviewed EPA's 2006 dioxin assessment say that the agency's latest revisions "ignored" key recommendations for how officials should revise the study, echoing concerns raised by industry and other federal agencies that EPA sidestepped key parts of NAS' critique.

The 2007 SAB panelists are concerned that EPA did not adequately address their calls to consider alternatives to a controversial Taiwanese epidemiology study that the agency is citing as the basis for its strict proposed cancer risk estimate for arsenic, according to a recent letter the panelists sent to SAB.

The panelists' concerns were echoed by key members of the SAB, including its chair, Deborah Swackhammer, when the board decided June 16 to delay approving a new arsenic panel's review of EPA's latest draft arsenic assessment -- a move that also delays EPA's ability to finalize the assessment. The arsenic panel's draft review of EPA's proposed assessment is a largely positive document that recommended mostly minor changes and some expanded clarifications.

EPA's proposed new assessment of arsenic presents an estimate of arsenic cancer potency some 17 times more stringent than the existing number, and the strict new proposal is raising concerns among industry because of the stricter drinking water rules -- and many other regulations -- it could drive.

Many in industry are also concerned that the agency is proposing a strict cancer risk estimate based on Taiwanese epidemiology studies. The industry representatives are concerned that the data and EPA's analysis of it overstates Americans' cancer risk from arsenic exposure.

Members of SAB's 2007 arsenic panel are also raising concerns about EPA's use of the Taiwanese study. According to one member of the 2007 SAB arsenic panel, Justin Teeguarden of the Pacific Northwest National Laboratory, the letter to SAB makes clear that "EPA did not adequately address comments made by the 2007 SAB panel." *The letter is available on InsideEPA.com.*

The letter's signatories note that they described the Taiwanese data in 2007 as "at this time . . . the most appropriate choice for estimating bladder cancer risk among humans . . . though the data have considerable limitations. . . ." But they note that the panel requested EPA "evaluate other recent published epidemiology studies."

But EPA did not provide a review of each of the new studies using consistent criteria in its updated assessment, the group says, though it did review some of the new studies published since the agency released its 2005 draft assessment.

Two former NAS panel members are also raising concerns about EPA's latest revisions to its dioxin assessment, saying the agency "ignored" key recommendations for how officials should revise a 2006 study.

Allen Silverstone, of the State University of New York, who served on the 2006 NAS panel and is serving on a new EPA advisory panel reviewing the new assessment, told a June 24 orientation session for the advisers that he intended to address the fact that it appeared NAS "recommendations were ignored in several areas" and that "particular studies were not used." He said he would detail his concerns in written comments to be presented at the panel's July 13-15 meeting.

Similarly, Joshua Cohen of Tufts New England Medical Center, who was also a member of the 2006 NAS panel that reviewed EPA's earlier assessment, said during public comments that EPA has not adequately addressed NAS recommendations for revising the uncertainty analysis, and it was not clear "why EPA chose to ignore" crucial cancer slope factor information. Cohen is not a member of the SAB panel now reviewing the agency's assessment.

Among other things, NAS urged EPA to reconsider parts of its analysis, indicating that it thought the agency had over-estimated the cancer risk of 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) -- the most toxic form of the ubiquitous class of chemicals. NAS also urged EPA to consider nonlinear dose-response modeling, which assumes that there is some safe threshold level of exposure to an environmental contaminant.

Despite the NAS critique, EPA's new draft cancer risk estimate closely tracks those calculated in the 2003 analysis but also includes a first-time reference dose -- the amount EPA considers safe to consume daily over a lifetime without experiencing non-cancer health effects -- in response to one of NAS' key recommendations.

AWARDS

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The Good Driller Award (*St. Petersburg Times*)

By Jody Freeman, New York Times
The oil spill in the Gulf of Mexico should make us reconsider how we regulate industries like drilling and mining that pose risks to people and the environment. • To that end, many argue that we need tougher safety standards, as well as higher liability caps and more severe civil and criminal penalties for polluters. Others believe that we need to reform our regulatory system: the Minerals Management Service is being restructured, and Congress may give the Environmental Protection Agency and the Coast Guard more robust regulatory power over offshore drilling. All agree that lax enforcement of regulations must stop.

Overlooked in this debate is the fact that regulators need carrots, not just sticks. That's why we should start rewarding companies that have exemplary safety records, exceed pollution standards and produce exceptional disaster response plans. Such incentives should never replace fines and penalties, which can often take years to work their way through the courts, but they could be a helpful complement.

Here's an example of how we might provide incentives for good behavior. Right now, royalty rates for offshore leases end up promoting dangerous deep-water drilling — the deeper you drill, the less you have to pay the government in royalties. Under the Deepwater Royalty Relief Act of 1995, Congress even waived royalties on millions of barrels of oil for certain deepwater leases from 1996 to 2000. This and other royalty relief programs have deprived the Treasury of billions of dollars in revenue, while

rewarding the riskiest drilling in the deepest waters. Instead, those firms with excellent safety records should pay fewer royalties for offshore leases, and those with a history of accidents, safety lapses and penalties should pay more.

Likewise, we should speed up the permit process as an incentive for companies that go beyond the legal minimum requirements, pay for backup safety systems and provide superior worker training for spill response. Providing such rewards would encourage continuous improvement in technology and disaster planning.

The Environmental Protection Agency tried this kind of approach during the Clinton administration, back when Carol Browner, now the White House energy and climate adviser, was the administrator. Companies that found innovative ways of going above and beyond baseline air and water pollution limits got rewarded with faster permitting. The program, called Project XL, was largely viewed as a success, but it ended in 2002.

In addition to devising new incentives, the government should make better use of information already at its disposal. After Union Carbide's release of toxic gases in 1984 killed thousands in Bhopal, India, Congress passed a law requiring a wide variety of industrial companies that produce significant volumes of toxic chemicals to publish an annual inventory of the dangerous substances they emit. This database is easily available to the public, but we should consider taking this a step further. Why not warn consumers, when they fill up at a BP station, of the company's annual safety record, in terms of lives lost and penalties paid? A little shaming might go a long way for a company that cares about its public image.

We will be dependent on oil and coal for our energy use for some time, even if we begin now, as President Barack Obama has urged, to move aggressively to cleaner energy. But as long as we continue to drill for oil and mine for coal, we must do everything we can to make those industries safer. That includes not just tough, well-enforced regulations, economic liabilities and criminal penalties for companies that prove too dangerous, but also positive incentives and public rewards for those that put safety first.

Jody Freeman, a professor at Harvard Law School, was the counselor for energy and climate change in the White House from January 2009 to this past March.

BP SPILL

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Gulf Oil Spill

BP Oil Spill Breaks Record for Biggest in Gulf (*AOL News*)

(July 1) -- America's worst-ever oil spill is now the Gulf of Mexico's most devastating in history as well.

Oil gushing from the BP well following the Deepwater Horizon rig explosion April 20 that killed 11 workers has surpassed the record Ixtoc I spill in Mexican waters from 1979 to 1980, The Associated Press reports. The AP said the oil flowing into gulf waters hit 140.6 million gallons today, compared with 140 million for the Ixtoc spill.
The AP said the calculations are based on the higher end of the government's estimates of the amount of oil leaked each day, minus what BP has reported collecting with its containment systems.

Figuring out the exact volume of oil that's seeped into the gulf is crucial for environmental reasons, to know how much oil is still out there that could potentially damage fish and coastal wildlife. But it's also important because BP will likely be fined for each gallon that's spilled, an oil expert at Texas A&M University, Larry McKinney, told the AP.

Today's milestone is a grim reminder that the gusher is far from being contained despite the best efforts of BP, the Coast Guard and countless hired workers and volunteers. During his Oval Office speech on the spill June 15, President Barack Obama said, "In the coming days and weeks, these efforts should capture up to 90 percent of the oil leaking out of the well."

Hurricane Alex hampers gulf skimming operations, officials say (*Washington Post*)

By Felicia Sonmez
Washington Post Staff Writer
Thursday, July 1, 2010; 3:14 PM
Skimming operations in response to the BP oil spill in the Gulf of Mexico have been "significantly hampered" by Hurricane Alex, Coast Guard Adm. Thad W. Allen said Thursday.
"In general, we're waiting for the weather to abate so we can move on with recovery operations," Allen said during an appearance at the daily White House news briefing. He said there is no certain date for skimming to resume but that "it will be weather-based."
Alex, which struck northern Mexico on Wednesday, weakened to a tropical storm Thursday but continued to pack a powerful punch, causing severe flooding and paralyzing the Mexican city of Monterrey, news agencies reported. At least two people were reported killed in the flooding, and thousands were forced to flee their homes.
Allen, the official in charge of the federal response to the oil spill, said swells and weather near the site of the damaged oil well are delaying the deployment of a third rig to bring up some of its leaking oil. He said it would take until the middle of next week to hook up the Helix Producer so that it can join two other vessels, the Discoverer Enterprise drill ship and the Q4000 platform, in producing oil from the BP well.

Asked about a report by Rep. Darrell Issa (R-Calif.) criticizing the administration's spill response, White House Press Secretary Robert Gibbs said many of Issa's claims had already been "debunked." Excerpts of Issa's report were released Thursday morning. Gibbs also said the Interior Department is expected to release a report on a revised moratorium on deep-water drilling "in the next few days."
Allen defended the transparency of the response effort, saying that the administration has been "pretty upfront" about the numbers it has issued on the spill. He noted that the spill has evolved from a "massive, monolithic oil spill" into patches of oil extending in multiple directions. That has required a change in approach, Allen said.
"The spill has evolved, and we'll evolve with it," Allen said.

Local oil-spill-response vessels may be needed in the Gulf (*Seattle Times*)

An emergency federal rule could set the stage for the departure of several of the Pacific Northwest's oil-spill-response vessels to battle the massive BP spill in the Gulf of Mexico. But Washington state officials say they won't approve the transfer of some of those skimmers unless there is an adequate backup plan in place to combat spills here.

An oil cleanup worker uses a shovel on Thursday to remove thick oil that washed ashore from the Deepwater Horizon oil spill in the Gulf of Mexico.

A new emergency federal rule could set the stage for the departure of two of the Pacific Northwest's largest oil-spill-response vessels and five Navy skimmers to battle the massive spill in the Gulf of Mexico.

But Washington state officials say federal rules do not trump state laws and that they won't approve the shift of the two large response vessels — one stationed at the mouth of the Columbia River, the other in Port Angeles — without additional efforts to compensate for their loss.

The tensions between state and federal officials over movements of skimming equipment reflect a tough question posed by the nation's largest oil spill: How much risk should be assumed by other states to help the Gulf Coast region cope with the expanding slicks of BP crude?

"We want to do everything we can to help our fellow Americans down there, but we also have to maintain a core level of readiness," said Curt Hart, a state Department of Ecology official. "We estimate a major spill here could cost our economy $10 billion and affect more than 165,000 jobs."

The new federal rule, which took effect earlier this week, aims to get more cleanup equipment to the Gulf by lowering Coast Guard and EPA requirements for cleanup equipment elsewhere.

Washington state law requires the oil industry be able to respond to a worst-case scenario that in some areas could involve a spill of millions of gallons of oil or refined fuels.

The new federal rule requires the industry to maintain enough equipment to respond to a much more modest — but more likely — spill of 2,100 gallons.

Backup plans discussed

Federal, state and industry officials have discussed backup plans in the event the two largest vessels, 205-foot-long ships outfitted with skimmers, be moved from the Northwest to the Gulf. The two vessels — Oregon Responder based in Astoria, Ore., and the W.C. Parks Responder based in Port Angeles — are key to responding to tanker spills in rough coastal waters.

Washington officials would not approve their departure without additional tugs being stationed on the Columbia River and at Port Angeles, as well as special prevention measures such as pumping fuel only in daylight hours or assigning more staff to supervise fuel transfers.

Those two vessels are maintained by the Marine Spill Response Corp. (MSRC), a national nonprofit created in the aftermath of the 1989 Exxon Valdez oil spill.

MSRC spokeswoman Judith Roos said there are no immediate plans to send the vessels south and she doesn't anticipate they will leave the Northwest.

Both nationally and in the Northwest, MSRC ranks as a major responder to oil spills. Its inventory includes 15 big vessels known as Responders that are outfitted with skimmers and other equipment. So far, 12 of them, including two from California, are either working in the Gulf or on their way, according to Roos. The Responder-class vessels have been some of the most effective vessels in skimming the Gulf of Mexico oil, said Linda Pilkey-Jarvis, spills coordinator for the Department of Ecology.

Risk acknowledged

In the Gulf, an armada of more than 550 skimmers is at work trying to clean up the worst spill in the nation's history.

More cleanup equipment is needed.

In a June 10 memo, the Coast Guard acknowledges the increased risk that could result from moving more equipment from other states. But it cites "urgent resource needs" that require the "maximum availability of response equipment."

The Coast Guard memo also concedes that states' requirements "may appear to prevent additional resources from flowing to the Gulf of Mexico."

The memo calls for Coast Guard officials to report state officials "unwilling" to go along with the federal rule so that there can be "engagement at the state executive level."

Plenty of equipment, as well as personnel, has already been sent from Washington, Alaska and other states to help battle the Gulf spill. In recent weeks, federal, state and industry officials have been discussing sending more resources. Gov. Chris Gregoire has been briefed on these meetings, Pilkey-Jarvis said.

Washington state officials also have been negotiating with the Navy about the movement of their skimming vessels to the Gulf.

So far, two of a fleet of nine Navy vessels stationed in the Northwest have departed for the Gulf and five more are scheduled to head south, according to Tina Eichenour, a spokeswoman for the Deepwater Horizon Unified Command in the Gulf.

Sean Hughes, a Navy Region Northwest public-affairs officer, said he could not confirm that the other five would be sent. He said any decisions would be reached in collaboration with the state.

Pilkey-Jarvis said officials were concerned about how long the vessels would be in the Gulf, but she said there was an upside: Crews will gain real-world experience fighting oil spills.

Hal Bernton: 206-464-2581 or hbernton@seattletimes.com

EPA Says Chemical Dispersant Is Far Less Toxic Than Oil (WKRG News 5)

By Jene' Young Meteorologist
Published: July 01 2010 - 4:47 pm Last Updated: July 01 2010 - 5:16 pm
BP started using chemical dispersants in April to break apart the massive amount of oil in the Gulf. In May, the Environmental Protection Agency told BP to find a less toxic dispersant to use. But BP never did, and continued using a dispersant called "Corexit." Now after initial tests, the EPA says Corexit is less toxic than oil.

Dr. Bob Shipp is a popular marine biologist who thinks dispersants will do more harm than good. "I just can't understand it. I just can’t understand EPA’s role in this at all, it makes no sense. You shouldn't use dispersants anyway because it makes the oil far more difficult to handle. It allows it to enter the ecosystem and it's going to have some negative effects."

Dr Shipp says the oil would be easier to clean up without dispersants.
"The oils on the surface, you can burn it, you can skim it, if it gets on the beach you can clean it up. You're not destroying the oil by putting it into the water column, it's still there."

Casi Callaway with Mobile Baykeeper wants the White House to put a stop to it.
"We think it's time for the President to step up and say no more dispersant."
She says the EPA doesn't have the power to do that.
"Once a chemical gets listed on EPA's list, there is no method to remove it. So you can't d-list the chemicals. When BP was told you need to find a less toxic dispersant, they said, nope, it's on your list, therefore we can use it."

Casi Callaway urges citizens against dispersants to write to the EPA, here is how you can get involved: http://www.mobilebaykeeper.org/news/corexit-action-alert

So far, BP has used close to two million gallons of Corexit. And there is no way to tell how much more will be dumped into the Gulf.

APNewsBreak:

Feds lean on BP over trash disposal (*Associated Press*)

Story also appeared: *Yahoo News*

By GARANCE BURKE, Associated Press Writer Garance Burke, Associated Press Writer 25 mins ago
The Coast Guard and the Environmental Protection Agency shored up their oversight of BP's work to clean up the oil-soaked Gulf Coast on Thursday, setting new standards for how the company and its contractors should test and track the garbage generated by the ongoing spill.
BP PLC has hired private contractors to haul away thousands of tons of polluted sand, crude-soaked boom and other refuse washing ashore from the worst offshore spill in U.S. history.
So far the disaster has generated more than 3,913 tons of solid waste, which is being hauled to landfills in Alabama, Louisiana, Mississippi and Florida.
Companies brought on to dispose of the material say the debris is being handled professionally and carefully, but a spot check by The Associated Press last week found clean-up procedures along the coast's northern reaches were haphazard at best.
In Alabama's Gulf State Park, a mound of oily sand was spotted in an uncovered waste container flanked by a pooling brown puddle, while in Orange Beach, a leaky truck piled with tar balls and oil-smeared protective gear left a pollution trail of its own.
The new requirements outlined in letters sent to BP Thursday add specific guidelines for how the refuse should be managed, and will make the waste plan enforceable and more transparent, an EPA spokeswoman said.
BP America spokesman Daren Beaudo said the company had not yet received the directive, so could not immediately comment.
Waste Management Inc., the nation's largest trash hauler, was hired by BP to dispose of the mess washing ashore in Alabama, Mississippi and Florida.

Spokesman Ken Haldin did not immediately comment on the new directive, but said in response to The AP's findings last week that the company would be more careful and have drivers check bins for problems and possibly use a new type of liner.

U.S. Environmental Protection Agency releases results from first round of oil dispersant testing (*Wireupdate*)

Thursday, July 1st, 2010 at 11:24 pm
By Monica Lawrence
WASHINGTON, D.C. (BNO NEWS) – The U.S. Environmental Protection Agency (EPA) on Thursday released results from the first round of its independent toxicity testing on eight oil dispersants to fight the oil spill in the Gulf of Mexico.
The EPA's results indicated that none of the eight dispersants that were tested, including the product in use in the Gulf currently, displayed biologically significant endocrine disrupting activity, meaning that no current dispersants are making headway in actually cleaning up the effects of the spill.
While the dispersants product alone - that aren't mixed with oil - have the same impact and damage on aquatic life, JD-2000 and Corexit 9500 were typically less toxic to small fish and JD-200 and SAF-RON GOLD were least toxic mysid shrimp. The EPA said that while that information is important, additional testing is warranted to make further decisions on the use of dispersants.
The EPA continues to carefully monitor BP's use of dispersant in the Gulf of Mexico. While the dispersants are generally less toxic and can prevent some oil from impact sensitive areas along the Gulf Coast, the EPA believes that BP should use as little dispersant as possible, and they have directed that BP use 75 percent less dispersant from peak usage.
However, before directing BP to ram down dispersant use, EPA directed Bp to analyze potential alternative dispersants for toxicity and effectiveness. BP reported to EPA that they were unable to find that a dispersant that is less toxic than Corexit 9500, the product that is currently used. In the wake of that information, the EPA began its own scientific testing of eight dispersant products. The results just released are the first stage of that effort.
The next phase of testing will seek to observe the acute toxicity of multiple concentrations of Louisiana Sweet Crude Oil alone and combination of the crude with each of dispersants for two test species.

Jul 1, 2010 7:20 pm US/Eastern

EPA Issues Pollutant Limits For Chesapeake Bay (*Associated Press*)

Story also appeared: *Baltimore Sun*

BALTIMORE (AP) —

The federal Environmental Protection Agency has issued its limits for nitrogen and phosphorus that Chesapeake Bay watershed states are to use in developing their "pollution diets" for helping restore the bay.

The EPA set annual limits of 187.4 million pounds of nitrogen and 12.5 million pounds of phosphorous on Thursday for the six-state bay watershed.

Pennsylvania, the source of about half of the bay's fresh water, received the biggest allocations, 76.77 million pounds of nitrogen and 2.74 million pounds of phosphorus.

Virginia was second with 53.4 million pounds of nitrogen and 5.41 million pounds of phosphorus.

The two pollutants spur oxygen-robbing algae blooms, and come from sources including fertilizers, sewage, auto and power plant emissions and detergents.

BP disaster may now be worst spill in Gulf history (*Associated Press*)

Story also appeared: *Dayton Daily News*

By TOM BREEN, The Associated Press
Updated 8:39 PM Thursday, July 1, 2010
NEW ORLEANS — Many fishing boats signed up to skim oil sit idle in marinas. Some captains and deckhands say they have been just waiting around for instructions while drawing checks from BP of more than $1,000 a day per vessel. Thousands of offers to clean beaches and wetlands have gone unanswered.
BP and the Obama administration faced mounting complaints Thursday that they are ignoring foreign offers of badly needed equipment and making poor use of the fishing boats and volunteers available to help clean up what may now be the biggest spill ever in the Gulf of Mexico.
Based on some government estimates, more than 140 million gallons of crude have now spewed from the bottom of the sea since the April 20 explosion that killed 11 workers on the Deepwater Horizon oil platform, eclipsing the 1979-80 disaster off Mexico that had long stood as the worst in the Gulf.
In recent days and weeks, for reasons BP has never explained, many fishing boats hired for the cleanup have done a lot of waiting around. At the same time, there is mounting frustration over the time it has taken the government to approve offers of help from foreign countries and international organizations.
The Coast Guard said there have been 107 offers of help from 44 nations, ranging from technical advice to skimmer boats and booms. But many of those offers are weeks old, and only a small number have been accepted, with the vast majority still under review, according to a list kept by the State Department.

A report prepared by investigators with the House Committee on Oversight and Government Reform for Rep. Darrell Issa, R-Calif., detailed one case in which the Dutch government offered April 30 to provide four oil skimmers that collectively could process more than 6 million gallons of oily water a day. It took seven weeks for the U.S. to approve the offer.

White House spokesman Robert Gibbs on Thursday scorned the idea that "somehow it took the command 70 days to accept international help."

"That is a myth," he declared, "that has been debunked literally hundreds of times."

He said 24 foreign vessels were operating in the Gulf before this week. He did not specifically address the Dutch vessels.

More than 2,000 boats have signed up for oil-spill duty under BP's Vessel of Opportunity program. The company pays boat captains and their crews a flat fee based on the size of the vessel, ranging from $1,200 to $3,000 a day, plus a $200 fee for each crew member who works an eight-hour day.

Rocky Ditcharo, a shrimp dock owner in Buras, La., said many fishermen hired by BP have told him that they often park their boats on the shore while they wait for word on where to go.

"They just wait because there's no direction," Ditcharo said. He said he believes BP has hired many boat captains "to show numbers."

"But they're really not doing anything," he added. He also said he suspects the company is hiring out-of-work fishermen to placate them with paychecks.

Chris Mehlig, a fisherman from Louisiana's St. Bernard Parish, said he is getting eight days of work a month, laying down containment boom, running supplies to other boats or simply being on call dockside in case he is needed. "I wish I had more days than that, but that's the way things are," he said.

Billy Nungesser, president of Louisiana's hard-hit Plaquemines Parish, said BP and the Coast Guard provided a map of the exact locations of 140 skimmers that were supposedly cleaning up the oil. But he said that after he repeatedly asked to be flown over the area so he could see them at work, officials told him only 31 skimmers on the job.

"I'm trying to work with these guys," he said. "But everything they're giving me is a wish list, not what's actually out there."

A BP spokesman declined to comment.

Newly retired Coast Guard Adm. Thad Allen, the government's point man for the response effort, bristled at some of the accusations in Issa's report.

"I think we've been pretty transparent throughout this," Allen said at the White House.

He disputed any suggestion that there aren't enough skimmers being put on the water, saying the spill area is so big that there are bound to be areas with no vessels.

The Coast Guard said there are roughly 550 skimmers working in the Gulf, with 250 or so in Louisiana waters, 136 in Florida, 87 in Alabama and 76 in Mississippi, although stormy weather in recent days has kept the many of the vessels from working.

The frustration extends to the volunteers who have offered to clean beaches and wetlands. More than 20,000 volunteers have signed up to help in Florida, Alabama and Mississippi, yet fewer than one in six has received an assignment or the training required to take part in some chores, according to BP.

The executive director of the Alabama Coastal Foundation, Bethany Kraft, said many people who volunteered are frustrated and angry that no one has called on them for help.
"You see this unfolding before your eyes and you have this sense that you can't do anything," she said. "To watch this happen in our backyard and not be able to help is hard."
About 225 foundation volunteers have helped watch for oil and document coastal conditions, she said, but BP's rules require training for anyone touching oily material. And the company is using paid workers for nearly all such projects.
While the leak continued spewing crude into the Gulf, the remnants of Hurricane Alex more than 500 miles to the west were still being felt Thursday in the form of rough seas that slowed the cleanup, though some skimming had resumed.
Some government estimates put the amount of oil spilled at 160 million gallons. That calculation was arrived at by using the rate of 2.5 million gallons a day all the way back to the oil rig explosion. The AP, relying on scientists who advised the government on flow rate, bases its estimates on a lower rate of 2.1 million gallons a day up until June 3, when a cut to the well pipe increased flow.
By either estimate, the disaster would eclipse the Ixtoc disaster in the Gulf two decades ago and rank as the biggest offshore oil spill during peacetime. The bill spill in history happened in 1991 during the Persian Gulf War, when Iraqi forces opened valves at a terminal and dumped about 336 million gallons of oil.
The total in the Gulf disaster is significant because BP is likely to be fined per gallon spilled. Also, scientists say an accurate figure is needed to calculate how much oil may be hidden below the surface, doing damage to the deep-sea environment.
"It's a mind-boggling number any way you cut it," said Ed Overton, a Louisiana State University environmental studies professor. "It'll be well beyond Ixtoc by the time it's finished."
And passing Ixtoc just before the July Fourth weekend, a time of normally booming tourism, is bitter timing, he said.
In other developments:
— The House passed the first major bill related to explosion, voting to allow families of those killed and injured workers to be compensated far more generously than current law allows. The measure now goes to the Senate.
— An animal welfare group said in a lawsuit that BP's practice of incinerating the oil is probably burning endangered sea turtles alive. BP spokesman Mark Proegler replied: "I can't say for sure we've never burned any, but every effort is taken to avoid that."
— The Coast Guard and the Environmental Protection Agency are tightening up their oversight of BP and its contractors cleaning up the oily sand.
Associated Press writers Jay Reeves in Orange Beach, Ala., Michael Kunzelman in New Orleans, Harry R. Weber in Houston, and Seth Borenstein, Erica Werner and Eileen Sullivan in Washington contributed to this report.
July 02, 2010 12:36 AM EDT

AP NewsBreak: Feds lean on BP over trash disposal (*Associated Press*)

By GARANCE BURKE (AP)
The Coast Guard and the Environmental Protection Agency shored up their oversight of BP's work to clean up the oil-soaked Gulf Coast on Thursday, setting new standards for how the company and its contractors should test and track the garbage generated by the ongoing spill.
BP PLC has hired private contractors to haul away thousands of tons of polluted sand, crude-soaked boom and other refuse washing ashore from the worst offshore spill in U.S. history.
So far the disaster has generated more than 3,913 tons of solid waste, which is being hauled to landfills in Alabama, Louisiana, Mississippi and Florida.
Companies brought on to dispose of the material say the debris is being handled professionally and carefully, but a spot check by The Associated Press last week found clean-up procedures along the coast's northern reaches were haphazard at best.
In Alabama's Gulf State Park, a mound of oily sand was spotted in an uncovered waste container flanked by a pooling brown puddle, while in Orange Beach, a leaky truck piled with tar balls and oil-smeared protective gear left a pollution trail of its own.
The new requirements outlined in letters sent to BP Thursday add specific guidelines for how the refuse should be managed, and will make the waste plan enforceable and more transparent, an EPA spokeswoman said.
BP America spokesman Daren Beaudo said the company had not yet received the directive, so could not immediately comment.
Waste Management Inc., the nation's largest trash hauler, was hired by BP to dispose of the mess washing ashore in Alabama, Mississippi and Florida.
Spokesman Ken Haldin did not immediately comment on the new directive, but said in response to The AP's findings last week that the company would be more careful and have drivers check bins for problems and possibly use a new type of liner.

Media, boaters could face criminal penalties by violating Coast Guard 'safety zone' around oil cleanup operations (*Times-Picayune*)

The Coast Guard has put new restrictions in place in Louisiana that prevent the public -- including photographers and reporters covering the oil spill -- from coming within 65 feet of any response vessels or booms out on the water or on beaches.

Photos by Susan Poag / The Times-PicayuneContract workers remove oil debris from the far side of booms on the beach at Grand Isle State Park on June 10. The Coast Guard has placed new restrictions preventing the public, including reporters, from coming within 65 feet of vessels or booms on the water or beaches.

On Tuesday the Coast Guard established an even stricter "safety zone" of more than 300 feet, but reduced the distance to 65 feet on Wednesday. According to a release from the Unified Command, violation of the safety zone rules can result in a civil penalty

of up to $40,000, and could be classified as a Class D felony.

"The safety zone has been put in place to protect members of the response effort, the installation and maintenance of oil containment boom, the operation of response equipment and protection of the environment by limiting access to and through deployed protective boom," according to the release.

In order to get within the 65-foot limit, media must call the Coast Guard Captain of the Port of New Orleans, Edwin Stanton, to get permission.

Because booms are often placed more than 10 feet outside of islands or marsh grasses, the 65-foot rule would make it difficult to photograph and document the impacts of oil on land and wildlife.

Thad Allen, the national incident commander for the oil spill, said in a press briefing this afternoon that it is "not unusual at all" for the Coast Guard to establish such a safety zone, likening it to a safety measure that would be enacted for "marine events" or "fireworks demonstrations."

Allen said he had received some complaints from county commissioners and mayors in Florida; he said BP had not brought up the issue.

"Once presented with it, it was a logical thing to do," Allen said.

Related topics: gulf of mexico oil spill 2010

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Headline Should Read:

"Media, boaters could face criminal penalties by violating Coast Guard 'safety zone' around oil cleanup operations, as BP, Lord Obama continue the criminal coverup"

Keep up with the latest on what is really going on with the Gulf Of Mexico clean up effort

This is what happens when the people vote for a Chicago mob thug goon administration led by Lord Obama.

Lord Obama has been bought and paid for by BP and Goldman Sachs(BP part Owner). This is a well-documented FACT, not opinion. Get off your ass and research it yourself.

Lord Obama certainly owes a great bit of gratitude to Vanguard, as they sold off all of his BP stocks "coincidentally" in the weeks before this "accident." Lord Obama stands to make $85 million dollars off of this spill. Yes, your Lord Obama OWNED LOADS OF STOCK IN BP! Vanguard dumped it for him in the weeks before this spill.

Lord Obama worshippers, this investigation is only beginning to heat up . . . trust me, it gets and will get a lot worse!

Looks like it's curtains for Lord Obama . . .

By the way, Janet "Butch" Napolitano has issued, by the commands of Lord Obama and BP, a no-fly zone over the Gulf Of Mexico.

Surely, they are not trying to hide anything, such as burning turtles that are protected species, using chemicals not-approved by the EPA, uncontrolled burns, etc.

Too bad that "Texico" is spelled "Texaco" . . . moron

How about a ship that could handle 400 cubic meters per hour?

This article, titled "Avertible Catastrophe" won't appear on any news sources here.

It just makes me sick when politicians make stupid azz decisions.

I will glady second what 504schmitty said on his last line, plus all the idiots in DC.

Hurricane hindering oil cleanup (*USA Today*)

Page 4A
Rough seas generated by Hurricane Alex pushed more oil from the massive spill onto Gulf Coast beaches Wednesday as cleanup vessels were sidelined by the faraway storm's ripple effects.

In Louisiana, the storm pushed an oil patch toward Grand Isle and Elmer's Island, dumping tar balls as big as apples on the beach. Cleanup workers were kept at bay by rain and lightning. Boom lining had been tossed about, and it couldn't be put back in place until the weather cleared.

"We lost all the progress we made," marine science technician Michael Malone said.

Large waves left Alabama beaches splattered with tar balls, even with the storm more than 500 miles away as it hit the Mexican coast.

The EPA, meanwhile, said the first round of testing on chemicals used to break up the oil shows all available dispersants are generally equally toxic.

Paul Anastas, the EPA's assistant administrator for research and development, said tests also showed the chemicals are far less toxic than oil. He said none of the chemicals had dangerous effects on sea life tested.

Senate panels advance oil spill bill (*Buffalo News*)

Natalie Roshto of Liberty, Miss., right, accompanied by Shelley Anderson of Midfield, Texas, testifies on Capitol Hill in Washington, Wednesday, June 30, 2010, before the Senate Commerce Committee hearing on the deepwater horizon tragedy. Roshto, and Anderson's husbands were killed in the Deepwater Horizon oil rig explosion in the Gulf of Mexico." vocusinstance="0">

Congress began advancing legislation Wednesday that imposes new safeguards on offshore oil drilling in hopes of preventing a repeat of the devastating spill that has brought environmental and economic havoc to the Gulf coast.

Two Senate committees separately approved bills that would strengthen the government's regulation of offshore drilling, require oil companies to be better prepared to cope with a spill, and lift federal spill-related economic liability limits.

The bills now advance to the full Senate, where they are likely to be merged into broader legislation.

Meanwhile, several committees in the House discussed legislation in response to the BP oil spill, with committee votes expected in the coming weeks.

While a call to impose greater safeguards in offshore drilling has shown widespread, bipartisan support, some lawmakers - Democrats and Republicans - raised concern that the actions by Congress might stifle offshore oil and gas development. Others say the bills don't go far enough and should be strengthened.

Congress should "address some of the obvious violations that have occurred" but the key is "striking a balance," said Sen. Mary Landrieu, D-La., whose state is bearing the brunt of the BP oil spill, but also views offshore oil development an economic necessity.

Landrieu said she voted "reluctantly" for a bill that emerged Wednesday from the Senate Energy and Natural Resources Committee, fearing it might harm oil development.

Sen. Robert Menendez, D-N.J., an opponent to offshore drilling, said he also supported it reluctantly because he believes it's too weak and expects it to be strengthened.

The bill, approved by the panel in a bipartisan voice vote, would increase the civil and criminal penalties for an oil spill, require greater redundancy in drilling safety equipment, impose more stringent requirements for deep water drilling permits, and calls for more federal inspectors while imposing a fee on industry to pay for them.

The committee also voted to set into law a decision already made by the Obama administration to separate the Interior Department agency responsible for offshore oil drilling into separate entities - one responsible for royalty collection, and another for safety and environmental regulation of offshore drilling.

The bill slows the revolving door between Interior and the oil and gas industry. A recent report by the department's inspector general said that its drilling regulators have been so close to the industry that they've accepted gifts from oil and gas companies and even negotiated to go work for the companies.

Specifically, the measure bans Interior Department employees involved in offshore drilling from going to work for the oil and gas industry for one year. Similarly, former oil and gas employees who join the government could not oversee matters relating to their former employer or client for one year.

Separately, the Senate Environment and Public Works Committee voted Wednesday to remove the current $75 million federal cap on economic liability from an oil spill and to require stronger spill response plans before approval of offshore oil or gas drilling applications.

While the bill advanced by voice vote, it was not without disagreement.

Republican Sens. James Inhofe of Oklahoma and David Vitter of Louisiana, said the more stringent spill response requirements and removal altogether of the economic liability cap would cause all but the largest oil companies to abandon offshore oil drilling.

"It's going to be a permanent moratorium" on drilling, said Vitter, referring to the tougher requirements and open-ended liability.

Lawmakers in the House also were taking up oil spill legislation, with votes planned in the coming weeks.

A House Energy and Commerce subcommittee began debating a bill requiring greater drilling safeguards, including new standards and testing to ensure that a "fail-safe" device that is supposed to prevent a well blowout actually works. The device failed to stop the gushing oil at the BP well.

The House Natural Resources Committee is considering legislation that would reorganize the federal offshore regulatory program and tighten standards and for rig inspections and federal oversight.

In other oil spill developments Wednesday:

- EPA officials announced tests on various chemicals used to break apart spill-related oil are generally equally toxic, but far less so than the oil itself. The agency said none of the chemicals had dangerous effects on the sea life tested.

- The chairman of the Senate Finance Committee has begun an investigation into whether Transocean Ltd., owner of the Deepwater Horizon rig, has improperly exploited U.S. tax laws. The company moved its headquarters to landlocked Switzerland two years ago from the Cayman Islands, another tax haven.

-Two widows of oil workers killed in the Deepwater Horizon accident expressed frustration during a hearing of the Senate Commerce, Science and Transportation Committee that a 1920 law limits compensation for the lives of their husbands to the loss of their paychecks and funeral expenses because they were killed at sea.

"Why would the damages to a family be different if a death occurs on the ocean as opposed to on land?" asked Shelley Anderson, whose husband, Jason, was a tool pusher on destroyed rig.

-Kenneth Feinberg, the administrator of $20 billion fund set up to compensate Gulf oil spill victims, acknowledged that while all legitimate claims must be honored, he has concern about fraudulent claims. Feinberg told the House Small Business Committee that he has asked the Justice Department - and possibly a private vendor - to help ensure claims are legitimate "because fraud could really undercut the credibility of this program."

- Rep. Darrell Issa, R-Calif., said in a draft report that the Obama administration appears to be more focused on protecting its reputation than responding to the disaster. Issa's report, to be released Thursday, quotes several frustrated local Gulf Coast officials who say the administration has been misleading about how much equipment it deployed to clean up the spill.

The White House waited until the 69th day of the disaster to accept critical offers of assistance from foreign countries. As of Monday, the government accepted Japanese aid, including two high speed skimmers and fire containment boom, according to an internal government report obtained by The Associated Press. The Japanese made the offer on June 22, according to Izumi Yamanaka, spokeswoman for the Japanese embassy in Washington.

The Coast Guard did not respond to questions about why it took a week to respond to the offer.

Associated Press writers Ben Evans, Eileen Sullivan, Henry C. Jackson, Joan Lowy and Frederic J. Frommer contributed to this report.

Volunteers ready but left out of oil spill cleanup (*Houston Chronicle*)

NEW ORLEANS — Many fishing boats signed up to skim oil sit idle in marinas. Some captains and deckhands say they have been just waiting around for instructions while drawing checks from BP of more than $1,000 a day per vessel. Thousands of offers to clean beaches and wetlands have gone unanswered.

BP and the Obama administration faced mounting complaints Thursday that they are ignoring foreign offers of badly needed equipment and making poor use of the fishing boats and volunteers available to help clean up what may now be the biggest spill ever in the Gulf of Mexico.

Based on some government estimates, more than 140 million gallons of crude have now spewed from the bottom of the sea since the April 20 explosion that killed 11 workers on the Deepwater Horizon oil platform, eclipsing the 1979-80 disaster off Mexico that had long stood as the worst in the Gulf.

In recent days and weeks, for reasons BP has never explained, many fishing boats hired for the cleanup have done a lot of waiting around. At the same time, there is mounting frustration over the time it has taken the government to approve offers of help from foreign countries and international organizations.

The Coast Guard said there have been 107 offers of help from 44 nations, ranging from technical advice to skimmer boats and booms. But many of those offers are weeks old, and only a small number have been accepted, with the vast majority still under review, according to a list kept by the State Department.

A report prepared by investigators with the House Committee on Oversight and Government Reform for Rep. Darrell Issa, R-Calif., detailed one case in which the Dutch government offered April 30 to provide four oil skimmers that collectively could process more than 6 million gallons of oily water a day. It took seven weeks for the U.S. to approve the offer.

White House spokesman Robert Gibbs on Thursday scorned the idea that "somehow it took the command 70 days to accept international help."

"That is a myth," he declared, "that has been debunked literally hundreds of times."

He said 24 foreign vessels were operating in the Gulf before this week. He did not specifically address the Dutch vessels.

More than 2,000 boats have signed up for oil-spill duty under BP's Vessel of Opportunity program. The company pays boat captains and their crews a flat fee based on the size of the vessel, ranging from $1,200 to $3,000 a day, plus a $200 fee for each crew member who works an eight-hour day.

Rocky Ditcharo, a shrimp dock owner in Buras, La., said many fishermen hired by BP have told him that they often park their boats on the shore while they wait for word on

where to go.

"They just wait because there's no direction," Ditcharo said. He said he believes BP has hired many boat captains "to show numbers."

"But they're really not doing anything," he added. He also said he suspects the company is hiring out-of-work fishermen to placate them with paychecks.

Chris Mehlig, a fisherman from Louisiana's St. Bernard Parish, said he is getting eight days of work a month, laying down containment boom, running supplies to other boats or simply being on call dockside in case he is needed. "I wish I had more days than that, but that's the way things are," he said.

Billy Nungesser, president of Louisiana's hard-hit Plaquemines Parish, said BP and the Coast Guard provided a map of the exact locations of 140 skimmers that were supposedly cleaning up the oil. But he said that after he repeatedly asked to be flown over the area so he could see them at work, officials told him only 31 skimmers on the job.

"I'm trying to work with these guys," he said. "But everything they're giving me is a wish list, not what's actually out there."

A BP spokesman declined to comment.

Newly retired Coast Guard Adm. Thad Allen, the government's point man for the response effort, bristled at some of the accusations in Issa's report.

"I think we've been pretty transparent throughout this," Allen said at the White House. He disputed any suggestion that there aren't enough skimmers being put on the water, saying the spill area is so big that there are bound to be areas with no vessels.

The Coast Guard said there are roughly 550 skimmers working in the Gulf, with 250 or so in Louisiana waters, 136 in Florida, 87 in Alabama and 76 in Mississippi, although stormy weather in recent days has kept the many of the vessels from working.

The frustration extends to the volunteers who have offered to clean beaches and wetlands. More than 20,000 volunteers have signed up to help in Florida, Alabama and Mississippi, yet fewer than one in six has received an assignment or the training required to take part in some chores, according to BP.

The executive director of the Alabama Coastal Foundation, Bethany Kraft, said many people who volunteered are frustrated and angry that no one has called on them for help.

"You see this unfolding before your eyes and you have this sense that you can't do anything," she said. "To watch this happen in our backyard and not be able to help is

hard."

About 225 foundation volunteers have helped watch for oil and document coastal conditions, she said, but BP's rules require training for anyone touching oily material. And the company is using paid workers for nearly all such projects.

While the leak continued spewing crude into the Gulf, the remnants of Hurricane Alex more than 500 miles to the west were still being felt Thursday in the form of rough seas that slowed the cleanup, though some skimming had resumed.

Some government estimates put the amount of oil spilled at 160 million gallons. That calculation was arrived at by using the rate of 2.5 million gallons a day all the way back to the oil rig explosion. The AP, relying on scientists who advised the government on flow rate, bases its estimates on a lower rate of 2.1 million gallons a day up until June 3, when a cut to the well pipe increased flow.

By either estimate, the disaster would eclipse the Ixtoc disaster in the Gulf two decades ago and rank as the biggest offshore oil spill during peacetime. The bill spill in history happened in 1991 during the Persian Gulf War, when Iraqi forces opened valves at a terminal and dumped about 336 million gallons of oil.

The total in the Gulf disaster is significant because BP is likely to be fined per gallon spilled. Also, scientists say an accurate figure is needed to calculate how much oil may be hidden below the surface, doing damage to the deep-sea environment.

"It's a mind-boggling number any way you cut it," said Ed Overton, a Louisiana State University environmental studies professor. "It'll be well beyond Ixtoc by the time it's finished."

And passing Ixtoc just before the July Fourth weekend, a time of normally booming tourism, is bitter timing, he said.

In other developments:

_ The House passed the first major bill related to explosion, voting to allow families of those killed and injured workers to be compensated far more generously than current law allows. The measure now goes to the Senate.

_ An animal welfare group said in a lawsuit that BP's practice of incinerating the oil is probably burning endangered sea turtles alive. BP spokesman Mark Proegler replied: "I can't say for sure we've never burned any, but every effort is taken to avoid that."

_ The Coast Guard and the Environmental Protection Agency are tightening up their oversight of BP and its contractors cleaning up the oily sand.

Associated Press writers Jay Reeves in Orange Beach, Ala., Michael Kunzelman in

New Orleans, Harry R. Weber in Houston, and Seth Borenstein, Erica Werner and Eileen Sullivan in Washington contributed to this report.

EPA to sample Macondo spill waste; had been solely BP role (*Platts*)

New York (Platts)--2Jul2010/534 am EDT/934 GMT
The US Environmental Protection Agency will begin sampling oil, contaminated materials and liquid and solid wastes recovered in cleanup operations from the the Macondo spill to help verify the waste is being properly managed, EPA said Thursday. The sampling of Macondo waste so far has been done by Macondo well operator BP in compliance with regulatory requirements of the EPA and the four Gulf States affected by the ongoing spill, EPA said in a statement. "While the states of Louisiana, Alabama, Mississippi and Florida are overseeing BP's waste-management activities and conducting inspections, this action today is meant to complement their activities by providing further oversight and imposing more specific requirements," EPA said. The EPA and the Coast Guard have issued a directive to BP on how the company should manage oil and other wastes recovered from Macondo, EPA said. Both organizations, in consultation with the four affected Gulf Coast states, will hold BP accountable for the implementation of the approved waste management plans and ensure the directives are followed in the states. According to the EPA, the directive will provide guidelines for community engagement activities and set transparency requirements on information regarding the proper management of the wastes; require BP to give EPA and state agencies access to facilities or any location where wastes are stored; require BP to comply with all applicable laws and regulations and to ensure all the facilities have obtained all necessary permits and approvals; and requires BP to submit to EPA and the Coast Guard specific plans, waste reports and tracking systems for the waste. --Richard Rubin, richard_rubin@platts.com

Gulf spill briefs: New standards set for waste disposal (*Fort Worth Star-Telegram*)

Texas
July 2, 2010 Friday
Gulf spill briefs: New standards set for waste disposal
New rules for waste disposal

The Coast Guard and the **Environmental Protection Agency** set new standards Thursday for how BP and its contractors should test and track the garbage generated by the spill. BP has hired contractors to haul away thousands of tons of polluted sand, crude-coated boom and other refuse washing ashore from the worst offshore spill in U.S. history. The disaster has generated more than 3,913 tons of solid waste, which is

being hauled to landfills in Alabama, Louisiana, Mississippi and Florida. The contractors say the debris is being handled professionally and carefully, but a spot-check by The Associated Press last week found that cleanup procedures along the Gulf Coast's northern reaches were haphazard at best. -- The Associated Press

Suit: Burns killing sea turtles

A federal lawsuit filed by several wildlife protection groups contends that BP's practice of burning off spilled oil in the Gulf of Mexico is likely killing endangered sea turtles. The lawsuit filed by the Animal Welfare Institute and other groups asks U.S. District Judge Carl Barbier to restrict BP's "controlled burns" of oil. BP spokesman Mark Proegler says the company has tried to avoid burning turtles, using crews in boats to look for turtles before oil is burned. -- The Associated Press

Whale sharks seen amid spill

A scientist says he has spotted three whale sharks swimming through heavy oil a few miles from BP's spewing well in the Gulf of Mexico. The huge fish feed by vacuuming the sea surface. Eric Hoffmayer of the University of Southern Mississippi Gulf Coast Research Lab says the fish, which grow to about 40 feet long, may take in huge mouthfuls of oil that could prove deadly.

-- The Associated Press

Fund to expedite payments

The administrator of the $20 billion escrow fund established to pay BP claims says he's changing the system so businesses can get emergency lump-sum payments. Kenneth Feinberg said Thursday that the payments will be expedited and won't have a predetermined limit. -- The Associated Press

BP spill hits a somber record as Gulf's biggest (*Buffalo News*)

Story also appeared: *Austin American Statesman, Contra Costa Times, Houston Chronicle, Evansville Courier & Press, Clarion-Ledger, Louisville Courier Journal, Charlotte Observer, St. Louis Post-Dispatch, Anchorage Daily News, NewsOK, Lexington Herald Leader, News & Observer, Sacramento Bee, Chicago Sun Times, Kansas City Star, Buffalo News, San Francisco Chronicle, Commercial Appeal*

BP's massive oil spill became the largest ever in the Gulf of Mexico on Thursday based on the highest of the federal government's estimates, an ominous record that underscores the oil giant's dire need to halt the gusher.

The oil that's spewed for two and a half months from a blown-out well a mile under the

sea hit the 140.6 million gallon mark, eclipsing the record-setting, 140-million-gallon Ixtoc I spill off Mexico's coast from 1979 to 1980. Even by the lower end of the government's estimates, at least 71.7 million gallons are in the Gulf.

The growing total is crucial to track, in part because London-based BP PLC is likely to be fined per gallon spilled, said Larry McKinney, director of Texas A&M University at Corpus Christi's Gulf of Mexico research institute.

"It's an important number to know because it has an impact on restoration and recovery," McKinney said.

The oil calculation is based on the higher end of the government's range of barrels leaked per day, minus the amount BP says it has collected from the blown-out well using two containment systems. BP collected a smaller amount of oil than usual on Wednesday, about 969,000 gallons.

Measuring the spill helps scientists figure out where the missing oil is, hidden below the water surface with some even stuck to the seafloor. Oil not at the surface damages different parts of the ecosystem.

"It's a mind-boggling number any way you cut it," said Ed Overton, a Louisiana State University environmental studies professor who consults for the federal government on oil spills. "It'll be well beyond Ixtoc by the time it's finished."

And passing Ixtoc just before the July Fourth weekend, a time of normally booming tourism, is bitter timing, he said.

The BP spill, which began after the Deepwater Horizon drilling rig explosion killed 11 workers April 20, is also the largest spill ever recorded offshore during peacetime.

But it's not the biggest in history.

That happened when Iraqi forces opened valves at a terminal and dumped about 460 million gallons of oil in 1991 during the Persian Gulf war.

As the Gulf gusher continued spewing, the remnants of Hurricane Alex whipped oil-filled waves onto the Gulf Coast's once-white beaches. The government has pinned its latest cleanup hopes on a huge new piece of equipment: the world's largest oil-skimming vessel, which arrived Wednesday.

Officials hope the ship can scoop up to 21 million gallons of oil-fouled water a day. Dubbed the "A Whale," the Taiwanese-flagged former tanker spans the length of 3 1/2 football fields and is 10 stories high.

It just emerged from an extensive retrofitting to prepare it specifically for the Gulf.

"It is absolutely gigantic. It's unbelievable," said Overton, who saw the ship last week in Norfolk, Va.

The vessel looks like a typical tanker, but it takes in contaminated water through 12 vents on either side of the bow. The oil is then supposed to be separated from the water and transferred to another vessel. The water is channeled back into the sea.

But the ship's never been tested, and many questions remain about how it will operate. For instance, the seawater retains trace amounts of oil, even after getting filtered, so the Environmental Protection Agency will have to sign off on allowing the treated water back into the Gulf.

"This is a no-brainer," Overton said. "You're bringing in really dirty, oily water and you're putting back much cleaner water."

The Coast Guard will have the final say in whether the vessel can operate in the Gulf. The owner, shipping firm TMT Group, will have to come to separate terms with BP, which is paying for the cleanup.

"I don't know whether it's going to work or not, but it certainly needs to be given the opportunity," Overton said.

Meanwhile along parts of the Gulf, red flags snapped in strong gusts, warning people to stay out of the water, and long stretches of beach were stained brown from tar balls and crude oil that had been pushed as far as 60 yards from the water.

Hurricane Alex churned up rough seas as it plowed across the Gulf, dealing a tough setback to cleanup operations. It made landfall along a relatively unpopulated stretch of coast in Mexico's northern Tamaulipas state late Wednesday, spawning tornadoes in nearby Texas and forcing evacuations in both countries. Alex weakened to a tropical storm Thursday morning as it moved across Mexico.

Although skimming operations and the laying of oil-corralling booms were halted across the Gulf, vessels that collect and burn oil and gas at the site of the explosion were still operating. Efforts to drill relief wells that experts hope will stop the leak also continued unabated.

In Florida, lumps of tar the size of dinner plates filled a large swath of beach east of Pensacola after rough waves tossed the mess onto shore.

Streaks of the rust-red oil could be seen in the waves off Pensacola Beach as cleanup crews worked in the rough weather to prepare the beach for the holiday weekend.

In Grand Isle, La., heavy bands of rain pounded down, keeping cleanup crews off the water and tossing carefully laid boom around. However, oil had stayed out of the passes.

"All this wave action is breaking up the oil very quickly," Coast Guard Cmdr. Randal S. Ogrydziak said. "Mother Nature is doing what she does best, putting things back in order."

Natural microbes in the water were also working on the spill. The result was a white substance that looked like mayonnaise, that washed up on some spots along the Grand Isle beach.

"People will be fishing here again," Ogrydziak said. "It may take a while, but people may be surprised that it's not taking as long as they thought. Look at the (Ixtoc) oil spill in Mexico. It was massive and now people are back to using those waters."

Associated Press writers Mary Foster in Grand Isle, La., Jay Reeves in Orange Beach, Ala., and Melissa Nelson in Pensacola Beach, Fla., contributed to this report.

EPA Report Dispersant In Gulf Is Safe As Others (*Baltimore Sun*)

ATLANTA - - The Environmental Protection Agency issued a study Wednesday that found that the dispersant being used by BP in the Gulf of Mexico, as well as seven alternative mass-produced dispersants, all fell within the range of "practically nontoxic" to "slightly toxic."

The conclusions, although preliminary, appear to support BP's contention that there is little difference between Corexit 9500 and other dispersants available on the market, an argument the oil giant used in rebuffing the EPA's order in May to stop using the chemical.

But the study offered little relief to environmentalists and ocean scientists concerned about the unprecedented amount of dispersant being sprayed into the Gulf in an attempt to mitigate BP's massive oil leak. Equally important, they say, are studies that would measure the toxicity of the Louisiana sweet crude as it mixes with the dispersants.

The report was released on a day when another key aspect of the spill response - the use of skimmer boats - was stymied by big swells kicked eastward by Hurricane Alex, which strengthened to a Category 2 storm Wednesday before it made landfall on the northeast coast of Mexico.

U.S. Coast Guard Petty Officer Kelly Parker said all near-shore skimmers in Louisiana were sent to port because of the high waves but were expected to take back to the water Friday. A spokeswoman for the response effort in Mississippi, Alabama and Florida said no skimming had been performed off those states.

Brownsville, Texas, appeared to be taking the brunt of Alex's outer bands after as many

as six tornadoes were reported in the area, officials said. In Mexico, the storm packed winds of more than 100 mph as it lashed the city of Matamoros.
News services contributed.rfausset@tribune.com

US House Panel Votes To Discard $75 Million Spill-Liability Cap (*Dow Jones*)

Story also appeared: *Automated Trader*

First Published Friday, 2 July 2010 01:15 am
2010 Dow Jones & Company, Inc.
(Updates with more details throughout.)
By Siobhan Hughes
Of DOW JONES NEWSWIRES
WASHINGTON -(Dow Jones)- A U.S. House panel on Thursday voted to remove a cap on damages that BP PLC (BP, BP.LN) and other oil companies must pay for spills like the one in the Gulf of Mexico, as part of the first broad legislative effort to respond to the ongoing disaster.
By voice vote, the U.S. House Transportation and Infrastructure Committee approved a bill to discard the current $75 million cap on claims for damage caused by offshore production facilities that goes beyond the cost of cleanup. The measure also would raise to $1.5 billion the minimum amount of insurance that facilities must hold, and make BP and other oil companies responsible for a new class of damages--those related to health problems associated with spill disasters.
The Democratic-controlled Congress is increasingly in favor of eliminating a cap on damages after a spill that has lasted for 2 1/2 months so far. A Senate panel on Wednesday cleared a narrow bill to toss out liability caps, in spite of complaints from Republicans that only the largest oil companies would be able to operate offshore with unlimited exposure to liability. The path to law remains unclear, as the Senate plans to tie up the liability-cap measure with a broader energy package and as numerous House panels claim jurisdiction over spill legislation.
Still, Rep. Jim Oberstar (D., Minn.), the chairman of the House Transportation Committee, said that while "the bill has a ways to go before it reaches the House," he expects that to happen in "the last part of July."
The U.S. House Natural Resources Committee will consider its own bill on July 14. The U.S. House Energy and Commerce Committee is also advancing legislation to deal with blowout preventers, the valve-based equipment that is supposed to shut off deepwater wells in the event of a catastrophic blowout. BP has been unable to activate the blowout preventer sitting atop the Macondo well. Lawmakers have unearthed evidence that the company modified the equipment in ways that made it riskier, though more details won't be known until the device is recovered from the sea floor.
In the House Transportation Committee, numerous lawmakers offered--and then withdrew--amendments, but the proposals made clear the breadth of the building congressional response. Among the amendments being pushed was one from Rep. Jerrold Nadler (D., N.Y.), who tried to ban the use of dispersants until the Environmental Protection Agency can issue rules on toxicity and effectiveness.

"If these dispersants are safe, there should be no problem proving so," Nadler said. "In the meantime, we should not use massive quantities of toxic dispersants before we know they are safe."
BP has been using Corexit, made by Nalco Holding Co. (NLC), to break up the oil that it has been unable to contain through a separate effort.
Separately on Thursday, federal authorities announced plans to step up oversight of BP's management of oil, contaminated materials and wastes recovered from cleanup operations in the Gulf of Mexico. The EPA and the Coast Guard issued a directive that will require BP to give the EPA and state agencies access to storage sites where the material is being held. Under the directive, the EPA will also begin sampling the waste to determine if it is being properly managed.
Eliminating a liability cap is controversial in Congress because smaller companies say they will be unable to operate offshore without limits to their liability for any oil spills. Republicans have warned about damage to the economy if smaller companies are shut out of coastal waters. Environmentalists say that limiting offshore drilling only to companies that can pay for all the damage might make sense, an idea that has gained traction in a Democrat-controlled Congress.
Under the House Transportation Committee bill, which would make the removal of the liability cap retroactive in order to ensure that BP's liability is unlimited, companies would also have to pay health-related claims. Under current federal law, the Oil Pollution Act of 1990, damages are limited to include damages to natural resources, property, public services and economic damages such as a loss of livelihood. Instead, individuals have to pursue health-related claims in state court, where laws differ from state to state.
With BP already paying more than $132 million in claims filed for economic damage stemming from the spill, the current cap is widely regarded as too low.
The legislation also would repeal a century-and-a-half-old law that Transocean Ltd. (RIG) has sought to use to limit its liability in the Gulf oil spill disaster--and do so retroactively. The House Judiciary Committee has already approved a similar measure. Transocean, the owner and operator of the Deepwater Horizon rig, filed legal papers in May under the Limitation of Liability Act of 1851 to limit its liability to just under $27 million.
The bill approved on Thursday, called the "Oil Spill Accountability and Environment Protection Act of 2010", is H.R. 5629.
-By Siobhan Hughes, Dow Jones Newswires; (202) 862-6654; siobhan.hughes@dowjones.com

Free Enterprise Crashes the Oil Spill Cleanup Party (*NewsMax)*

Solving the problem of cleaning up the waters in the Gulf of Mexico may depend not on government, nor on the corporate giant BP, but on innovation and commitment to free enterprise. One promising and persistent example is Mr. Nobu Su of Taiwan, CEO of TMT Corporation.

Thursday morning he is to meet with Coast Guard officials in New Orleans to outline this weekend's trial run of the A Whale, the huge tanker/oil skimmer which Su has brought to America. He says the ship is the long-needed “big answer to a big problem.”

Although he was dismissed when he originally shared his concept with BP and U.S. officials after the Deepwater Horizon explosion, Su forged ahead and spent millions to add intake valves on the bow of the 1,115-foot, 10-story-tall ship. These allow it to gather 500,000 barrels daily of spilled oil and water — 250 times the capacity of the other ships now engaged in the cleanup.

In a face-to-face meeting in Washington, D.C., Su told me he still does not know how many millions he spent to sail the ship from near Shanghai to a Portugal shipyard to have its unique oil-skimming system installed, and then dispatch the ship to the United States. He says he made the decision to act around May 1 and the ship arrived by June 25 — a timetable that U.S. officials had considered impossible to achieve.

Su believes so firmly in its potential that he already has retrofitting under way in Portugal on the B Whale, a sister ship that he says could arrive in the Gulf of Mexico by mid-July. And the C Whale soon will follow.

Despite the original rebuffs from BP and federal bureaucrats, Su charged ahead. Rather than waiting to be invited to help in the Gulf, he wrangled an invitation from Virginia Gov. Robert McDonnell to make port in Norfolk for a media event.

Once it was on the scene, it became impossible for the Coast Guard and other federal officials, plus BP, to overlook the A Whale. And McDonnell's avid support was a big help.

In essence, the A Whale had crashed the cleanup party, rather than waiting for an invitation.

Su's team now has appreciative words for the Coast Guard's willingness to give the ship a chance. Greater concerns are whether others in the oil spill bureaucracy will create barriers, especially over the issue of discharged water. Because most (85-90 percent) of what is collected is water, the A Whale and other international oil skimmers separate out the oil and discharge the water.

It's unclear whether the EPA would try to impose its strict standards that discharged water can only have 15 ppm of pollutants — a requirement of 99.9985 percent purity that is impossible to meet on this scale and under these conditions.

So far, the Obama administration has not issued environmental or Jones Act waivers that would remove any doubts about whether the A Whale can go to work, if its test runs prove successful. Then Su's TMT company could negotiate with BP for its services.

Could bad weather get in the way? Su says the mammoth vessel can withstand what

others cannot, so it would be the last ship that had to leave due to weather — and the first to return to oil removal work. Because his company also operates oil-drilling platforms in Asia, Su is familiar with the challenges of weather.

Su's team generously gives credit to the USA for creating his entrepreneurial and innovative spirit that he says is part of his Taiwanese upbringing. His senior vice president, T.K. Ong, says the environment for success was created by the “moral and material support” provided by the USA to the island nation after it broke from mainland China.

While we all hope that the A Whale will prove to be a great success, it's important to recognize that a system of free enterprise is necessary to create that success — and hopefully many more.

Ernest Istook served 14 years as a U.S. congressman and is now a distinguished fellow at The Heritage Foundation.

Top five bottlenecks in the Gulf oil spill response (*Christian Science Monitor*)

Local officials complain about lack of urgency in the federal Gulf oil spill response. Here are five reasons that the government seems to be dragging its heels.
Workers skim a large patch of weathered oil by hand near the boat ramp at Ken Combs Pier in Gulfport, Miss. The Gulf oil spill became the largest ever in the Gulf of Mexico on Thursday, based on the highest of the federal government's estimates.
(Amanda McCoy/The Sun Herald/AP)
By Patrik Jonsson, Staff writer
posted July 1, 2010 at 7:46 pm EDT
Atlanta —
With each oily wave hitting marshes and beaches from the Gulf oil spill, desperation grows along the already stained Gulf Coast.
In part, the magnitude of the spill has simply overwhelmed the ability of the White House and BP to completely contain it. But it is clear that bureaucratic red tape – echoing the post-Katrina federal response five years ago – has bogged down clean-up efforts as a host of agencies – OSHA, EPA, Coast Guard, Army Corps of Engineers and others – weigh in on most decisions.
Meanwhile, as November elections approach, the oil spill has a political dimension as both parties begin to use the massive oil slick from the Deepwater Horizon accident to bolster their prospects. Democrats will point out Republican ties to Big Oil, and Republicans will chide what they'll call a lackadaiscal response by the White House.
If the Macondo well is capped, oil cleanup is ramped up, and no hurricanes hit the slick, the oil spill crisis is likely to eventually abate. But the impression many Gulf Coast residents have so far is of a Keystone Kops response, where mundane regulations and misplaced priorities stand in the way of protecting local livelihoods and the Gulf's natural environment.

"The cleanup effort is drowning in the proverbial sea of red tape," writes Gulf Coast native Winston Groom, the author of "Forrest Gump," in the Weekly Standard.
Here are the top five bottlenecks impeding the Gulf oil spill cleanup so far:
Enough life vests? The Coast Guard has not eased any of its safety regulations and will likely continue to refuse to do so. A Louisiana effort involving 16 oil-sucking barges was shut down for nearly a day on June 18 by the Coast Guard, which wanted to make sure there were enough life vests and fire extinguishers on board.
"The Coast Guard is not going to compromise safety ... that's our No. 1 priority," Coast Guard spokesman Robert Brassel told The Daily Caller. Louisiana Gov. Bobby Jindal called it "frustrating."
The Jones Act. It's unclear to what extent the Jones Act, a 1920 protectionist law that mandates only US vessels and crews operate within the US three-mile maritime border, has really affected the ability to move foreign oil skimmers into the spill theater.
At issue in the law is both availability and proximity of US based skimming vessels. Several nations have said their offers of help have been rebuffed at least in part by US officials citing the Jones Act. This week, Obama sent out a call for more nations to join the clean-up response, but the President has not publicly addressed the legal and practical issues around US law and the foreign fleets ready to help.
"We want all the skimming vessels in the world deployed," Plaquemines Parish President Billy Nungesser tells the Times-Picayune newspaper in New Orleans.
(Factcheck.org says, "In reality, the Jones Act has yet to be an issue in the response efforts.... So far, offers from six foreign countries or entities have been accepted and only one offer has been rejected. Fifteen foreign-flag vessels are working on the cleanup, and none required a waiver.")
EPA says no, **then yes.** Three days after the accident, the Dutch government offered advanced skimming equipment capable of sucking up oiled water, separating out most of the oil, and returning the cleaner water to the Gulf. But citing discharge regulations that demand that 99.9985 percent of the returned water is oil-free, the EPA initially turned down the offer. A month into the crisis, the EPA backed off those regulations, and the Dutch equipment was airlifted to the Gulf.
'Ever hear of Radio Shack?' In a recent fly-over of a spill area near Perdido Bay, BP official Doug Suttles expressed amazement that spotter plane pilots couldn't communicate directly with skimming boats on the surface to direct them to oil patches.
"We need to get the skimmers to the oil," Suttles said. Local officials in Escambia County, Fla., have been asking for weeks for plane-to-ship communications, to little avail.
"Haven't they ever heard of Radio Shack?" writes Mr. Groom.
Who's in charge here? President Obama has said "the buck stops" with him. But the actual incident response command structure is a Gordian Knot for local officials requesting help and resources. Frustrated by red tape, some officials have been warned they'll be arrested if they take matters into their own hands. The lack of a clear command structure has hampered the ability to move resources like booms and skimmers quickly, especially in a still-growing spill that's at the whim of the Gulf's ever-changing tides, currents and winds.
While most of the criticism has been heaped on federal agencies and the Obama administration, questions are being raised about the extent to which the four Gulf state

governors (all Republicans) are responding too – specifically, on deployment of National Guard troops under their command.
In a recent investigative report, CBS News found that Louisiana's Gov. Jindal had deployed just 1,053 of the 6,000 troops available to him. "Alabama has deployed 432 troops of 3,000 available," according to CBS. "Even fewer have been deployed in Florida - 97 troops out of 2,500 - and Mississippi - 58 troops out of 6,000."
Jindal told CBS that the White House had instructed state officials that "Coast Guard and BP had to authorize individual tasks" for National Guard units.
But Coast Guard Adm. Thad Allen, the national incident commander in charge of the government's response to the spill, disputed that. "There is nothing standing in the governor's way from utilizing more National Guard troops," Allen told CBS.
"Whether it's simple confusion or the infusion of politics into the spill, the fact remains thousands of helping hands remain waiting to be used," concluded CBS.

07/02/2010

Gulf Spill Prompts EPA To Revise Plan To Delay Oil Spill Rule Compliance (*Inside EPA*)

EPA has resubmitted for White House review a revised proposal to extend the compliance deadline for its oil Spill Prevention, Control, and Countermeasure (SPCC) rule, after the Gulf of Mexico oil spill prompted the agency to withdraw and reassess an earlier version of the proposal sent for pre-publication review in March.
It is unclear what changes EPA has made to its proposed rule to extend the compliance date for the SPCC rule, which includes requirements for oil facilities to craft plans for oil spill prevention, preparedness, and response to prevent oil discharges to navigable waters and adjoining shorelines. But one industry source says the Gulf oil spill could have prompted EPA to narrow the proposed compliance extension for political reasons.

EPA sent its new version of the compliance deadline extension to the White House Office of Management & Budget (OMB) for review June 25. The submission comes months after EPA submitted its original proposal to OMB in March, and subsequently pulled that proposal from review in April in the wake of the Gulf spill, an EPA source says. According to OMB's website, a final rule is slated for publication sometime in August.

The EPA source would not disclose what the compliance deadline will be in the new extension proposal, but would say that the deadline has changed from the earlier proposal -- whose deadline was also unknown.

Following the BP spill, "I presumed the extension was a goner . . . politically and in terms of optics, I would have said no," one industry source says. EPA's decision to resubmit the proposal after pulling it in the wake of the spill is a surprise, the source

adds, because the large amount of negative publicity facing the oil industry may strengthen any EPA attempt to simply enforce the SPCC rule's existing Nov. 10 deadline without extension.

Still, the source expects that given the criticism of the oil industry in the wake of the spill EPA is likely to offer only a short compliance extension, perhaps one year from enactment of the rule, or Jan. 14, 2011.

The review of the oil spill rule compliance deadline comes as EPA is planning a broader review of its rules, guidelines and procedures for preparing and responding to oil spills on land and at "fixed" facilities that could discharge oil into U.S. waters, according to the agency's draft strategic plan for fiscal years 2011 through 2015.

The Bush EPA issued the original SPCC rule in December 2008 but incoming Obama officials delayed it as part of its broad review of past actions. In November, EPA amended the rule, making small changes from the existing version. In the amendments, EPA removed exclusions for oil production facilities and farms from loading and unloading rack requirements, established alternative criteria for facilities to self-certify their spill plans and provided exemptions for certain produced water facilities. An oil industry source said the changes will not affect a large number of facilities.

But EPA in its February Action Initiation List of just-launched rulemaking efforts said that the Nov. 13 Obama administration rule could create some uncertainty among industry about their compliance deadlines.

Because of some of the changes made in the Nov. 13 amendments -- including removal of certain provisions from the December 2008 version of rule -- "facilities may need additional time to comply with the SPCC amendments. Because of the uncertainty surrounding the final amendments to the December 5, 2008 rule and the delay of the effective date, the agency will propose to extend the compliance date," according to the initiation list. -- *John Heltman*

BP spill hits a somber record as Gulf's biggest (*NewsOK.com*)

NEW ORLEANS — BP's massive oil spill became the largest ever in the Gulf of Mexico on Thursday based on the highest of the federal government's estimates, an ominous record that underscores the oil giant's dire need to halt the gusher.

NEW ORLEANS — BP's massive oil spill became the largest ever in the Gulf of Mexico on Thursday based on the highest of the federal government's estimates, an ominous record that underscores the oil giant's dire need to halt the gusher.

This image from video provided by BP PLC early Thursday, July 1, 2010 shows oil continuing to leak from the broken wellhead, at the site of the Deepwater Horizon oil

well in the Gulf of Mexico. (AP Photo/BP PLC)

The oil that's spewed for two and a half months from a blown-out well a mile under the sea hit the 140.6 million gallon mark, eclipsing the record-setting, 140-million-gallon Ixtoc I spill off Mexico's coast from 1979 to 1980. Even by the lower end of the government's estimates, at least 71.7 million gallons are in the Gulf.

The growing total is crucial to track, in part because London-based BP PLC is likely to be fined per gallon spilled, said Larry McKinney, director of Texas A&M University at Corpus Christi's Gulf of Mexico research institute.

"It's an important number to know because it has an impact on restoration and recovery," McKinney said.

The oil calculation is based on the higher end of the government's range of barrels leaked per day, minus the amount BP says it has collected from the blown-out well using two containment systems. BP collected a smaller amount of oil than usual on Wednesday, about 969,000 gallons.

Measuring the spill helps scientists figure out where the missing oil is, hidden below the water surface with some even stuck to the seafloor. Oil not at the surface damages different parts of the ecosystem.

"It's a mind-boggling number any way you cut it," said Ed Overton, a Louisiana State University environmental studies professor who consults for the federal government on oil spills. "It'll be well beyond Ixtoc by the time it's finished."

And passing Ixtoc just before the July Fourth weekend, a time of normally booming tourism, is bitter timing, he said.

The BP spill, which began after the Deepwater Horizon drilling rig explosion killed 11 workers April 20, is also the largest spill ever recorded offshore during peacetime.

But it's not the biggest in history.

That happened when Iraqi forces opened valves at a terminal and dumped about 460 million gallons of oil in 1991 during the Persian Gulf war.

As the Gulf gusher neared the record, Hurricane Alex whipped oil-filled waves onto the Gulf Coast's once-white beaches. The government has pinned its latest cleanup hopes on a huge new piece of equipment: the world's largest oil-skimming vessel, which arrived Wednesday.

Officials hope the ship can scoop up to 21 million gallons of oil-fouled water a day. Dubbed the "A Whale," the Taiwanese-flagged former tanker spans the length of 3 1 / 2 football fields and is 10 stories high.

It just emerged from an extensive retrofitting to prepare it specifically for the Gulf.

"It is absolutely gigantic. It's unbelievable," said Overton, who saw the ship last week in Norfolk, Va.

The vessel looks like a typical tanker, but it takes in contaminated water through 12 vents on either side of the bow. The oil is then supposed to be separated from the water and transferred to another vessel. The water is channeled back into the sea.

But the ship's never been tested, and many questions remain about how it will operate. For instance, the seawater retains trace amounts of oil, even after getting filtered, so the Environmental Protection Agency will have to sign off on allowing the treated water back into the Gulf.

"This is a no-brainer," Overton said. "You're bringing in really dirty, oily water and you're putting back much cleaner water."

The Coast Guard will have the final say in whether the vessel can operate in the Gulf. The owner, shipping firm TMT Group, will have to come to separate terms with BP, which is paying for the cleanup.

"I don't know whether it's going to work or not, but it certainly needs to be given the opportunity," Overton said.

Meanwhile along parts of the Gulf, red flags snapped in strong gusts, warning people to stay out of the water, and long stretches of beach were stained brown from tar balls and crude oil that had been pushed as far as 60 yards from the water.

Hurricane Alex churned up rough seas as it plowed across the Gulf, dealing a tough setback to cleanup operations. It made landfall along a relatively unpopulated stretch of coast in Mexico's northern Tamaulipas state late Wednesday, spawning tornadoes in nearby Texas and forcing evacuations in both countries. Alex weakened to a tropical storm Thursday morning as it moved across Mexico.

Oil deposits appeared worse than in past days and local officials feared the temporary halt to skimming operations near the coast would only make matters worse ahead of the holiday weekend.

"I'm real worried about what is going to happen with those boats not running. It can't help," said Tony Kennon, mayor of Orange Beach, Ala.

Although skimming operations and the laying of oil-corralling booms were halted across the Gulf, vessels that collect and burn oil and gas at the site of the explosion were still operating. Efforts to drill relief wells that experts hope will stop the leak also continued unabated.

In Florida, lumps of tar the size of dinner plates filled a large swath of beach east of Pensacola after rough waves tossed the mess onto shore.

Streaks of the rust-red oil could be seen in the waves off Pensacola Beach as cleanup crews worked in the rough weather to prepare the beach for the holiday weekend.

In Grand Isle, La., heavy bands of rain pounded down, keeping cleanup crews off the water and tossing carefully laid boom around. However, oil had stayed out of the passes.

"All this wave action is breaking up the oil very quickly," Coast Guard Cmdr. Randal S. Ogrydziak said. "Mother Nature is doing what she does best, putting things back in order."

Natural microbes in the water were also working on the spill. The result was a white substance that looked like mayonnaise, that washed up on some spots along the Grand Isle beach.

"People will be fishing here again," Ogrydziak said. "It may take a while, but people may be surprised that it's not taking as long as they thought. Look at the (Ixtoc) oil spill in Mexico. It was massive and now people are back to using those waters."

Associated Press writers Mary Foster in Grand Isle, La., Jay Reeves in Orange Beach, Ala., and Melissa Nelson in Pensacola Beach, Fla., contributed to this report.

07/02/2010

GOP Fears Boxer's Plan For Spill Cleanups Could Prompt New Moratorium (*Inside EPA)*

Republican senators are warning that an amendment Sen. Barbara Boxer (D-CA) attached to legislation to lift the cap on economic and environmental damages from oil spills would have the unintended consequence of acting as an offshore drilling moratorium because its requirements are too stringent for even the biggest oil companies to meet.
Boxer, chair of the Environment & Public Works Committee, successfully added to the oil spill legislation, S. 3305, a rider to modify and tighten Clean Water Act oil spill contingency plan requirements. S. 3305, introduced by Sen. Robert Menendez (D-NJ), would amend the Oil Pollution Act (OPA) to remove an existing $75 million cap on civil liability economic damages from a spill, and eliminate a $500 million cap on natural resource damage claims.

Boxer's amendment would require oil companies to craft oil spill response plans that would ensure they will prevent economic damages, job losses and impacts to natural

resources, according to a summary of the amendment circulated at a June 30 markup of S. 3305. *Relevant documents are available on InsideEPA.com.*

The rider would also "ensure that the response measures outlined in a plan are determined to be technologically feasible and appropriate to respond to a worst case discharge," according to the summary.

GOP members of the committee charged that the rider would act as a *de facto* moratorium on offshore oil drilling because the new spill response plan requirements are so onerous companies will be unable to meet them. Instead of launching new offshore oil rigs, companies would choose not to, the senators warned.

Boxer said the amendment was warranted based on reports of the inadequacy of BP's oil spill response plan, which was in place prior to the Deepwater Horizon explosion and spill in the Gulf of Mexico. The company's plan for responding to a "worst case" scenario included contacting a wildlife expert who has been deceased for four years, and outlined contingency plans to protect walruses, which do not live in the Gulf of Mexico.

At the markup, Sen. David Vitter (R-LA) said that while he supports lifting the OPA cap he had "concerns about this specific amendment" because, he said, it "sets an unattainable goal" for industry. "I'm not sure the majors can meet the goal," he said, referring to major oil companies. GOP members have raised concerns that having unlimited liability could lead to only major oil companies being able to stay in business.

Vitter also said that President Obama has already named a special commission to look into mistakes made with BP's oil spill response plan, and that this amendment is "completely prejudging" the outcome of that report because it outlines prescriptive measures that companies would have to include in their plans.

Boxer however countered that her amendment would not impose a *de facto* moratorium and only requires an update to oil spill response plans rather than onerous new rules on the oil industry.

Despite the Republicans' concerns, the amendment passed along party lines, and the full bill passed out of the environment committee by voice vote, and it now heads to the full Senate for consideration.

The House Transportation & Infrastructure Committee is slated to hold a July 1 markup of the lower chamber's companion version of the liability cap bill, introduced by Rep. James Oberstar (D-MN).

Senators at the markup also sparred over the broader issue of oil companies' liability in the wake of spills, with some Republicans saying that while the $75 million civil liability cap in OPA is too low they have major concerns with attempts to lift the cap too high or even provide for unlimited liability as outlined in S. 3305.

Sen. James Inhofe (R-OK), ranking member on the environment panel, said that unlimited liability would be too steep for most oil companies, leaving little more than five major oil companies in business.

Industry sources have previously said that higher liability caps would drive smaller oil producers out of business because they would be unable to afford liability insurance. This would hit especially hard in the Gulf, where the majority of drillers are smaller, independent companies that could not afford the insurance coverage necessary to cover such potential liability, an industry source has said, unlike the industry's major players.

Inhofe offered a rider that would lift the $75 million liability cap but require the president to consider setting a higher -- not unlimited -- cap based on risk factors, including a company's safety record. Inhofe's amendment was however defeated.

"I remain disappointed that my offer of a reasonable compromise on liability caps was rejected by Democratic leaders" Inhofe said in a statement following the markup. "Nevertheless, I will continue to seek a bipartisan solution, because I believe we are not far apart on this issue."

He reiterated fears that "an injudicious decision to rashly remove caps could mean that the only producers left standing in the Gulf will be BP and Big Oil, as well China's state-owned oil company.

Sen. Lamar Alexander (R-TN) also raised concerns about the retroactive nature of the bill, which would revise the OPA so that the April BP oil spill would fall under the unlimited liability cap.

Alexander said that imposing retroactive liability is contrary to congressional precedent. "We're not a banana republic," Alexander said at the markup. Further, he said that while "the idea of unlimited liability is appealing at first," eliminating the cap could leave the United States more dependent on overseas oil, more dependent on unsafe tanker ships, more reliant on "big oil" and foreign companies, and could possibly lead to higher oil prices.

Sen. George Voinovich (R-OH) also suggested that lawmakers adopt a Price-Anderson model for addressing oil spill liability. Republicans have previously advocated this approach, which would limit liability for a single producer at $300 million and apportioning liability between $300 million and $10 billion among the oil and gas industry generally. However, Voinovich did not offer an amendment to include such an approach in S. 3305.

Proponents say that a Price-Anderson approach allows companies to pool their collective risk in order to protect small companies and creates industry-wide incentives to maximize risk-reduction strategies but environmentalists and other critics say that because Price-Anderson caps the industry's liability it still leaves the public vulnerable to catastrophic damages and also subsidizes the industry's insurance premiums.

At the markup, Boxer echoed some of those criticisms and said that under the Price-Anderson approach, taxpayers would suffer because they would effectively provide a "bailout" for the oil industry.

Meanwhile, Vitter also offered a rider accepted by voice vote, though with some changes to the rider made during markup. Vitter's amendment would require bi-annual reports to congress on the payouts made by BP from the $20 billion fund. At Boxer's request, Vitter agreed to change the bill and have the report come directly from the Oil Spill Fund Administrator -- currently Kenneth Feinberg -- rather than the president.

Huge skimmer ready to aid Gulf (*Columbus Dispatch*)

If it works, refitted ship will suck up, clean oily water
The "A Whale" tanker has never been tested.

NEW ORLEANS -- With hurricane-whipped waves pushing more oil onto the Gulf of Mexico's once-white beaches, the government pinned its latest cleanup hopes yesterday on a huge new piece of equipment: the world's largest oil-skimming vessel.

The Taiwanese-flagged former tanker named the "A Whale" is the length of 3 1/2 football fields and stands 10 stories high. It just emerged from an extensive retrofitting to prepare it specifically for the Gulf, where officials hope it will be able to suck up as much as 21 million gallons of oil-fouled water per day.

"It is absolutely gigantic. It's unbelievable," said Louisiana State University environmental sciences professor Ed Overton, who saw the ship last week in Norfolk, Va.

As the monstrous vessel made its way toward the Gulf, large waves churned up by distant Hurricane Alex left Alabama beaches splattered with oil and tar balls the size of apples. The rough seas forced most smaller skimming boats into port for a second consecutive day, putting many cleanup crews at a standstill.

The oil-skimming ship looks like a typical tanker, but it takes in contaminated water through 12 vents on either side of the bow. The oil is then supposed to be separated from the water and transferred to another vessel. The water is channeled back into the sea.

But the ship has never been tested, and many questions remain about how it will operate. For instance, the seawater retains trace amounts of oil, even after getting filtered, so the Environmental Protection Agency will have to sign off on allowing the treated water back into the Gulf.

"This is a no-brainer," Overton said. "You're bringing in really dirty, oily water and you're putting back much cleaner water."

The vessel, owned by the Taiwanese shipping firm TMT Group, was completed as a tanker earlier this year in South Korea. But after the Gulf spill, the company's CEO and founder, Nobu Su, ordered it changed into a giant skimmer. The vessel was sent to Portugal for the refit and embarked for the Gulf as soon as it was finished.

The ship arrived yesterday in Louisiana coastal waters, where TMT officials planned to meet with the Coast Guard to plan a tryout.

The Coast Guard will have the final say in whether the vessel can operate in the Gulf. TMT will have to come to separate terms with BP, which is paying for the cleanup.

Meanwhile, along parts of the Gulf, long stretches of beach were stained brown from tar balls and crude oil that had been pushed as far as 60 yards from the water.

Oil deposits appeared worse than in past days, and local officials feared the temporary halt to skimming operations near the coast would only make matters worse ahead of the July 4 holiday weekend.

In Florida, lumps of tar the size of dinner plates soiled a beach east of Pensacola after rough waves tossed the mess onto shore.

As of yesterday, between 71.2 million and 139 million gallons of oil have gushed into the Gulf from the leak caused by the April 20 explosion aboard the drilling rig Deepwater Horizon. The blast killed 11 oil workers on the platform, which was owned by Transocean Ltd. and leased by BP PLC.

Although skimming operations and the laying of oil-corralling booms were halted across the Gulf, vessels that collect and burn oil and gas at the site of the explosion were still operating.

Also yesterday:

• Independent drilling engineers and some energy analysts said BP could be in a position to intercept the damaged well with two relief wells and begin the critical kill operation within 14 days.

BP said work on the wells has not been impeded by Hurricane Alex.

• An effort to scoop thousands of turtle eggs from their nests to save them from death in the oily Gulf of Mexico will begin in coming weeks in a bid to keep a generation of threatened species from vanishing.

The U.S. Fish and Wildlife Service will coordinate the plan, which calls for collecting about 70,000 turtle eggs in up to 800 nests buried in the sand across Florida Panhandle and Alabama beaches.

• The Environmental Protection Agency issued a study that found the dispersant being used by BP in the Gulf of Mexico, as well as seven alternative mass-produced dispersants, all fell within the range of "practically non-toxic" to "slightly toxic."

The conclusions, although preliminary, appear to support BP's contention there is little difference between Corexit 9500 and other dispersants available on the market, an argument the oil giant used in rebuffing EPA's order in May to stop using the chemical.

But the study offered little relief to environmentalists and ocean scientists concerned about the unprecedented amounts of dispersant being sprayed into the Gulf.

Information from the Houston Chronicle and the Los Angeles Times was included in this story.

CLIMATE CHANGE
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Agency says global carbon dioxide levels stayed flat in '09 (*Boston Globe*)

July 2, 2010 Friday
NEWS; Foreign; Pg. 7
By Arthur Max, Associated Press
AMSTERDAM - The world's industrial emissions of climate-changing carbon dioxide held steady last year, as recession slowed production in rich countries while growth in China and India made up the difference, a leading monitoring agency reported yesterday.

The Netherlands Environment Assessment Agency said last year was the first since 1992 that registered zero growth in carbon emissions from the burning of fossil fuels, cement production, and chemical industries - key sources of greenhouse gases.

It did not take into account, however, measurements from deforestation, forest fires, and the release of carbon from decomposing biomass, which could add up to 20 percent to global emissions.

The Dutch government-sponsored agency was the first to report that China had overtaken the United States as the world's largest carbon polluter in 2006. Its evaluations are based on energy data from the oil company BP, the International Energy Agency, and the figures from cement, steel, and other industries collected by the European Commission's Joint Research Center.

Emissions shrank in the leading industrial countries by 7 percent, or 800 million tons,

last year, but that was compensated by a 9 percent increase in China and 6 percent in India, said the report, issued annually.

China has more than doubled its emissions since 2000 to reach 8.1 billion tons, even though for the past five years it has annually doubled its capacity of wind and solar energy.

India's emissions have grown 50 percent since 2000, and it has now surpassed Russia as the world's fifth-largest carbon polluter, said the report.

Measured by country, China remains the largest polluter, but the United States emits nearly three times more per person, it said. The report comes as 194 countries try to reach an accord to control the gases scientists say are raising the Earth's average temperatures. That rise, if unchecked, could lead to catastrophic water shortages, rising seas and coastal flooding, and more severe drought in arid zones.

A summit of about 120 world leaders in Copenhagen last December failed to agree on an effective remedy, and negotiators have lowered their ambitions for the next major climate conference in Cancun, Mexico, at the end of this year.

Britain Curbing Airport Growth To Aid Climate (*New York Times*)

July 2, 2010 Friday
Late Edition - Final
Section A; Column 0; Foreign Desk; Pg. 1
By ELISABETH ROSENTHAL
In a bold if lonely environmental stand, Britain's coalition government has set out to curb the growth of what has been called "binge flying" by refusing to build new runways around London to accommodate more planes.

Citing the high levels of greenhouse gas emissions from aviation, Prime Minister David Cameron, a Conservative, abruptly canceled longstanding plans to build a third runway at Heathrow Airport in May, just days after his election; he said he would also refuse to approve new runways at Gatwick and Stansted, London's second-string airports.

The government decided that enabling more flying was incompatible with Britain's oft-stated goal of curbing emissions. Britons have become accustomed to easy, frequent flying -- jetting off to weekend homes in Spain and bachelor parties in Prague -- as England has become a hub for low-cost airlines. The country's 2008 **Climate Change** Act requires it to reduce emissions by at least 34 percent by 2020 from levels reached in 1990.

"The emissions were a significant factor" in the decision to cancel the runway-building plans, Teresa Villiers, Britain's minister of state for transport, said in an interview. "The 220,000 or so flights that might well come with a third runway would make it difficult to

meet the targets we'd set for ourselves." She said that local environmental concerns like noise and pollution around Heathrow also weighed into the decision.

Britain is bucking a global trend. Across North America, Asia and Europe, cities are building new runways or expanding terminals to handle projected growth in air travel and air freight in the hope of remaining competitive.

That growth in traffic has been damped but not halted by hard economic times, and in the current global recession, business concerns have generally prevailed over worries about **climate change.** In the United States, Chicago-O'Hare, Seattle-Tacoma and Washington-Dulles all opened new runways in 2008.

On Tuesday, Kennedy International Airport in New York reopened its Bay Runway -- one of four, and the airport's longest -- after a four-month, $376 million renovation that included the creation of two new taxiways to speed plane movements between runways and terminals.

Airport expansion plans have sometimes been modified or canceled because of concerns about noise or ground-level pollution. But Peder Jensen, a transportation specialist at the European Environment Agency in Copenhagen, said that as far as he knew, Britain "is the only country that had made a conscious decision based on climate considerations."

Heathrow, one of the world's busiest airports and a major connection point for destinations in Europe, South Asia and the Middle East, is already notorious for its flight delays and endless lines. It is the only airport of its size with just two runways; Paris-Charles de Gaulle has four and O'Hare has seven.

So even though the Conservative Party had been expressing growing reservations about the planned expansion since 2008, many businessmen were shocked when Mr. Cameron canceled the plan after coming to power in a coalition with Liberal Democrats.

"This is a new government that claimed to be business friendly, but their first move was to eliminate one of the best growth opportunities for London and the U.K. and British companies," said Steve Lott, a spokesman for the International Air Transport Association. "We've run into a shortsighted political decision that will have terrible economic consequences."

The British government counters that the economic effects of scrapping the third runway are "unclear" while the environmental costs of adding one are unacceptably high. Ms. Villiers said that a high-speed rail network intended to replace short-haul flights would be a better way to address the airport's congestion than adding a runway.

"We recognized that just putting more flights and more passengers into the skies over southeast England wasn't worth the environmental costs we're paying," she said. "We decided to make Heathrow better rather than bigger."

Although it is often said that emissions from air travel account for 2 to 3 percent of global emissions, the proportion is higher in many developed countries: emissions from aviation are growing faster there than those from nearly any other sector.

The British government has calculated that aviation emissions accounted for just 6 percent of the country's carbon dioxide emissions in 2006. But it concluded in a report that aviation could contribute up to a quarter of those emissions by 2030.

In the United States, the number of general aviation hours is forecast to grow an average of 1.8 percent a year, and to be 60 percent greater by 2025 than it is now, according to the Federal Aviation Administration. While airlines have worked hard to improve airplane efficiency, those efforts are dwarfed by the upward trend in flying.

Citizens' groups in communities near Heathrow fought hard for nearly a decade against the airport's runway expansion, complaining about noise and nitrous oxide pollution. As **climate change** became a more potent political issue in Britain several years ago, environmental groups with broader concerns jumped into the fray, camping out at Heathrow and occupying runways at smaller airports, shutting them down for hours.

"If you were a politician, how you felt about the third runway became a test of your commitment to dealing with **climate change,"** said Ben Stewart, communications director for Greenpeace U.K.

The temptation to expand airports is great for cities in search of new business and tourism. Airports in Europe are now mostly run by private companies, and for them, the more traffic, the more profit.

Some critics say the British government's principled stand is pointless because airlines and travelers will respond not by forgoing air travel but by flying through a different airport. Instead of emissions being reduced, the critics say, they will simply be transferred to places like Barajas Airport in Madrid or Frankfurt International Airport, which have recently been expanded.

"My personal opinion is that the decision concerning Heathrow's third runway was highly politicized and outpaced the science of what that runway might or might not do in terms of emissions," said Christopher Oswald, a vice president of Airports Council International, an industry group. He suggested that a third runway might actually reduce emissions above Heathrow, because with less congestion, planes would spend less time idling on runways or circling in holding patterns.

But Dr. Jensen of the European Environment Agency said that building roads or runways generated more traffic in the long term because greater convenience draws people to a route.

Leo Murray, a spokesman for Plane Stupid, an environmental group that has fought

new runways, called the British government's decision "a turning point for aviation" although he added, "It is uncomfortable to have the coup de grace delivered by the Conservative government."

07/02/2010

Pipeline Review Poses Early Test For CEQ's NEPA Guidelines For GHGs (*Inside EPA*)

Environmentalists and 50 House lawmakers are urging State Department officials to delay approval of a major pipeline bringing more Canadian tar sands crude oil to the United States until the White House's Council on Environmental Quality (CEQ) completes new guidelines for assessing greenhouse gas (GHG) impacts under the National Environmental Policy Act (NEPA).
Activists say the guidelines, along with a lifecycle GHG analysis they are urging EPA to conduct, will help correct the State Department's underestimation of the GHG impacts of tar sands oil -- believed to be a major new source of fuel -- and help ensure more mitigation of the increased GHG emissions that they believe will likely result.

The activists are especially concerned because they believe a draft environmental impact statement (EIS) that the department released earlier this year erroneously assumes that "the crude oil delivered by the project would be replacing similar crude oils from other sources; [therefore] the incremental impact of these emissions would be minor,"according to the draft EIS.

Activists contend the size and implications of the fossil-fuel project are perfectly suited to serve as one of the first applications for the new guidelines, which are still under review at CEQ. The State Department "should hold off on moving forward with this draft EIS until these new guidelines are released to ensure the thorough consideration of direct and indirect greenhouse gas emissions associated with the project, as specifically requested by these guidelines," says one environmentalist closely involved in the issue.

While CEQ and EPA officials are currently assessing the GHG and climate change impacts of the project, it is unclear whether they will be using the draft NEPA guidelines for GHGs, or whether they will also urge the State Department to put off a decision on the project until the guidelines are finalized, the source says.

A CEQ spokeswoman says the council is "reviewing the proposed Keystone XL Canada-U.S. pipeline project proactively, not in response to anyone, and is working with the State Department as they move through the NEPA process." The spokeswoman declined to comment about whether the pending GHG guidelines will be used in the review or whether CEQ will be recommending the department delay a decision until the guidelines are completed.

Environmentalists say EPA's Office of Air & Radiation and its Office of Enforcement & Compliance Assurance have been reviewing the climate change and other

environmental impacts of the pipeline project proposal. CEQ and EPA officials have been holding joint meetings as well, the source says.

The source says the June 23 letter from 50 House Democrats to Secretary of State Hillary Clinton will "hopefully serve as a wakeup call for those in the administration who are not seriously considering the GHG impacts and will strengthen the resolve of those who are. It shows there is some serious concern on the Hill." The source says the letter is also intended to address concern that some in the department are prepared to approve the project as a routine matter. "Bureaucrats from within the State Department have indicated support, but that's a long cry from the White House," the source says. "I do believe EPA and CEQ have the potential to impact this decision." *The letter is available on InsideEPA.com.*

At issue is the proposed Keystone XL Project by TransCanada Keystone Pipeline, L.P. The firm is proposing to construct and operate a crude oil pipeline from Hardisty, Alberta, near the tar sand fields, to existing terminals in Texas, terminating in Houston, according to the State Department.

The project would have the capacity to deliver up to 900,000 barrels per day of crude oil from Hardisty to the terminals in Texas. Because the project will cross into the United States from Canada, a presidential permit issued by the State Department is required for the project to proceed. This subjects the project to NEPA, which requires disclosure of potential environmental impacts and the consideration of possible alternatives.

The department released a draft EIS for the project in April and recently extended a written comment deadline for the EIS to July 2. The department held a June 29 public hearing on the plan in Washington, DC, and is also expected to soon commence a 90-day period under which a "national interest determination" -- a requirement for the permit -- is considered, according to the environmentalist.

July 16 marks the deadline for a federal interagency review of the project.

07/02/2010

Senators See Widely Divergent Outcomes For Scope Of Climate Legislation (*Inside EPA*)

Senators are offering starkly different appraisals of the likelihood and scope of any compromise on climate and energy legislation in the wake of a June 29 White House meeting with roughly two dozen lawmakers that did not appear to resolve the thorny issue of whether a bill including a carbon price could gain traction.
Lawmakers also continue to differ on whether a legislative response to the BP oil spill in the Gulf of Mexico should be part of a pending climate and energy bill, or move as separate legislation.

On climate change, Senate Democrats are restating their willingness to compromise on a draft comprehensive bill offered by Sens. John Kerry (D-MA) and Joseph Lieberman (I-CT) while stopping short of endorsing an energy-only approach. Republicans, however, emerged from the meeting voicing strong opposition to an unspecified "energy tax," though GOP critics in the past have defined carbon limits or greenhouse gas cap-and-trade as energy taxes.

Lieberman in June 29 comments to reporters at the White House called the bipartisan meeting "very constructive" and said that "some of our colleagues" who have been previously reluctant to support carbon price language indicated a willingness to compromise on limited language for "limiting carbon pollution."

Lieberman added that Obama offered a "passionate" appeal for a carbon price as a way to make polluters pay. Kerry reiterated prior comments that the two lawmakers are willing to "scale back" the scope of their legislation, but suggested that an energy-only approach is a non-starter.

Striking a markedly different tone, Sen. Lamar Alexander (R-TN) told reporters at the White House that "priority one, two and three" should be to aid the Obama administration's oil spill response efforts. Alexander called for an energy bill, but, in an apparent reference to cap-and-trade, added that the first step in that direction should be to "take a national energy tax off the table in the middle of a recession."

On the timing of oil spill legislation, Lieberman said there was a "strong feeling" at the meeting that climate and energy legislation "should be the legislative vehicle that responds to what was wrong" in the Gulf. However, Sen. Lisa Murkowski (R-AK) said she did not believe oil spill response legislation would be added to a climate and energy bill.

Some lawmakers are now suggesting that a "utility-only" carbon limit is now possible. Alexander himself did not go that far, but indicated that he and over a dozen other lawmakers from both parties favor a three-pollutant approach to curb utility emissions of sulfur dioxide, nitrogen oxides and mercury -- in a bill some have suggested could be a foundation for efforts to strike some kind of agreement on carbon dioxide.

His comments came in the wake of reports that Sen. Jeff Bingaman (D-NM) is drafting a bill focused on carbon emissions from utilities. Bingaman told reporters at the Capitol after the White House meeting that he was working on draft utility-only language, but he will only introduce it if it can get adequate support. Bingaman said he has no co-sponsors for his bill.

Publicly, however, the disparate narratives on the status of climate and energy efforts continued on Capitol Hill, where Lieberman suggested that a utility-only approach could be one option for proceeding while several other lawmakers called it a nonstarter. "That's one place to go," Lieberman said when asked by reporters about a utility-only bill, adding that he was open to a compromise on capping carbon emissions, which "would probably be less than economy-wide."

Sen. Tom Carper (D-DE) said the political "sweet spot" could be achieved by using the Bingaman-Murkowski energy bill and tweaking it with a series of possible amendments, including a four-pollutant utility bill that includes carbon dioxide and other amendments related to fuel efficiency, clean transportation, and tax provisions to boost manufacturing green energy products.\

However, Sen Judd Gregg (R-NH), who also attended the White House meeting, told *Inside EPA* that prospects for consensus on a utility-only approach are "extremely slim."

Alexander stopped short of ruling out a utility-focused limit in concept, but told reporters on the Hill that now is not the time. "You don't put an energy tax on electricity in the middle of a recession when you want to create new jobs," Alexander said.

Sen. Mark Begich (D-AK), called a utility-only approach "one of many items" that were discussed at the White House meeting as possibilities for inclusion in a climate/energy measure.

But Murkowski, the ranking Republican on the Senate Energy & Natural Resources committee, said she could not support a utility-only approach and added that she did not believe it could get enough Republican support to pass the Senate. "I have said repeatedly, it is still cap-and-trade and I just do not think that we can afford to advance that. It's not something I support, so we are not working with [Bingaman] on that," she said.

CORRECTION
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Correction: Gas Drilling-Chemicals story (*Associated Press*)

Story also appeared: *Washington Post*

The Associated Press
Thursday, July 1, 2010; 3:43 PM
HARRISBURG, Pa. -- In a June 28 story about chemicals that are used in natural gas drilling, The Associated Press, relying on information provided by the Pennsylvania Department of Environmental Protection, erroneously reported the intended use of the chemicals on a list assembled by the agency. The department now says the list of chemicals provided to the AP includes all chemicals used at well sites, whether in the hydraulic fracturing process or for other drilling purposes.

ENERGY
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New in D.C.: Brookland walkability, rooftop city views (*Washington Times*)

July 2, 2010 Friday
C, HOME GUIDE; Pg. 2
By Michele Lerner SPECIAL TO THE WASHINGTON TIMES
EYA, named America's Best Builder in 2009 by Builder magazine, specializes in smart-growth developments such as town-home communities within walking distance of public transportation, shops and other amenities. The company also builds mixed-use developments and has built nearly 30 neighborhoods in the Washington area, including revitalizing the neighborhood surrounding Nationals Park in Southeast Washington, National Park Seminary in Silver Spring, Md., the Arts District in Hyattsville, Md., and several communities in Alexandria, Va.

One of its latest developments is Chancellor's Row, a new community of town homes four blocks from the Brookland/Catholic University Metro station in Northeast Washington. Sited on a 10-acre parcel of St. Paul's College, Chancellor's Row will have 3 acres of open spaces, with views of D.C. landmarks. Residents will be able to walk not only to Metro, but also to nearby shops and restaurants, the theater, and fitness and cultural amenities available at Trinity University and Catholic University. Twelfth Street Northeast in Brookland provides more nearby shops and restaurants, and residents also can enjoy performances at Dance Place.

The 237 town homes will have brick exteriors with rooftop terraces, cornice detailing and paint colors that fit in with the neighborhood's architectural styles. Each four-level home will have a private one- or two-car garage, **Energy Star** windows, professional landscaping and an energy-efficient light-colored roof. Some of the homes will include cement siding and a brick stoop with a wrought-iron railing. A front porch and a deck are optional.

Inside, the homes have three or four bedrooms and two or three full baths, a powder room, hardwood flooring in the powder room and kitchen, 9-foot ceilings on the main and upper levels, two-panel smooth-finish doors, high-tech wiring, recessed lighting, and ceramic tile flooring in the foyer.

Each master bath has ceramic tile flooring, double-sink vanities and a glass-enclosed shower, and the secondary baths also have ceramic tile flooring. The kitchens have 42-inch birch cabinets, granite or Corian counters, recessed lighting, a pantry and **Energy Star** appliances. The homes are **Energy Star** and LEED certified for energy efficiency. Each has a rough-in for a solar hot-water system, and buyers can add a rough-in for electric panels and an electric-car charging station.

The homes are priced from $469,900 to $589,900, with a monthly homeowners association fee of $121.

The Dupont model, priced from $559,900, has three bedrooms, two or three full baths, a powder room and a two-car garage. This home has a lower-level entrance into a foyer that also has a door to the garage. The foyer has a double-door closet. Next to the foyer is a study that buyers can turn into a bedroom with the addition of a closet and double doors.

The main level has an open floor plan with the living area at the front of the house and an open dining area in the center. Buyers can add a gas fireplace to the living room and adjust the plan to contain an enclosed kitchen. The standard plan has an open center-island kitchen with a pantry and an adjacent powder room. Buyers can add a deck to the back of this level.

The upper level features an expansive master suite with a walk-in closet and a private full bath. This level also has a laundry room and a second bedroom with a closet and a private full bath.

The finished loft level has an open loft with a sliding glass door to the roof terrace. Buyers can add a full bath to this level, if desired.

For more information or directions to Chancellor's Row, contact sales managers Nick Yannitello and Sylvia Mader at 202/290-3794 or visit www. eya.com.

Have Obama and the Democrats forgotten how to fight? (*Washington Post*)

By E.J. Dionne Jr.
Thursday, July 1, 2010; A15
One of the strangest lead sentences I have ever encountered appeared in Politico last week. It read: "John Kerry has been the most aggressive advocate of climate change legislation in the Senate this year -- so aggressive that it's rubbed some of his colleagues the wrong way."
The story went on to say that Kerry's "zeal" is "making some swing-vote Democrats cringe at the thought of negotiating with someone they fear is tone-deaf to the political realities of their respective states -- particularly in a difficult midterm elections year."
So there you have it: Once criticized for being too aloof and patrician, Kerry is now being assailed for daring to have passion for the cause of reducing the amount of carbon we are pumping into the atmosphere.
Note that none of this is about the legislative merits. Kerry is being criticized for caring too much about an *issue* and not thinking enough about an *election* -- for being insufficiently opportunistic and unprincipled.
And Democrats wonder why the polls find an "enthusiasm gap" that suggests their supporters will sit around grumpily in November while Republicans flood the polling places.
It might help if voters saw President Obama and his party in Congress fighting for something going into these elections (including their record on health care and financial

reform) rather than reacting, retrenching and retreating. Kerry's attitude is not the problem. It's part of the solution.

Let's be clear: Yes, it is hard for politicians from coal states, or from states whose utilities use a lot of coal, to get enthusiastic about carbon caps. It's also true that many of the Democrats fighting for their political lives represent rather conservative states and districts. They hear most from voters who are talking -- make that yelling -- about big spending, big deficits, big government. Some of their constituents even think of Obama as the Manchurian candidate.

There's also this: If the unemployment rate were hovering around 5 percent instead of above 9 percent, and if Republicans were not intent on using the Senate to stop just about everything Democrats are trying to do, the public's mood about Washington and how it works would be less lethal.

In the face of these core problems, there is increasing grumbling among congressional Democrats about the Obama administration's habits. Some wonder whether Obama is indifferent to their fate. Others sense that the president is far more solicitous to those who oppose him than to those who bleed for him. And many are questioning whether Obama's lieutenants have figured out that they have not been the messaging geniuses in the White House that they seemed to be in the 2008 campaign.

On the current course, even a Republican Party whose leaders say the most outlandish and extreme things -- and whose own congressional rank and file worry about their lack of a coherent program -- could take back the House and make deep inroads in the Senate.

Which brings us back to Kerry, who in a talk with me made no apologies for his eagerness to get an energy bill. What's striking is that he has negotiated with every industry and trade group imaginable to find a deal. If he's passionate about this, he's also been relentlessly practical.

And he notes that many business groups would prefer that Congress deal with the carbon question. "They see it coming from the EPA and regulation, and they would rather have us legislate," he said. Kerry's persistence is one reason the Senate leadership and a White House with which he's been working closely are still trying to push an energy bill through.

Someone needs to find the same pugnacious spirit on a jobs bill. Yes, crucial assistance to states that are slashing programs and raising taxes has been blocked by Republican senators -- including Olympia Snowe and Susan Collins of Maine. Both prize their moderate images, but neither has been willing to break with the GOP leadership.

But either Obama and the Democrats really believe that giving the economy another shot in the arm now is essential or they don't. If they put no punch behind their argument, voters will have no idea that some state cutbacks or tax hikes they are worried about could be avoided if Congress were willing to act.

The Obama of 2008 understood how to define the stakes and how to rouse the faithful with both reason and passion. What happened to that guy?

ejdionne@washpost.com

FUEL

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07/02/2010

EPA Pulls RFS Changes Due To Concerns Over New Technology Mandates (*Inside EPA*)

EPA is withdrawing recent amendments to its renewable fuels standard (RFS) addressing how ethanol facilities can expand if they use advanced technologies to meet the RFS' greenhouse gas (GHG) limits, after ethanol industry groups argued that the changes would force an entire ethanol facility to install the expensive new technologies. In a June 30 *Federal Register* notice, EPA announced a partial withdrawal of its May 10 direct final technical amendments to the RFS due to adverse comments. One of the amendments being withdrawn clarified the extent to which renewable fuel producers must use certain advanced technologies in order to qualify under the RFS, EPA says. *Relevant documents are available on InsideEPA.com.*

Ethanol group Growth Energy claims that the result of the direct final rule would be to require currently exempt producers that want to expand beyond 105 percent of capacity to switch an entire facility -- not just the expanded portion -- to advanced technologies. The group said this result is likely unintentional because it is inconsistent with the 2007 energy law's exemption and with EPA's final RFS for existing ethanol facilities issued in February.

Existing biofuels facilities were exempt under the 2007 energy law from having to meet the RFS' standard for reducing lifecycle GHG emissions. However, the law did not state whether those facilities "grandfathered" from having to meet the standard would be able to expand without triggering new requirements.

EPA has acknowledged as far back as 2008 that it was grappling with whether an exempt ethanol facility that intended to expand would have to meet RFS' requirements to cut lifecycle GHGs 20 percent below those of conventional gasoline. EPA also wrestled with whether it had authority to regulate GHGs at the facilities in the event of an expansion, either regulating just the expansion or the entire facility (*Inside EPA*, May 12, 2008).

The RFS issued in February defined "facilities" to distinguish between grandfathered facilities not subject to the GHG limits and new facilities subject to the limits. But the preamble also included requirements for grandfathered facilities that produce fuel above 105 percent their baseline capacity -- defined in the rule -- to meet the GHG standard by using advanced biofuels if they wanted to produce qualifying fuel.

EPA then issued its May 10 direct final rule clarifying definitions for advanced technologies for "corn oil fractionation," "corn oil extraction," "membrane separation" and "raw starch hydrolysis" that requires at least two of those technologies to be used 100 percent of the time in order to qualify as advanced under the RFS. That has the

effect of requiring currently exempted facilities that want to expand to switch to advanced technology for the entire facility, ethanol groups said.

In June 9 comments on the May rule, Growth Energy said it would "require a producer who is expanding its production volume on a specific property beyond that volume allowed for 'grandfathered' ethanol to invest in and to use one or more advanced technologies for 'all' corn processed, 'all' thin stillage and distillers grains, 'all' ethanol dehydration and starch hydroloysis, and 'all thermal energy' used at that 'facility."

The group added, "No ethanol producer attempting to remain fully competitive in the industry will be able to expand its production volume at a given 'facility' beyond the volumetric requirements specified in the [final RFS]. . . . As a result, the nation will likely forgo increases in corn ethanol production meeting the GHG reduction metric."

A Growth Energy source says if EPA does not make necessary clarifications, any expanded biorefinery risks "losing the grandfathered status of the original 100-105 percent capacity," meaning exempted refineries would be unwilling to expand because it would lose the key exemption.

Growth Energy also questions EPA's "impractical" requirement that any corn ethanol dry mill production plant demonstrate sole reliance on combined heat and power 100 percent of the time to qualify as an advanced technology.

"[N]o portion of the text of the February 2010 final rule indicates that EPA intended to require existing facilities to use advanced technologies in order to produce [RFS-qualified] renewable fuel -- an outcome that would be inconsistent with what EPA considers to be the 'grandfathering' provisions," Growth Energy says.

The group argues that the final rule makes it clear that EPA's intent was not to "penalize a decision to increase production volume, by referring to a 'baseline volume' in its crucial subsection dealing with the implementation of the key portion of the 2007 act. In that respect, the step that Growth Energy is asking the agency to take would serve to clarify EPA's intent and to avoid a situation in which the regulated community would be required to choose between the apparent intent of the regulation . . . and the text of the direct final rule."

The group says simply withdrawing the direct final rule would "leave unaddressed the problems that EPA has attempted to address in providing adequate specificity for advanced technologies." In the alternative, Growth Energy suggests that EPA amend the definition of "facilities" in the February final rule, or to amend the text of the direct final rule "in a manner that makes it clear on the face of the regulation that advanced technologies are not required for use in the portion of a facility that, in the absence of the expansion in production volume beyond the level permitted by the February 2010 final rule, would be treated as producing a 'grandfathered' product."

However, because EPA simply withdrew the amendment, it is unclear how the agency plans to address the concern except to issue a new proposal at some point in the future. -- *Dawn Reeves*

07/02/2010

House Democrat's Push On Fracking Disclosure Sparks Gas Industry Split (*Inside EPA*)

A key House Democrat is working with some natural gas industry officials to mandate the disclosure of chemicals used in hydraulic fracturing, or fracking, though the move is sparking a split with other gas industry officials who fear it may open the door to EPA regulations under the Safe Drinking Water Act (SDWA).
One industry source says the efforts by Rep. Diana DeGette (D-CO) and natural gas exploration and production companies to craft a legislative proposal are not "industry-wide negotiations." Further, a legal source says many in industry are hesitant to agree to a disclosure mandate, especially one under SWDA, for fear it could be an initial step toward removing the gas industry's long-running exemption from SDWA regulation, enacted in the 2005 energy law.

Some energy companies supported disclosure language included in a May 12 draft Senate climate bill, believing that disclosure is the best way to avoid potential controversy about the chemicals being used in the process. But many energy services firms -- such as drillers -- in the highly competitive industry believe the chemical mixtures used in fracking are confidential and need to be protected, with some oil and gas companies taking a similar line.

Environmentalists and some Democrats counter that little is known about the chemicals used in fracking and that EPA needs to have authority to regulate and oversee the industry under SDWA.

But many in industry would prefer that states take primary authority on programs to address the largely unregulated practice of fracking, the source says. Companies also have early concerns that the pending DeGette legislative proposal could offer insufficient confidential business information (CBI) protections, the industry source adds.

According to a Democratic House source, DeGette is talking with production and exploration companies and the trade organization America's Natural Gas Alliance about the proposal, which could be based on a rider DeGette' offered at a May 26 markup of the SDWA reauthorization bill, H.R. 5320. The source says the lawmakers and industry "agree on principles" and there is "significant support within industry for having disclosure."

DeGette's amendment -- offered but withdrawn at the markup -- would have amended SDWA to give EPA or states authority under the agency's Underground Injection Control (UIC) program to require that companies disclose the chemicals they use in fracking, and seek to make that data available to the public. *The amendment is available on InsideEPA.com.*

The House source points out that, in many cases, UIC authority rests with the states and EPA would only require the information as a "backstop" if the state does not have UIC authority or require the disclosure. The UIC program regulates the construction, operation, permitting, and closure of injection wells that place fluids underground.

The rider would have allowed states or EPA to make "proprietary chemical formulas or the specific chemical identity of a trade secret chemical" available to medical personnel during an emergency.

One environmentalist source says site-by-site information on the chemicals used should be available to the public quickly and easily, and calls an earlier version of the DeGette amendment a "good proposal."

DeGette is focusing on moving some type of legislative proposal to require disclosure because it "has the best opportunity to move this Congress," and there is interest in the issue from others in Congress, the Democratic House source says. For example, there could also be an opportunity to add the amendment to a comprehensive energy bill introduced by House Natural Resource Committee Chairman Nick Rahall (D-WV).

Another venue for a revised amendment could be for DeGette to offer it as an amendment once the SDWA reauthorization bill -- which cleared the energy panel at markup -- hits the House floor for debate, according to the Democratic source. Lawmakers are expected to debate that bill sometime this summer.

It is unclear how the talks between DeGette and some in the natural gas industry may conclude, and what changes the lawmaker is considering to her existing amendment before reintroducing it.

The legal source, who works with gas companies, says that if DeGette's legislation clears the House, the Senate may not take it up. "Where is the appetite for it on the Senate side?" the source says. And if the Senate moved forward with climate cap-and-trade legislation, there might be "less potential" for bills affecting natural gas, considered by many to be a "bridge fuel" to moving away from using fossil fuels. "They can't move too many contrary policies," the source says.

Some House lawmakers have also raised concern with DeGette's rider, with Energy & Commerce Committee Chairman Rep. Henry Waxman (D-CA) asking DeGette to withdraw her rider at the May markup given the panel's ongoing oversight of fracking and the potential for future work on the issue. "Now is not the right time for this change," he said.

Rep. Joe Barton (R-TX) meanwhile raised questions about expanding EPA authority over the practice by allowing the agency to mandate the disclosure of the chemicals. The amendment "would give EPA for the first time a regulatory foothold and I do not think that is good public policy for the United States," he said

Many in industry have also raised significant concerns with DeGette's amendment as introduced. The legal source says the UIC program created under

SDWA does not apply to fracking and any disclosure should be handled at the state-level by the oil and gas authorities, rather than by EPA.

Numerous states, most notably Wyoming, have pursued state-level disclosure requirements for fracking. Under that program, companies provide information on fluid ingredients to the state, which then does not necessarily make the information public, though the public can petition the state to get some information (*Inside EPA*, June 18).

The source says that requiring disclosure under the SDWA could be an initial step toward a future legislative push for removing the practice's exemption from regulation. "What else . . . are you trying to accomplish?" by requiring disclosure under SDWA of the chemicals used in fracking, the source says.

Further, the source says the Emergency Planning & Community Right-to-Know Act (EPCRA) could provide more structure and a set of mechanisms for dealing with industry concerns about CBI because EPCRA was designed to provide toxicology information to the public without divulging protected information.

Regarding CBI, the House Democratic Source says that while DeGette's proposal would require disclosure of a list of the substances used in fracking, ratios of the ingredients in the formulation are not required. This is an approach that "strikes the right balance" between public information and trade secrets, the source says. -- *Aaron Lovell*

GENERAL

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07/02/2010

Lack Of EPA Region IV Chief May Hurt Credibility, Reflect Internal Disputes (*Inside EPA*)

The lack of an Obama administration-appointed head of EPA Region IV -- the only agency region that still has an acting, non-permanent top official -- could be harming the region's credibility on high-profile issues, and reflect difficulties in finding a candidate willing to take over a region said to be suffering from internal fights, sources say.
One environmental attorney in the region says there is "no legitimate reason" for the "unprecedented" delay in naming a regional administrator more than a year since President Obama took office, especially because several of the Southern states under the region's purview are dealing with the major environmental impacts of the Gulf oil spill. "I am astounded that they don't have anybody in this position yet," the source says.

Region IV is also involved in several other key environmental issues, including the cleanup of the massive coal ash spill at a Tennessee Valley Authority (TVA) disposal site, and a slew of claims by activists of wrongdoing by the region and others that have harmed environmental justice communities in the region.

The region covers Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi. Stan Meiburg is currently serving as acting administrator of Region IV, the only one out of 10 EPA regions that currently lack a permanent administrator appointed by President Obama. The heads of Region I, II, III, VI and IX were announced Nov. 5, for Regions VIII and X Jan. 13 and April 21 for Regions V and VIII.

The environmental attorney says Meiburg is "doing a great job" but says the region risks losing credibility -- and potentially resources -- the longer that it continues to lack an officially appointed chief.

"I think the region runs quite smoothly but obviously they need to know that they feel beloved by EPA headquarters and have their own leader so they can vie for resources like every other region," the source says.

The position has been empty since 2008 and there is no legitimate reason why the position has not been filled halfway through 2010, the source says. And the administration's focus on the Gulf of Mexico oil spill is no excuse for not filling the position. The administrator could have been named long before the spill and the president and Senate have been able to fill other key positions, including EPA's new inspector general (IG), the source says.

Sources raise concern that the lack of an administrator also undermines the region's status in key environmental issues including the spill, the TVA cleanup, and claims of environmental justice wrongdoing.

Acting IG Bill Roderick recently cleared the region of any allegations that it ignored concerns about impacts on environmental justice communities of several Region IV decisions, including the shipment of coal waste from the TVA spill to a landfill near an environmental justice community in Alabama (*Inside EPA*, June 18).

Nevertheless, sources say a regional administrator appointed by the president would be seen as having more authority and stature than an acting official, which could adversely impact the region's role influencing discussions over policies and other issues with both headquarters and other agency regions.

The attorney says the administration could choose a leader from a variety of backgrounds, including state or federal government, an environmental group or a corporate role. But the administrator's background should include multimedia experience, since the position must deal with such a wide range of air, waste, water and other issues, the source says.

One agency union official in the region says the position is rumored to have been offered to three people -- a high-ranking state environment official, a politician in Atlanta and an upper management official in region IV -- but that each of them turned down the offer. The source could not provide the names of the candidates.

EPA spokespeople did not return a request for comment.

Some EPA employees fear that candidates are unwilling to take the position because they do not want the burden of having to fix what are said to be broken relations between management and employees, the source says. "It fosters the perception that we have that things are bad and no one wants to be in charge," the source says.

Some employees feel that management scrutinizes their actions despite their expertise, and others feel younger, newer employees are taking promotion opportunities from employees who have been there longer, the source says.

The delay in filling the administrator position also seems to reinforce the low scores the region received in an annual survey of the best places to work in the federal government, the source says.

The survey, compiled by the Partnership for Public Service and American University's Institute for the Study of Public Policy Implementation gave Region IV low scores. Region IV came in 179th out of 216 in effective leadership, above only Region VIII -- covering Colorado and other Western states -- at 181 and Region VII covering Texas and other Southern states, which was ranked at 190 out of the 216 agencies and agency sub-components assessed.

Effective leadership "measures the extent to which employees believe leadership at all levels of the organization generates motivation and commitment, encourages integrity, and manages people fairly, while also promoting the professional development, creativity, and empowerment of employees," according to the survey's website.

Region IV also come 208th out of 216 in the survey's assessment of "fairness," the lowest score of any EPA region. According to the survey's website, fairness is measured as the "extent to which employees believe disputes are resolved fairly in their work unit, whether or not employees believe arbitrary action and personal favoritism is tolerated, and if employees feel comfortable reporting illegal activity without fear of reprisal."

The union source says employees would like to see the administration appoint a leader in the region from the environmental field with a scientific background that is willing to come in and make changes. The new leader should come in, get feedback from management and employees, ask for the top minds in the office to suggest ideas to fix the situation and be willing to look back later and see whether it has worked, the source says. -- *Kate Winston*

GRANTS

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Martindale-Brightwood speaks out (*Indianapolis Recorder*)

Northeastside residents voiced concerns about the many environmental problems they face at a recent meeting held by the Martindale-Brightwood Environmental Justice Collaborative (MBEJC).

Ironically, the issues that residents of Martindale-Brightwood found most important were the ones that could be the simplest to fix.

The purpose of the meeting was to allow anyone who works, lives or worships in the neighborhood to look at the different issues and assign each a rating based on its impact. MBEJC has been looking at the environmental problems with the help of a grant from the Environmental Protection Agency

Elizabeth Gore, chairperson for MBEJC, explained, “We wanted to let the neighbors identify environmental hazards that the community has encountered. Rather than us telling them, we wanted to let them tell us.”

Jodi Perras, executive director of Improving Kids' Environment, a non-profit that cooperates with MBEJC, presented findings on 19 different hazards in terms of the health threat each poses and the likelihood of exposure. The greatest risks were lead paint, indoor pollutants such as asbestos, traffic pollution and lead in the soil.

Attendants were asked to rate each problem in three separate categories – intensity, psychological impact and level of community concern. The feedback will figure heavily into how the threats are prioritized and which will be focused on most heavily.

Interestingly, issues found less threatening by the overview were rated highly by residents. Code violations and illegal dumping tied for the highest resident rating although the overview found them relatively less threatening.

The psychological impact scores were also intriguing. Brownfields (housing areas once used for industry that may have contamination issues), for example, were rated higher than stray animals in terms of intensity, but lower in terms of psychological effects.

Some residents say this is because lower risk problems are more frustrating, because they are much easier to deal with. “I have an abandoned house on either side of mine,” said Roberta Sparks of North Hovey Street. “I mow them. They pay people to mow, but they come out and don't do anything. There is dumping on both properties and I pick it up. The city came out and boarded one window and left the rest, and they borrowed my hammer to do that.”

People like Sparks are frustrated because it is much easier to mow a lawn, catch stray dogs or remove dumped trash than it is to replace entire lawns of contaminated soil or to hire a professional to strip and repaint a home with lead-based paint. Furthermore, these problems are generally not on a resident's property but instead on abandoned lots

or houses, making them beyond an individual's control.

Identifying the most frustrating issues was part of the point of the meeting. The purpose of getting the EPA grant was to pinpoint the biggest problems in Martindale-Brightwood, but that is only half of the battle. MBEJC must also balance their findings with what is realistic at their July 29 prioritizing meeting.

For example, one of the top environmental threats in the neighborhood is traffic pollution. However, according to Perras, this is not likely to be a high priority. “With Martindale-Brightwood being so close to I-70 and Keystone, a lot of pollution comes from mobile sources,” she said. “But what can be done about it? Certainly, efforts can be made in mass transit and more efficient vehicles, but those changes are made at different levels. We have to focus on what is in our control. If we pick an issue that we don't really have as much control over, then we won't have much to show for it down the road. We want to make sure we pick something that we have success with.”

The good news is that, based on the track record of this type of EPA grant, residents should have hope that their community will be improved. For example, people in Marquette, Mich., successfully used a similar grant to reduce mercury levels in Lake Superior by 40 percent, and the rank and prioritize method has proven successful.

MINING

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Deaf to 'Music Saves Mountains,' EPA Approves New Surface Coal Mine (*Environmental News Service*)

WASHINGTON, DC, July 1, 2010 (ENS) - The U.S. Environmental Protection Agency has given its conditional approval to a new mountaintop removal coal mining permit, as long as the mine operator makes changes to protect downstream water quality.

The permit for Arch Coal, Inc. in Logan County, West Virginia involves a 760-acre mountaintop removal operation known as the Coal-Mac Pine Creek Surface Mine.

The permit was among those applications subject to a stricter permit review guidance imposed by the EPA in April under the Obama administration's effort to reduce environmental impacts from Appalachian surface mining.

Environmentalists support the stricter review guidance, but coal industry officials are opposed, and the West Virginia Department of Environmental Protection is contemplating a legal challenge to the EPA guidelines.

Environmental and community groups are concerned about the effects of the Pine Creek mining operation that will blast away mountaintops and dump the unwanted rock into three valleys, burying headwater streams.

Bill Price, Sierra Club Environmental Justice organizer in West Virginia, said, "We had high hopes that the EPA's more stringent guidance for mountaintop removal coal mining would mean protection for our communities, but apparently we were mistaken. It's time to turn words into action and end this destructive practice."

"The massive Pine Creek Surface Mine and the neighboring communities and watershed suffer from the cumulative impacts of being surrounded by other mountaintop removal coal mines," said Price. "Mining companies have already buried close to 2,000 miles of Appalachian streams beneath piles of toxic waste and debris. We can't allow even one additional mine to destroy our communities."
Mountaintop removal mining in southern West Virginia (Photo by Vivian Stockman courtesy Ohio Valley Environmental Coalition)

But the EPA has decided to grant the permit if Arch Coal would build each valley fill separately over a three year period.

In a June 21 letter to the U.S. Army Corps of Engineers in Huntington, West Virginia, John Pomponio, director of the EPA's Environmental Assessment and Innovation Division, said waiting to start the next fill until the previous one is finished would allow monitoring of each fill "to ensure that predicted water quality outcomes are achieved."

Arch Coal officials have not said whether or not they would accept the new EPA conditions.

Vivian Stockman of the Ohio Valley Environmental Coalition lives in Logan County. "In approving the Pine Creek permit, the EPA has failed our community," she wrote today on the website ILoveMountains.org. "Any more mountaintop removal mining in Logan County is going to further degrade the watershed, increase pollution-related health impacts and increase the likelihood of more flooding."

"As deforestation on the Arch Coal mine site would continue to dismantle an important global carbon sink, the mine itself would produce over 14 million tons of coal, which when burned in power plants, would contribute over 40 million tonnes of carbon dioxide greenhouse gas pollution to the planet's atmosphere," she warned.

Community efforts to call a halt to mountaintop removal mining have attracted the support of well known musicians Dave Matthews, Emmylou Harris, Alison Krauss, Patty Griffin, Kathy Mattea, Patty Loveless, Big Kenny and Buddy Miller. They are working with the Natural Resources Defense Council in a new campaign called Music Saves Mountains.

At a sold-out benefit concert in May at Nashville's Ryman Auditorium organized by the NRDC, they raised money for this cause and pledged to generate public awareness of the dangers of this type of coal mining.

Kathy Mattea told ENS in an interview that songs can have a powerful effect on public opinion.

"Music has a way of telling a compelling story in three minutes, that would take many words to convey in print," Mattea said. "Art wakes us up from a different place, and that is music's advantage. Compelling songs can wake people up, and get them involved."

"Events like the one at the Ryman can galvanize a movement, and help the people on the front lines to gather together and re-energize when they may have gotten weary from working so hard," she said.

"And I suspect there were people in the audience who had been drawn by an affinity for the music, that may have never heard of mountaintop removal. I think drawing people to an event like that helps expose them to the discussion that was going on as the background to the concert."

"I am from these mountains," Mattea said. "I grew up there, and as a kid I was all over West Virginia, hiking, camping, caving, fishing, swimming. When I saw Mountaintop Removal for the first time, I was heartbroken. Then I met locals who live near these mines and heard their stories, and it was a sea-change moment for me. I resolved to try to help with whatever resources I could bring."

"Sometimes that's been meeting with the governor, or lobbying state legislators, or U.S. senators and representatives. Sometimes that's been speaking to college students. Sometimes that's been singing with other like-minded people. Sometimes it's been in the form of speeches or articles. Sometimes it's been in the form of long conversations with grassroots activists, or people in the coal industry," said Mattea. "I am interested in being of service in any way I can."

William Kenneth Alphin, known by his stage name Big Kenny, says songs are one way to make more people aware of the need for change. "I just want parents to know that the job they have, that is putting food on the table for their kids is the same job that is contaminating the water their children are drinking and poisoning them," he told ENS in an interview.

Big Kenny first became aware of mountaintop removal mining about three years ago while flying from Nashville to the family farm in Culpeper, Virginia.

"We saw this abominable destruction from mountaintop removal mining at low level," he said. "It looked like a moonscape - unbelievable. We saw black lakes and immense destruction."

"When I returned to Nashville I started researching what was happening and ended up going back to ground zero of this destruction and found out first hand from the people who live there that mountaintop removal is not good for our clean water and the basic human rights of our communities. Coal has oppressed the people of Appalachia for centuries. Few profit off the harm of many."

Kenny said the words of America's founding father Thomas Jefferson inspired him to take action against mountaintop removal mining.

"Since Thomas Jefferson wrote 'life, liberty and the pursuit of happiness' just 30 miles from where I was raised a seventh generation Virginia Rock and Roll Farm Boy, it really hit home for me. These are my people and the Appalachia is where my people live. I need to do everything I can to let them know that we have better options for power in our country than any process of exhuming coal that poisons our land, our air, our water, and our children."

"Protecting Appalachia's natural heritage is critical in preserving both our musical legacy and the future of our craft," said Harris. "The Appalachians have inspired countless country, folk, bluegrass, gospel and Americana songs. Now those sources of inspiration are being secretly destroyed. We're standing together with one voice to send the message that we will not sit idly by while our mountains are being blown apart."

The coal companies on one side and the musicians, environmental groups and affected communities are locked in a battle that is not going to end anytime soon.

But the Music Saves Mountains participants say their campaign is not an anti-coal industry movement. Rather, it seeks to raise awareness and put an end to just one destructive form of coal mining, mountaintop removal. Less than seven percent of the coal mined in the United States comes from mountaintop removal, its opponents point out.

"Nothing good comes from mountaintop removal," said NRDC President Frances Beinecke. "It costs jobs, destroys forests and poisons drinking water. People become sick as a result of this form of mining, and communities are forever damaged. Mountaintop removal would never be allowed in America's other treasured mountain ranges, such as the Rockies, the Sierra Nevada or the Adirondacks. It should not be allowed in the Appalachians, and it must stop."

07/02/2010

DOI Urges Stricter EPA Rules To Protect Streams From Mountaintop Mines (*Inside EPA*)

The Interior Department (DOI) is backing EPA's methods for establishing strict conductivity benchmarks to protect Appalachian streams from mountaintop mining pollution and is urging EPA to craft a rule codifying the approach, while saying stricter benchmarks may be needed in the future to protect endangered species and long-term stream health.
DOI recently filed comments on EPA studies about the water quality impact of Appalachian mountaintop mining and so-called valley fills, in which waste rock that has been removed from mountains to access coal seams is disposed in nearby streams. EPA used the studies to justify its strict April 1 guidance on mining water permits -- that included the strict benchmarks to protect aquatic life -- which the agency predicted would end most uses of valley fills.

In the June 15 comments, DOI endorses EPA's approach for setting the benchmarks based on the studies, and says that the agency should develop a rulemaking to codify the agency's strict approach used in its guidance.

A rulemaking could help address criticism from industry that EPA is trying to create regulation through its guidance. DOI's endorsement of the water quality benchmarks could also boost the agency's possible expansion of the water quality benchmark approach to other regions and other pollutants, which sources say could in turn apply to other sectors other than mountaintop mining, potentially affecting a broad range of industries (*Inside EPA*, June 25).

The strict benchmark that EPA set in the guidance is for conductivity, a measure of salinity, to protect aquatic life. In the guidance, EPA proposed to deny permits that would increase conductivity above 500 microsiemens per centimeter (uS/cm) and to require additional scrutiny if conductivity exceeds 300 uS/cm.

EPA's Science Advisory Board (SAB) is currently reviewing the agency's studies. If the SAB review concludes by endorsing the agency's approach, it could help EPA argue that its stringent new approach to mountaintop mining is scientifically valid and should continue for future mountaintop mining permit reviews.

DOI backs EPA's approach to setting the benchmarks because it is difficult or impossible to restore steams with high levels of conductivity. *The comments are available on InsideEPA.com.*

"It is our general observation that the conductivity of streams affected by mountaintop mining does not quickly (or ever) return to baseline levels, which supports it use as a benchmark parameter, but which also suggests that degraded streams are not likely to recover once conductivity is excessively elevated," the comments say.

And DOI argues even more stringent benchmarks may be needed in the future to prevent a "take" of an endangered species, which is the harm or killing of an endangered species and which EPA's studies show could occur even conductivities are below 300 uS/cm, the comments say. "We are concerned about such circumstances, specifically, when take of species listed under the Endangered Species Act may occur despite conductivity values less than 300 uS/cm. We recommend that EPA adopt this

benchmark with a proviso that allows the application of a more protective benchmark where data show that take of listed species may occur," according to the comments.

EPA should also conduct more studies to determine whether more stringent benchmarks are needed in regions of Appalachia, the comments say. EPA's data comes mainly from Kentucky and West Virginia, but stream conditions in Tennessee, where salt and selenium levels may differ, may require a tighter benchmark, DOI says.

The department also recommends that EPA write new regulations to codify the agency's approach to mountaintop mining. "EPA should consider initiating a rule making for regulations stipulating maintenance of conductivity values equal to or below the benchmark in waters receiving point source or non-point source [mountaintop mining -- valley fill] drainage," which would help protect endangered species and federally-designated habitat, the comments say.

EPA has faced criticism about the benchmarks from industry, who argues EPA is trying to set regulation through the non-binding guidance rather than a formal rulemaking. Industry has also argued that conductivity is an inappropriate metric to establish water quality standards because it does not in itself indicate toxicity effects on aquatic life and typically is used simply as an indicator for whether further water quality analysis is needed.

One industry source says that DOI's comments arguing for possibly stricter benchmarks have the same faults as EPA's approach. "Predictably, the [DOI] entirely misses the point: that conductivity is an invalid measure of water quality. It cannot address the factors that may contribute to impairing water quality."

But one informed source says that the department's concerns about mining's impacts on endangered species should be expanded to apply to all species. "[W]e should protect aquatic life before a species becomes endangered, not just after. So if the agencies determine that some level below 300 is necessary to protect against the take of a listed species, there is not reason not to apply the level to non-listed species as well." -- *Kate Winston*

07/02/2010

EPA Mandates Compliance With Mountaintop Guide As Permit Condition (*Inside EPA*)

EPA has agreed to back a new mountaintop mining permit in West Virginia, the first approval of a pending mountaintop mining permit since the agency issued its guidance earlier this year, provided the company implements several measures the agency outlined in the guidance.
Among the guidance provisions EPA is requiring the company to meet are fill minimization measures, sequential construction of "valley fills" at the site, monitoring for

water conductivity -- a measure of water salinity -- and forgoing construction of valley fills at other mine sites to account for "cumulative impacts" of its operations.

The agency's conditional approval of the Clean Water Act (CWA) permit for the Pine Creek Surface Mine in Logan County, WV, to be operated by Coal-Mac, a subsidiary of Arch Coal, marks the first application of its landmark guidance to approve a permit and the first permit EPA has approved since issuing the guidance earlier this year.

EPA's sign-off on the Pine Creek permit would authorize Coal-Mac to construct up to three valley fills, the large surface impoundments that mountaintop minining operators use to dispose of waste rock, so long as they are constructed one at a time and the company monitors water quality to ensure conductivity -- a measure of water's salinity -- does not exceed 500 microsiemens per centimeter (uS/cm) at one completed fill before it begins construction on the next.

The agency's decision was outlined in a quietly issued June 21 letter from EPA to the Army Corps of Engineers, which issues so-called "dredge-and-fill" permits under section 404 of the water act to allow disposal in valley fills. *Relevant documents are available on InsideEPA.com.*

In mountaintop mining operations, companies blast mountaintops to reach coal seams underneath and then deposit the waste in nearby "valley fills," where it obliterates streams. To limit the impact of the practice, EPA Administrator Lisa Jackson April 1 unveiled guidance setting a host of strict permit conditions EPA will apply to pending and future dredge-and-fill permits.

Among other things, the guidance says mining operations that caused conductivity to exceed 500 uS/cm generally would violate water quality standards, and that operations below 300 uS/cm would be acceptable. The guidance also outlines four principles that permits should uphold: that activities would not violate water quality standards; that applicants have evaluated all potential alternatives; that companies avoid and minimize direct, indirect and cumulative impacts; and that unavoidable impacts are effectively mitigated. Jackson said in unveiling the guidance that it would preclude construction of most valley fills.

But the guidance has been strongly criticized by industry officials who charge it would shut down the industry. Coal state lawmakers have called on the agency to withdraw the guidelines.

Environmentalists, however, are now strongly criticizing the agency's decision to conditionally approve the permit. Natural Resource Defense Council's Rob Perk called EPA's decision to sign-off on the permit "perplexing and downright disgusting," in a June 30 post on the organization's blog. "It appears that EPA chief Lisa Jackson's hollow words back in April . . . will spell the demise of precious hollers in West Virginia."

In the June 21 letter to the Corps, EPA notes that Coal-Mac "has proposed to incorporate Best Management Practices" that the guidance recommends, including a conductivity threshold for adaptive management. If twice-monthly monitoring indicates

conductivity would exceed 300 uS/cm, the company "will implement an adaptive management plan (AMP) to address the trend," and if it would exceed 500 uS/cm, the company would "provide additional mitigation focused on chemical improvements in the watershed."

Coal-Mac in its proposal wanted to construct two of three proposed fills within six months of each other, and the third several years later. EPA says that concession is insufficient and recommends "that each proposed valley fill be constructed to its completion and monitored over a period of time to evaluate whether significant degradation is occurring."

EPA also notes that the company proposed to create more than 40,000 feet of stream to mitigate the impacts of its fills, and to restrict three previously permitted fill sites at another mine to account for its cumulative impacts.

Senators Seek Novel Waste Standard To Limit Mountaintop Mine Permits (*Inside EPA*)

July 2, 2010
Sens. Benjamin Cardin (D-MD) and Lamar Alexander (R-TN) are crafting a first-time numeric standard measuring coal mines' efficiency in limiting the volume of their waste in an effort to curtail controversial mountaintop mining operations in Appalachian states, according to EPA and other documents obtained by *Inside EPA.*

The numeric standard is intended to create an additional criteria to block mountaintop mining operations after the lawmakers' earlier efforts to limit the practice based on a narrative definition of "mountaintop mining" would also have limited other kinds of surface mining operations that the senators say they do not want to curtail.

But the lawmakers and EPA officials are now working to revise the earlier proposed standard after an EPA-sponsored analysis found that it would not meet the senators' goals of blocking dozens of pending permits that EPA is subjecting to close scrutiny -- and in particular, the pending permit for the Spruce mine, which EPA has retroactively proposed to veto. *Relevant documents are available on InsideEPA.com.*

The senators' goals are detailed in a March 4 e-mail from Cardin's staff to EPA, asking whether the revised language would "preclude the Spruce mine permit" and "preclude the abusive permits" in the group that EPA is scrutinizing

The EPA-sponsored analysis found that a numeric efficiency standard of 2-3 loose cubic yards of fill material per ton of coal (lcy/ton) produced would block between 54 percent and 70 percent of the pending permits that were analyzed -- and not the Spruce permit, which had an efficiency measure below that range.

Two informed sources say the 2-3 lcy/ton range is not in the latest draft language, although the sponsors are continuing to explore similar efficiency standards to limit the

practice. One source says the sponsors still hope to move a bill this year, and are exploring ways to combine efficiency, geographic and narrative criteria in a narrow enough way so as to end mountaintop removal but not other mining activities.

Cardin said earlier this year that he and other supporters hoped to unveil their revised legislation within weeks, but that timeframe has stretched as staff continue to grapple with the language and seek broader Senate support.

"I think at the end of the day it only gets done this year if it's relatively non-controversial, and I think that there's more support out there, particularly in some of the mining states than I would've thought," Cardin told reporters June 15. He said he still hoped to see the bill passed this year but added that, "The challenge has been defining what we're trying to do, which is [ending] removing the mountaintop and polluting the waters. Some of the definitional issues give the mining companies some concerns.

"The regulatory climate is more favorable to getting this bill done this year," Cardin added.

One source tracking the bill says mining companies without operations in Appalachia may be more willing to work with the senators if the legislation is sufficiently limited that they would not be affected, while companies and state officials in Appalachian states would continue to oppose the legislation, saying it is unfair to target only them.

At issue are revisions to S. 696, a bill that has been in limbo since last year as the lawmakers have struggled to narrow in on a definition of "mountaintop removal coal mining" and "fill material" that would ban what environmentalists say is the most damaging type of coal extraction without blocking other forms of surface mining.

The bill generally rescinds eligibility for surface mining projects to dump mining spoil into waters under Clean Water Act (CWA) section 404 dredge-and-fill permits, which are issued by the Army Corps of Engineers subject to EPA review. Mining projects instead would be subject to much stricter section 402 discharge limits that EPA sets.

The senators say the bill is intended to address the controversial practice of mountaintop coal mining in which operators blast the tops off of mountains with heavy explosives to get at coal seams underneath. The practice has prompted considerable concern from environmentalists and others because the waste rock is then dumped in so-called valley fills, obliterating streams and harming water quality. Local communities surrounding valley fills have also faced property damage due to the practice.

The practice has proliferated under the terms of a Bush administration rule which allows mining and other waste to be considered "fill material," which is exempted from the CWA's definition of "pollutants" subject to regulation under EPA's section 402 discharge permit requirements. The Bush-era rule altered the regulatory definition of "fill material" to include "material . . . changing the bottom elevation of any portion of the water." Previously, "fill material" was required to create dry land. Bush administration officials said the purpose of the change was to ensure CWA authority over landfills located in

wetlands after a 1998 appellate decision ruled only federal solid waste rules -- not the CWA -- applied to landfills.

But the rule's effects have applied more broadly, allowing the dumping of mountaintop mining waste in Appalachian streams and other practices. Since the Obama administration took office, EPA has blocked issuance of as many as 79 pending section 404 permits subjecting them to close scrutiny to ensure they meet strict water quality and other requirements the agency issued earlier this year.

One of the most controversial of these permits is a 2007 permit for the Spruce No. 1 mine, which the agency proposed to veto long after it was issued. The company is now challenging EPA's authority to propose the veto (*see related story*).

Since blocking the permits, the agency has allowed a handful of permits to move forward but only after mine operators agreed to make changes to their designs -- most recently the Pine Creek Surface Mine proposed by Coal-Mac Inc. for Logan County, WV (*see related story*).

While Cardin and Alexander say their bill is intended to apply only to mountaintop mining operations, EPA and the Congressional Research Service found that the version of the bill as introduced -- which excluded from the fill material definition "spoil" as defined by the Surface Mining Control & Reclamation Act -- would subject all surface coal mining operations, not just mountaintop mining operations, to strict EPA discharge permit requirements.

EPA and the lawmakers late last year floated several proposals to define the terms in a way that addressed various concerns but the various options either failed to narrow the bill sufficiently or met with strong opposition from industry and/or environmentalists (*Inside EPA*, Nov. 27).

As a result, the bill's sponsors began exploring an efficiency metric, believing that if they could put a tight enough limit on generation of spoil it would prevent destruction of mountaintops. The informed source says sponsors are continuing to struggle with the language and could end up including parts of the narrative definitions proposed earlier, along with efficiency and geographic limits outlined in the latest draft. The source says arriving at an appropriate definition has been far more difficult than anyone expected when the senators set out to write their bill.

According to draft legislative language detailed in the analysis, the lawmakers are now proposing to bar mining companies from obtaining the Corps-issued section 404 "dredge and fill" permits by excluding from the definition of "fill material" mountaintop mine waste that exceeded a ratio of 2-3 cubic yards of waste per ton of coal recovered.

In addition to setting an efficiency standard, the draft language also limited the definition of "mountaintop removal mining" to Appalachian states -- a move one observer says may be designed to generate support from lawmakers outside of Appalachia that have large coal mining operations in their states.

The draft language defines mountaintop removal mining as a project "which extracts coal by surface methods in the steep terrain of the Appalachian coalfields." It would define fill material as not including material generated in mountaintop mining and placed in a valley fill that "exceeds the ratio of three cubic yards of said material per ton of raw coal recovered."

But the EPA-commissioned analysis of the draft language found that it would not meet the sponsors' goal of blocking the Spruce permit, although it would only prevent between half and 70 percent of the Corps-issued 404 permits in West Virginia and Kentucky currently under EPA review. In terms of potential coal production, the efficiency standards analyzed would keep between 57 and 85 percent of the coal from being mined

The analysis found that a 2-lcy/ton standard would "exclude approximately 85 percent of the coal proposed to be mined within the evaluated surface mining permits," while a ratio of 3 lcy/ton would exclude around 57 percent.

Defining mountaintop mining as happening on "steep terrain of the Appalachian coalfields," would generally apply S. 696 only to Kentucky and West Virginia permits, according to the EPA-sponsored analysis, because operations in other states are "typically regarded as non-steep slope." According to the analysis, under a 2 lcy/ton ratio, only 16.7 percent of West Virginia permits would be acceptable, and 35.9 percent of Kentucky permits would be acceptable; with a 3 lcy/ton standard, 53.85 percent of Kentucky permits and 27.78 percent of West Virginia permits would be acceptable.

The analysis also found that the Spruce mine would also be able to continue operations if the range were set between 2-3 lcy/ton because the mine's disposal ratio is 2 lcy/ton. The analysis says that mines where the coal seam is topographically lower in the hillside, "the land configuration allows more material to be defined as backfill rather than excess spoil. This situation appears to be the case with regard to the metric for the Spruce Mine."

While the agency's agreement with the Corps initially blocked 79 permits, the analysis evaluated 57 proposed permits in Kentucky and West Virginia, saying those were the only ones that had not already been modified or withdrawn and for which there was sufficient information to apply the effect of the proposed statute.

It is unclear how the legislative language would affect coal mine operators' ability to receive permits in the future. The analysis notes that of the permits it analyzed exceeding the 3 lcy/ton ratio, "most all did not appear to have been designed with fill optimization procedures in place today," but could not offer any conclusions about their potential to implement such procedures to meet the standard. The analysis found no relationship between mine size, type or location and the spoil ratio.

Mining industry officials say they are worried about the pending legislation, along with other aggressive moves by EPA to limit mountaintop mining. An industry source says while the analysis does not details jobs impacts, it does suggest limits on coal production. But the source notes that a recent report from Republican staff on the

Senate environment committee estimates that a quarter of Appalachian coal jobs are at risk from EPA actions. -- *Nick Juliano*

PESTICIDES
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New EPA rules could halt mosquito spraying (*Star News*)

New EPA pesticide restrictions threaten local programs
By Shelby Sebens
Shelby.Sebens@StarNewsOnline.com
Published: Thursday, July 1, 2010 at 5:07 p.m.
Some government agencies may be forced to zap their mosquito control programs when new federal regulations take effect next year.
The new regulations have local government leaders worried about the future of pest control in Brunswick County, especially in the event of major flooding when the bugs tend to multiply.

Brunswick County officials held a workshop Thursdayto educate town leaders on the new regulations and urge them to send comments to the Environmental Protection Agency.

A recent decision by a U.S. Appeals Court overturns the EPA's 2006 rule that stated an agency did not need a permit to discharge pesticides to waters of the United States. Starting in April, a National Pollutant Discharge Elimination System permit will be required.

And with that, county mosquito biologist Jeff Brown says, comes a mountain of paperwork, increased costs and the need for better technology.

Brown said if the regulations remain as they are when they go into effect, the county will be forced to stop spraying for adult mosquitoes. He said the county doesn't have the technology to do the mapping of where they would spray, a requirement of the new legislation.

Assistant County Manager Steve Stone said if the rules are as stringent as officials believe them to be, then the county cannot afford to make its program comply.

"It would, at a minimum, quadruple our current budget," he said.

This worried local leaders at the meeting, who said if the county can't afford it, there is no way they could. The rules also carry heavy penalties for noncompliance, ranging from hefty fines to jail time.

"What happens to the mosquito population?" Boiling Spring Lakes City Manager David Lewis asked.

Brown said the trucks that people often see spraying at night actually do little to curb the mosquito population. It's the work that people don't see, such as larvae control, that makes the most impact.

After a hurricane, however, spraying is often a necessity. And sometimes mosquito experts can search for years and not find mosquito breeding locations to do the preventive work.

"If we stop spraying, I think you can expect the mosquito populations to grow," he added.

The EPA is accepting public comments on the new regulations through July 15.

Adding to the difficulty of controlling mosquito populations is a dwindling amount of state aid.

In the late 1950s after major flooding from Hurricane Hazel, the state set up a $2 million fund to help small towns control mosquito populations.

That fund has dwindled to $186,000, said Nolan Newton, chief of pest management for the N.C. Department of Environment and Natural Resources.

Newton said he anticipates the small towns won't be able to keep up with the new regulations or take on the liability and potential fines that they carry.

"I suspect that counties are going to get more and more requests to take over mosquito control," he said.

The EPA states in a press release that the permit requirement would decrease the amount of pesticides discharged into the nation's waters, making them safer for human health.

Industry officials tried to appeal the EPA's new rules to the U.S. Supreme Court, but the higher court declined to hear the case.

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RECYCLING

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EPA encourages people to recycle phones (WIVB)

What happens to old cell phones?

Updated: Thursday, 01 Jul 2010, 9:13 AM EDT
Published : Thursday, 01 Jul 2010, 9:13 AM EDT

* Melissa Holmes
* Posted by: Emily Lenihan

BUFFALO, N.Y. (WIVB) - Apple says they sold almost two million of their new iPhone 4, in the first three days the new gadget was on sale.

But picking up one sleek, new device, often means hanging up an old one.

On sidewalks, around street corners, and in malls, Apple fans snatched up more than 1.7 million of the new iPhone 4, in the first three days on sale, the tech giant says.

But what happens when almost two million old cell phones are hung up? Most end up stashed in drawers or closets, or tossed in landfills.

The Environmental Protection Agency encourages consumers to recycle old phones with help of a number of major electronic retailers, who offer bins where consumers can toss unwanted devices. Batteries and other components are later disposed of, in line with the proper EPA guidelines.

You can also trade an old phone for savings, or for cash. Stores like Radio Shack allow consumers to trade their old wireless phone in exchange for a gift card. Or, consider a donation. Check with domestic violence shelters and senior centers in western New York to see if they can put your old phone to new use.

Whatever method you decide, make sure you've cut off your service plan before you turn the phone in. Erase personal data manually, with a data erasing tool, or by removing the SIM card.

SUPERFUND
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07/02/2010

EPA Orders Rare Review Of Radioactive Cleanup Plan At Precedential Site (Inside EPA)

EPA is ordering parties responsible for radioactive contamination at a Missouri Superfund site to assess new cleanup options even though the Bush EPA already approved a cleanup plan for the site -- a rare move environmentalists hope will spur the agency to avoid setting what they say is a bad precedent for radioactive cleanups under the existing plan.
The cleanup plan approved by the Bush EPA for the West Lake Landfill site in Bridgeton, MO is at least 18 times less stringent than those EPA has implemented in the past at similar urban Superfund sites around the United States. Critics say that if the Obama EPA allows the plan to proceed it would set a dangerous precedent by permitting radioactive waste to remain at urban Superfund sites at levels above EPA's traditional limits, and allowing the wastes to be disposed at urban landfills not regulated by the Nuclear Regulatory Commission (NRC).

But a June 4 "Work Plan for Supplemental Feasibility Study" that EPA Region VII ordered the parties responsible for the contamination to prepare outlines two alternative cleanup remedies to the one in the existing plan.

The two alternatives would require "[e]xcavation of radioactive materials with off-site commercial disposal of the excavated materials" or "[e]xcavation of radioactive materials with on-site disposal of the excavated materials in an on-site engineered disposal cell with a liner and cap if a suitable location outside the geomorphic flood plain can be identified." *Relevant documents are available on InsideEPA.com.*

Under the work plan, the parties responsible for cleanup at the site will conduct a supplemental feasibility study "consisting of an engineering and cost analysis" of the two new cleanup alternatives. If, after the study is completed, EPA decides to move forward with one of the new alternatives, it will then have to amend the Bush-era record of decision (ROD) calling for the waste to remain in place to reflect that decision, an EPA spokesman says.

The ROD that the Bush EPA approved in May 2008 calls for the radioactive waste to stay in place beneath a "cover of rocks, construction rubble, and clay [with] no liner below to protect the wastes from ground water leaching," according to a resolution the St. Louis City Board of Alderman approved earlier this year urging EPA to change course. Radioactive waste was illegally dumped at the West Lake site during the Cold War less than a mile from a residential development and within the floodplain of the Missouri River.

A 1988 report by the NRC indicates that the average concentration of radioactive radium-226 at the West Lake site is about 90 piccocuries per gram (pCi/g) of soil, 18 times above the 5 pCi/g level that EPA usually uses as the cut off point for allowing waste to remain at such a Superfund site. The traditional Superfund standard is called an applicable or relevant and appropriate requirement (ARAR), and is the level to which

the West Lake site would be cleaned up to if EPA selects one of two new alternative plans it is now ordering the responsible parties to study.

According to a January 11 letter EPA Region VII officials sent to the responsible parties ordering them to prepare the June 11 work plan, the new cleanup alternatives would aim to achieve "complete removal," which "is defined to mean attainment of the risk-based radiological cleanup levels specified in two waste office directives, through which EPA establishes the 5 pCi/g ARAR for radium-226 at Superfund sites.

The West Lake situation is one of several environmentalists are monitoring that they fear could lead to a precedent allowing for radioactive waste to be disposed of in conventional landfills not regulated by the NRC.

Environmentalists hope the new study requirements could lead to the reversal of the Bush-era cleanup plan. But in a June 16 letter to federal, state and local government officials and lawmakers, activists warn that the "option of leaving the wastes in their current location, with rocks, some clay and construction rubble on top, is still under consideration as initially chosen by the EPA in its" 2008 ROD. The letter was sent to Missouri lawmakers including Sens. Christopher Bond (R) and Claire McCaskill (D) and Reps. Lacy Clay (D), Todd Akin (R) and Russ Carnahan (D).

07/02/2010

Court Rejects Industry Suit Over Constitutionality Of EPA Cleanup Orders (*Inside EPA*)

A key federal appeals court has rejected an industry lawsuit challenging EPA unilateral cleanup orders (UAOs) as unconstitutional, denying industry's claims that UAOs violate the Constitution's due process clause by not providing a fair opportunity to file a challenge and by inflicting major economic harm on a company.
The U.S. Court of Appeals for the District of Columbia Circuit June 29 in *General Electric Company (GE) v. EPA* affirmed a lower court's grant of summary judgment in favor of EPA in the case -- a ruling that was seen as likely after the three D.C. Circuit judges who heard oral argument strongly questioned GE's constitutional arguments. *The ruling is available on InsideEPA.com.*

The decision has potential implications on cleanup orders nationwide. Under the Comprehensive Environmental Response, Compensation, & Liability Act (CERCLA), known as the Superfund law, EPA can issue UAOs to require parties to perform cleanup work if they do not agree to do the work through a judicial consent decree or administrative order, or refuse to perform work they previously agreed to perform under a settlement agreement.

EPA can issue a UAO ordering a short-term or long-term cleanup when it finds there may be an imminent and substantial endangerment to the public health or the environment, according to the agency's website.

If parties do not comply with a UAO, EPA can sue, and courts can assess penalties and require the party to pay up to three times what it cost EPA to do the cleanup. Courts can also issue issue orders requiring cleanup of a site.

GE had argued that CERCLA, and the way EPA administers it, violates the Fifth Amendment's due process clause because EPA issues UAOs without a hearing before a neutral decision-maker.

GE also claimed that EPA's method of issuing and implementing UAOs violates due process because the issuance of an order "can inflict immediate, serious, and irreparable damage by depressing the recipient's stock price, harming its brand value, and increasing its cost of financing," according to the portion of the ruling outlining GE's arguments.

But in a unanimous opinion, Judge David Tatel said the financial impacts of a UAO do not violate due process requirements. The ruling then focuses solely on the constitutional challenge, with Tatel writing, "Because our judicial task is limited to determining whether CERCLA's UAO provisions violate the Fifth Amendment either on their face or as administered by EPA, we affirm the decisions of the district court."

07/02/2010

EPA's TCE Assessment Spurs New Concern Over Controversial Lab Data (*Inside EPA)*

EPA is facing new concerns about the inclusion of data from a controversial Italian lab in one of its key Integrated Risk Information System (IRIS) assessments after an industry consultant cautioned peer reviewers that the agency's draft assessment of the ubiquitous solvent trichloroethylene (TCE) relies on the lab's data to support its conclusion that TCE is carcinogenic.
The new concern brings to seven the number of pending and already final assessments where EPA relied on data from the Italian Ramazzini Institute and provides industry with a new basis to challenge the agency's controversial conclusion that TCE causes cancer.

Despite the concern, a scientific peer review panel June 24 appeared to back EPA's conclusion that TCE causes cancer, reiterating draft conclusions that EPA has sufficient human epidemiological evidence to back its conclusion without needing the controversial animal toxicity data. *Relevant documents are available on InsideEPA.com.*

During a June 24 conference call, Michael Dourson, president of the corporation Toxicology Excellence for Risk Assessment who is representing the Halogenated

Solvents Industry Alliance, urged the Science Advisory Board (SAB) panel reviewing EPA's draft TCE assessment to reconsider the strength of the animal data supporting EPA's conclusion that the solvent is a human carcinogen -- in part because the agency relies on data from the Italian Ramazzini Institute.

Dourson reviewed all of the studies EPA references where lab rats were exposed to TCE and incidence of cancerous kidney tumors investigated -- a total of 74 dose groups of rats, he said.

But he said that only "two of the 74 groups [of animal data that EPA used in its cancer determination] were significant" and one of these is a study conducted by Cesare Maltoni, Ramazzini's founder.

As a result, he argued that EPA should exclude the Maltoni results from the draft assessment given the agency's recent announcement that it is reconsidering six risk assessments due to their use of Ramazzini data, a move that he argues indicates significant uncertainty with EPA.

"That drops us to one statistically significant study," Dourson said. "Only one statistically significant finding -- that's more [an example] of Occam's razor, or chance" than evidence of cancer.

EPA June 15 announced that it is reviewing six final and pending IRIS assessments that rely on data published by Ramazzini Institute scientists. In its announcement, EPA said it was holding four pending assessments -- of acrylonitrile, methanol, methyl tertiary butyl ether, and ethyl tertiary butyl ether -- and would reconsider already final assessments for vinyl chloride and 1,1 dichloroethylene -- due to their use of Ramazzini data. The concern is likely to be especially significant for EPA's draft methanol assessment and its 2000 assessment of vinyl chloride, where EPA relied on Ramazzini data as the sole basis for setting quantitative safety standards.

The agency's decision was prompted by a June 11 report from the National Toxicology Program (NTP), whose pathologists found a lower incidence of leukemias and lymphomas in some slides in a Ramazzini methanol study than Ramazzini's scientists.

EPA indicated in its announcement that it is reviewing all of its published and draft IRIS assessments to determine if "any other assessments are significantly impacted" by the inclusion of Ramazzini data.

It is unclear whether or how EPA will act on the new concern about use of the data in the the draft TCE study. EPA's spokeswoman did not return a request for comment.

But during the SAB panel's first meeting, panelists appeared to suggest their support for the agency's conclusion that TCE causes cancer, though Dourson and other industry representatives on the June 24 conference call again urged the panel to reconsider the strength of the evidence behind EPA's draft finding.

The agency's draft assessment calls TCE, a common drinking water contaminant at Superfund and other waste sites, a human carcinogen. That finding is hotly contested by industry and the military, who could face significant liability and cleanup costs if the existing assessment of the chemical is strengthened.

SAB, however, reiterated its draft answers to charge questions about the TCE assessment, which indicate the panel agrees with EPA's cancer classification.

Several panelists at the panel's May 10-12 meeting argued that human epidemiological data, particularly studies indicating TCE exposure leads to kidney cancer, is particularly strong, and can be the basis for EPA's determination. And they added that this evidence is supported by the animal kidney cancer data -- in the two studies EPA indicates have positive findings: the Maltoni study and a 1990 NTP study.

TOXICS

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Ban on BPA use advances *(Los Angeles Times*)

July 2, 2010 Friday
Home Edition
SECTION: LATEXTRA; Metro Desk; Part AA; Pg. 4
Ban on BPA use advances;
Assembly passes a measure to eliminate the chemical from baby feeding products.
By Susan Carpenter
The state Assembly passed a bill Thursday to ban the chemical Bisphenol-A from baby bottles and other items that come in contact with small children.

The Toxin-Free Toddlers and Babies Act, or SB 797, would ban the use of BPA in feeding products for children 3 years old and younger.

BPA has been linked with health problems such as infertility, autism, asthma, and breast cancer. In January, the U.S. Food and Drug Administration reversed its long-held position that BPA posed no concern, calling for more studies of the artificial hormone that often is used in plastic baby bottles and sippy cups and linings of cans, including those containing baby formula.

Written by Sen. Fran Pavley (D-Agoura Hills), SB 797 was introduced in early 2009, but was defeated in the Assembly last September. Pavley asked for reconsideration and on Thursday the measure passed. It will return to the Senate for a reconciliation vote in August, at which point it could move on to Gov. Schwarzenegger for his signature. A spokesman for the governor said Thursday that Schwarzenegger had not taken a position on the bill.

Tim Shestek, senior director of state affairs for the American Chemistry Council, said his group continues to oppose the measure. "We don't believe that the Legislature ... should be in the business of making decisions on these complex scientific questions," he said. "That's why they created the Green Chemistry Initiative, so state scientists can evaluate chemicals in consumer products."

The Green Chemistry Initiative was a bill that passed the Legislature in September 2008. It required the California Department of Toxic Substances Control to prioritize chemicals of concern and to put the burden of chemical testing on that agency, not industry.

"Sen. Pavley is supportive of the Green Chemistry Initiative and we look forward to having a process in place so that we can evaluate chemicals of concern, but it's not up and running and we don't know when it will be," said Sen. Pavley's legislative director, Elise Thurau. "This bill is integrated with the green chemistry process."

If passed, SB 797 would require the manufacturers of baby bottles and cups to discontinue use of BPA by January 2012. Makers of infant formula would need to comply by July 2012.

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Raising alarm on mercury danger (*Boston Globe*)

Federal environmental regulators this month released a report detailing options for combatting mercury contamination in fish in the Sudbury River, the first step toward making the fish safe to eat.

Meanwhile, a regional agency is readying a multimedia, grass-roots campaign to get the word out to fishermen along the river that consuming their catch poses grave health risks, especially to children. The campaign will include 30-second radio spots in Portuguese on Brazilian programs; website and print advertisements in English, Spanish, and Portuguese; and outreach to community groups and churches.

“The hazards of consuming the fish are not getting to everyone who needs to get the message," said Martin Pillsbury, environmental division manager at the Metropolitan Area Planning Council, the agency that's directing the campaign.

Starting in 1917, a 35-acre site in Ashland near the Sudbury River was used for industrial manufacturing, with Nyanza the most notable company to occupy the site. The companies produced textile dyes in a process that used mercury until Nyanza shut down in 1978, according to a federal Environmental Protection Agency report on the Superfund site.

During the site's 61 years of use, vast volumes of chemical waste were buried in large pits underground, stored in lagoons, or discharged into the river via a small stream known as Chemical Brook. Cleanup at the industrial site has been ongoing since the 1980s, but nothing has addressed the mercury that flowed into the river, settled in its bottom sediment, and made its way into fish tissue, according to the report.

From 1940 to 1970 alone, approximately 51 metric tons of mercury were released into the river in Ashland, the report said. The Sudbury flows from its headwaters near the Westborough-Hopkinton line through Southborough before it passes the Nyanza site in Ashland, and then continues through Framingham, Wayland, Sudbury, and Lincoln before it reaches Concord, where it joins the Assabet to form the Concord River.

Ingesting mercury can cause significant neurological disabilities in cognitive thinking, memory, attention, language, and fine motor and visual spatial skills, according to the EPA. The effect is most profound on fetuses, infants, and children, since their nervous systems are still developing.

The report details several options for reducing risks of mercury poisoning, including public-awareness campaigns to stop people from eating its fish, capping tainted sediment, and a complex operation to dredge and clean sediment. The costs range from almost nothing to more than $200 million.

But there is no quick fix for a situation that's been almost a century in the making, according to the report, which states that reducing the mercury in fish to acceptable levels could take decades.

That's why the Metropolitan Area Planning Council has been working for more than two years on a multilingual campaign to target audiences they say haven't gotten the message that it's dangerous to eat fish from the Sudbury River.

07/02/2010

EPA Downplays Prospects For Delaying CWA Chemical Spraying Permit (*Inside EPA*)

A top EPA pesticide official says the agency is unlikely to extend the public comment period on its Clean Water Act (CWA) pesticide spraying permit as industry is seeking because the agency is striving to meet a court deadline for the permit to go into effect next April, a suggestion that could also limit prospects for industry efforts to extend the court deadline.
Bill Jordan, senior policy advisor for EPA's Office of Pesticide Programs, told a gathering of state representatives June 21 that, based on internal deliberations on the rulemaking process for the pesticide permit, "the chance of an extension of the comment period is very low."

EPA is developing the permit after the U.S. Court of Appeals for the 6th Circuit in *National Cotton Council, et al. v. EPA* vacated EPA's 2006 rule exempting agricultural pesticide users, state pest controllers and others that spray chemicals "on or near" waters from needing to obtain a National Pollutant Discharge Elimination System (NPDES) permit. The ruling means that some applications are now considered discharges under the water act, requiring a permit to avoid liability for unregulated discharges.

The court issued a two-year stay, which expires on April 11, 2011, for EPA to develop the permit and to allow applicators to apply for a NPDES permit.

But the pending requirement is prompting considerable concern from industry officials who fear it will impose costly new permit burdens and open the door to new citizen litigation. Industry officials initially urged Congress to address the issue by passing legislation clarifying that applications regulated by chemical control laws are exempted from regulation under the water act.

But industry officials recently decided they are unlikely to win congressional action on the issue and are instead calling on the agency to seek "creative ways" to gain additional time to develop and implement the permit.

Exempting chemical spraying from regulation under the water act is "possible," but action in Congress is "ahead of where we're at" at the current time, says Jay Vroom, president and chief executive officer at CropLife America.

Rather than lobby Congress to address the issue substantively, the group and others are urging EPA to ask the appellate court that ordered EPA to issue the permit by April 2011 to give the agency more time to act. The deadline set by the court is "near impossible" for EPA and states to meet, Vroom says. The group also says Congress could move to extend the deadline.

In addition, affected industry groups are also seeking substantial changes to the draft permit, including additional language reiterating that agricultural stormwater is exempted from the water act, addressing concerns about regulatory burdens for smaller entities and providing more flexibility for when regulated entities must implement integrated pest management and other control measures.

And they are asking EPA to extend the comment period on the draft permit, which is set to expire July 19.

But EPA's Jordan, speaking before the State Federal Insectiside, Fungicide and Rodenticide Act Issues Research and Evaluation Group, said that the firm, court-issued deadline was the reason EPA would be unlikely to extend its comment period beyond July 19.

"I want everybody to understand that, in order for us to meet the deadlines that we see lying ahead, and in order to have a permit in place for providing coverage . . . we need

to have wrapped up comment period by the middle of July and start working on the process of reviewing public comments and drafting the final permit," Jordan said.

"The court has established a deadline of April 11, 2011 for the stay of the mandate . . . so once that stay is lifted, people either need to have a permit or need to stop applying pesticides" into CWA-covered waters.

07/02/2010

Industry Faults EPA Plan To Use NTP Cancer Data To Expand TRI List (*Inside EPA*)

Industry groups are criticizing EPA's plan to use National Toxicology Program (NTP) cancer findings as the basis for listing 16 additional chemicals on the agency's Toxics Release Inventory (TRI) and are instead urging EPA to rely on studies from the International Agency for Research on Cancer (IARC) -- a move that would result in only two of the chemicals being added to the list of chemicals subject to TRI reporting rules.

The International Institute of Synthetic Rubber Products, Inc., a trade group representing the rubber industry, and Chemical Products Corporation, a Georgia chemical manufacturer, each filed comments faulting NTP cancer findings for key chemicals and instead urged EPA to rely on IARC findings.

The rubber products institute urged EPA in June 1 comments to use IARC's findings on isoprene -- which is used in rubber production and also found in gasoline exhaust, wood pulping, tobacco smoke, vehicle emissions, and biomass combustion -- because NTP's findings on the chemical lack data they say undermines NTPs' finding that the chemical is "reasonably anticipated" to cause cancer. *Relevant documents are available on InsideEPA.com.*

The Georgia chemical manufacturer, meanwhile, in May 21 comments urged EPA to use IARC findings for all 16 chemicals proposed for addition to the TRI list, charging that a dispute over an unrelated chemical study in the 1990s had undermined NTP's "scientific integrity" and its data should be ignored.

Last April, EPA proposed to add to the TRI 16 chemicals not previously subject to the inventory's reporting requirements. To add a chemical to TRI, EPA must demonstrate that a chemical meets certain listing criteria -- for example, it is known to cause cancer or is released in large enough volumes to exceed certain reporting thresholds.

According to EPA's proposed rule published in the April 6 *Federal Register*, the agency examined 27 new carcinogens that NTP has included in its Report on Carcinogens (RoC) since the agency last updated the TRI list in this way and decided, based on its criteria, to add 12 of them plus an additional four polycyclic aromatic hydrocarbons to the TRI list. "These sixteen chemicals have been classified by the [NTP] in their [RoC]

as 'reasonably anticipated to be a human carcinogen,'" the notice says. "EPA found no inconsistencies [between how NTP reviewed its data and how EPA does] and agrees with the hazard conclusions," the agency says.

The chemicals proposed for addition are vinyl flouride, furan, isoprene, 1-amino-2,4-dibromoanthraquinone, 2,2-bis(Bromomethyl)-1,3-propanediol, glycidol, methyleugenol, 1,6-dinitropyrene, 1,8-dinitropyrene, 6-nitrochrysene, 4-nitropyrene, o-nitroanisole, nitromethane, phenolphthalein, tetrafluoroethylene and tetranitromethane.

But the two industry groups are criticizing EPA's use of NTP findings as the basis for the proposed listings.

Activists Eye TSCA Citizen Suits While EPA Delays Lead Rule Enforcement (*Inside EPA*)

July 2, 2010
Activists supporting stricter lead rules plan to file citizen suits under the Toxic Substances Control Act (TSCA) to enforce against violations of EPA's new lead paint renovation rule, while EPA recently said it would delay enforcement of the rule's certification mandates until later this fall in response to congressional and industry demands.
A source with activist coalition leader Parents for Non-Toxic Alternatives says, "There is nothing in the rule that is being suspended" through EPA's June 18 memo announcing the agency would not enforce the lead renovation, repair and painting (RRP) rule's training and certification provisions until October. The source says that contractors and property management firms still have a legal requirement to be certified if performing the work covered under the RRP rule even though the agency does not intend to seek penalties for violations until October.

The coalition intends to pursue citizen suits under section 20 of TSCA, which gives citizens the right to file lawsuits to enforce any provisions of the toxics law. EPA issued the lead RRP rule under TSCA authority. Citizens must first give 60 days notice of intent to sue before they can file their litigation.

The activists intend to seek verification from companies that they are certified to the requirements of the lead paint rule, and if not then they will consider legal complaints against them. The activists will pursue "egregious" violations of the rule to set an example, and provide their complaints to federal officials including EPA and the Department of Justice. By informing EPA's enforcement office and the appropriate region of the violations, the source says the coalition hopes to provide EPA with "good enforcement cases" that the agency can pursue.

EPA's RRP rule went into effect April 22, but industry raised concerns that few contractors would meet the rule's training and certification requirements in the rule.

Senators approved a rider to the emergency supplemental funding bill to strip EPA's funding for implementing the rule due to those concerns.

But Cynthia Giles, EPA's assistant administrator for the Office of Enforcement & Compliance Assurance, in the June 18 memo said the agency would delay enforcement of the rule until October.

That is prompting criticism from activists who advocate strict regulations to prevent from lead exposure. The source says EPA cannot waive the requirements without a statutory change, and EPA's delay in enforcement of certification does not prevent citizen efforts under section 20 of TSCA, the source says.

The coalition, made up of around 20 local groups around the country focused on healthy housing, affordable housing, lead poisoning, environmental justice and tenets' rights, intends to be a "more aggressive, more direct" approach to compliance with the rule during its first year, a time when EPA's enforcement may typically be more relaxed as companies adjust to new requirements -- even without EPA's announced delay.

The source says the campaign was in development before EPA relented on certification and training enforcement, and its goal is to spread the word about training among contractors and property management firms.

The RRP rule requires contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 to be certified to follow specific work practices to prevent lead contamination. EPA promulgated the rule to protect children from lead-based paint, as their exposures to the pollutant have been shown to cause learning and behavioral disorders.

Activists and healthy housing advocates have long argued that the available training was sufficient, and said in some places the training classes offered were not full. EPA has also said that the amount of training was sufficient.

By targeting "egregious examples" of non-compliance with the rule, the coalitions also hopes to "make examples" of slumlords or "big construction firms" who are not abiding by the rule, particularly groups with multiple violations or that are large enough to have a "big impact" with their non-compliance.

Further, the coalition will seek to pressure media outlets to stop accepting advertising from firms that are not in compliance with the rule, or indicate whether or not the service providers are certified, and encourage construction-permitting and code compliance agencies require the certification before issuing permits, the announcement says.

In the June memo, Cynthia Giles, EPA's assistant administrator for the Office of Enforcement & Compliance Assurance, tells EPA toxics officials and regional enforcement chiefs that the agency will not take enforcement actions against individual contractors if they have enrolled in the necessary training by Sept. 30, 2010. Contractors must complete the training by the end of the year, according to a supplemental guidance memo.

Further, EPA "will not take enforcement actions for violation of the RRP Rule's firm certification requirement" until Oct. 1, 2010, the memo says. "Since the RRP rule became effective on April 22, 2010, concerns have been raised by the regulated community regarding difficulties experience in obtaining the rule required firm certification and renovation worker training," the memo says.

EPA's move follows Senate action to delay the rule's enforcement. In May, the Senate passed a rider to the fiscal year 2010 supplemental appropriations bill restricting any funding from the bill to go towards enforcing the rule. "I appreciate that the EPA recognizes that it must boost the number of certified trainers in each state and that small contractors need more time to comply with EPA's rule," Sen. Susan Collins (R-ME), sponsor of the appropriations amendment, said in a June 18 statement. -- *Aaron Lovell*

WATER
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Denton, Johnson county residents blame drilling process for fouled well water (*Fort Worth Star-Telegram*)

Texas
July 2, 2010 Friday
SECTION: B
Denton, Johnson county residents blame drilling process for fouled well water
BYLINE: ELIZABETH CAMPBELL and AMAN BATHEJA; liz@star-telegram.com, abatheja@star-telegram.com

When her well water took on an odd odor, Linda Scoma, who has lived near Crowley in rural Johnson County for 20 years, worried something might be wrong. Then her hair suddenly turned orange after she washed it, and she knew there was a problem.

Damon Smith of the Denton County town of Dish said the water flowing from his family's well, drilled in 2002, used to run clear and clean. Now, when he pours it into a glass, Smith regularly sees sediment floating in it.

Both suspect the same source of their problems: nearby natural gas drilling activities.

While most of the discussions about the environmental impact of natural gas drilling in the Barnett Shale have centered on air quality, questions are now being raised about its potential impact on water quality as well.

Drilling critics have expressed concern that a drilling process called hydraulic fracturing -- in which millions of gallons of water and sand laced with chemicals are pumped into the ground to free up natural gas -- has the potential to contaminate groundwater

supplies.

Industry advocates counter that fracturing for Barnett Shale wells typically occurs more than a mile below underground aquifers that provide drinking water. Industry practice is to install multiple layers of pipe, known as casing, and cement inside the wellbore to isolate petroleum and chemicals from groundwater.

"You're talking about 6,000 feet of strata, rock and sand separating the fracturing in the shale and the fresh water table," said Ed Ireland, executive director of the Barnett Shale Energy Education Council. "There's not any case in Texas where hydraulic fracturing has damaged a water table."

The federal government may weigh in on the issue. The Environmental Protection Agency is launching a study of fracturing that is expected to focus on effects on groundwater supplies. Congress is also considering legislation that would increase regulation of hydraulic fracturing, or fracking, including forcing companies to disclose the chemicals used in the process.

After drilling began near Scoma's home, water tests detected increasing levels of chemicals used in the drilling process. The company that conducted the tests advised the Scomas not to drink the water, and they wash their clothes at a Laundromat because the couple says the water is discolored and has an oily sheen. They have sued the drilling company.

"I was embarrassed to go out in public because of my hair," Linda Scoma said.

At Smith's well, though, testing by the Texas Railroad Commission, which regulates drilling, found no high levels of toxic materials. Contaminants detected in the water were not at a level that would violate state or federal water quality standards, officials said.

"Therefore, we would not expect any adverse health effects after ingestion of water with these concentrations," Railroad Commission spokeswoman Stacie Fowler said.

If that's true, Smith has an offer for the commission and anyone else who wonders if the water is OK.

"Come to my house. Drink a big glass of that water at my table," he said.

Sediment and surfactants

The town of Dish sits near several large compressor stations that process natural gas from the Barnett Shale. Town leaders have gained a reputation for questioning the safety of drilling and challenging state regulations.

The Smith family said they started seeing sediment in their well water last year, shortly after Devon Energy fractured a gas well less than 1,000 feet from their home.

Since then, the family has used their well water only for watering trees and their flower bed. They get their drinking water from a next-door neighbor's well, which has not shown signs of contamination.

At the family's request, the Railroad Commission has taken three samples of the family's well water since May to see whether it poses a health risk. The first sample found high levels of substances such as arsenic and barium, which can occur naturally, but did not detect more well-known drilling contaminants like benzene. The second sample didn't find anything.

The conflicting results prompted a third sample, taken June 10. It indicated that contaminants were not at levels higher than those set by the state and federal governments, according to a report obtained this week by the Star-Telegram .

Skeptical that state regulators are adequately protecting Texans, the Dish Town Council paid about $1,500 for Wolf Eagle Environmental Llc. to test the Smiths' water, Mayor Calvin Tillman said.

The firm reported that it tested positive for two chemicals known as surfactants: methylene blue active substances and cobalt thiocyanate active substances, although the company's release did not say at what levels the two chemicals were found.

Todd Anderson, professor of environmental toxicology at Texas Tech University, said those two chemicals could not naturally occur in the water. The chemicals are commonly found in some detergents, but they are also used in gas and drilling operations, he said. There are several ways they could end up in someone's groundwater, including a leaking septic system, he said.

The Railroad Commission did not test for the two surfactants, Fowler said. However, she said she invited Smith and Dish to share its data with the commission. The commission has not decided whether the Wolf Eagle results warrant more tests, she said.

Wolf Eagle President Alisa Rich said the Railroad Commission's test was an incomplete analysis of the Smiths' water. "It's not only not safe to drink, it's not safe to bathe in," Rich said.

The agency might not have thought to test for surfactants because they aren't regulated under state or federal drinking water laws, Anderson said.

The list of chemicals the Railroad Commission tested for -- including benzene, toluene and lead -- made sense as an effort to check for contamination from natural gas drilling, he said.

Devon spokesman Chip Minty declined to comment.

Considering moving away

Linda Scoma and her husband, Jim, say they have considered moving away from their home, which Jim, a retired contractor, built "with my own two hands."

Jim Scoma said that after Chesapeake Energy began drilling adjacent to their property, he noticed that his water filters were clogged and that the sink, washing machine and bathtub were stained.

The Scomas met several times with Chesapeake concerning their water well. They said Chesapeake did not offer to test the water, so they spent hundreds of dollars to have it tested. Those tests from 2008 and 2009 show that the water contained increased levels of benzene, toluene, ethylbenzene xylene, barium and iron, chemicals used in the drilling process.

According to the lawsuit the Scomas filed in Johnson County civil court June 1, the water "intermittently turned an orange/yellow color, tasted bad and gave off a foul odor."

T Nguyen, a Dallas attorney representing the Scomas, said she is concerned that other people could have contaminated water wells and not realize it.

But Brian Murnahan, a spokesman for Chesapeake Energy, said the company will dispute the Scomas' claims that gas drilling activity ruined their water supply.

"Chesapeake Energy disputes the claims in the lawsuit filed by the Scomas and is confident our position will be evident when presented in court," Murnahan wrote in an e-mail statement.

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EPA issues pollutant limits for Chesapeake Bay, MD (*Associated Press*)

Story also appeared: *Frederickburg*

The Associated Press
BALTIMORE

BALTIMORE (AP) â€” An Environmental Protection Agency official says the agency realizes Chesapeake Bay watershed states will have to make tough decisions to meet new pollution limits.
EPA Regional Administrator Shawn M. Garvin made the comments Thursday as the federal agency issued limits for two nitrogen and phosphorus.

The EPA set annual limits of 187.4 million pounds of nitrogen and 12.5 million pounds of phosphorus for the six-state bay watershed. That's down from 247.5 million pounds of nitrogen and 16.62 million pounds of phosphorus last year.
Pennsylvania, the source of about half of the bay's fresh water, received the biggest allocations.
Nitrogen and phosphorus spur oxygen-robbing algae blooms and come from sources including fertilizer, sewage, and detergents.

New pollution limits set for the bay (The Capital)

Published 07/01/10
The federal government announced new pollution limits for the Chesapeake Bay on Thursday.

The Chesapeake Bay as a whole should only have 187.4 million pounds of nitrogen and 12.5 million pounds of phosphorus flowing into it each year, the U.S. Environmental Protection Agency has determined.

In 2009, the pollution loads were 247.5 million pounds of nitrogen and 16.62 million pounds of phosphorus.

The pollution limits are part of the baywide "total maximum daily load" or "pollution diet" being drafted by the federal government and the states.

If pollution is reduced enough, the bay could become healthy enough to be removed from the list of the nation's "impaired" waters.

Nitrogen and phosphorus are nutrients that flow into the bay from sources such as sewage plants, septic systems, urban stormwater, fertilizer and animal waste.

The nutrients fuel the growth of algae blooms, which rob life-sustaining oxygen from the water, creating the bay's infamous "dead zone."

The states around the bay are working on plans to comply with the new limits.

The plans will lay out how the pollution reductions will be made, such as through upgrading sewage plants, limiting new development, modernizing stormwater controls or getting farmers to adopt more bay-friendly practices.

07/02/2010

Utilities Look To Appeals Board To Limit EPA Water Permit Takeovers (*Inside EPA*)

The water utility industry is looking for a forthcoming decision from EPA's Environmental Appeals Board (EAB) to clarify when EPA can take over state-issued water discharge permits, as well as whether there are limits to EPA's discretion in requiring new permit conditions once the agency has decided to invalidate a state permit and issue its own. EAB heard oral arguments June 7 for *In Re: San Jacinto River Authority* (SJRA), where EPA Region VI defended a challenge by a Texas water authority to the agency's decision to take over a state water discharge permit in 2007 and the inclusion of whole effluent toxicity (WET) limits in the new permit EPA issued last year. *A copy of the documents is available on InsideEPA.com.*

SJRA was joined at oral arguments by the National Association of Clean Water Agencies (NACWA), which had expressed concern in an *amicus* brief filed ahead of the hearing that if EPA is allowed to revoke a state permit and replace it with a more stringent one with impunity, as the wastewater treatment utility group feels occurred in the SJRA case, then EPA could do the same with permits for utilities elsewhere.

At issue in the dispute is the inclusion of a sublethal WET limit in the new 2009 SJRA permit. Sublethal WET limits require dischargers to consider not only whether the levels of individual effluent contaminants are below acceptable levels, but whether the aggregate toxicity of those contaminants is still below levels required to protect aquatic life.

The state permit only included a lethal WET limit, where the threshold for failure would have been whether or not the river receiving the discharges could even sustain marine life.

NACWA contended in its *amicus* brief that EPA is requiring the WET tests without any scientific justification, but EPA insists that it has consistently required the use of WET testing in instances where state authorities have not.

An industry source familiar with the arguments says the plaintiffs during oral arguments raised questions about the grounds on which EPA is permitted to invalidate a state-issued permit and what limits there should be, if any, to new requirements in a permit the agency issues instead.

In the SJRA case, the source says, EPA appears to have withdrawn a permit that it had already approved in 2002, which constitutes a policy reversal and therefore requires a rulemaking procedure to allow stakeholders to comment on the decision. "EPA clearly reversed themselves," the source says. "They had gone along with the state permitting rules, and then they go back and say [the permit is invalid]. They can't just reverse themselves like that."

Further, industry remains concerned about what EPA may include in a new permit, the source says. "EPA tends to take the position that, once they've decided to take over a permit, they have a lot of discretion" in what to include in that permit, the source says.

"That discretion can't be unbounded. There need to be some constraints on what EPA can do or not do, and I think this case is a perfect example of that."

While EAB tends to defer to EPA on technical determinations, the source says the plaintiffs "made some good points" and the board's decision, which may not be published for six to 12 months, will likely address industry's concerns. Whether those issues are addressed substantively or not is difficult to say, the source says, but generally EAB rigorously addresses every aspect of a case that is argued during oral arguments, so industry has reason to expect that the matter will become clearer.

Industry had filed a motion to strike from the proceedings a reply from EPA to NACWA's *amicus* brief, wherein EPA defended its revocation of the SJRA permit because its 2002 approval of the state's WET implementation procedures was an approval of a state guidance document, not an approval of water quality standards. Industry contended that if that defense were to be taken at face value, the 2002 approval would be meaningless in its entirety.

During oral arguments, EPA Assistant Regional Counsel Thomas David Gillespie maintained that the 2002 approval of the state guidance document was reflective of both internal policy priorities that favored the development of a lethal WET limit instead of a sublethal limit. Further, a 2004 decision by the U.S. Court of Appeals for the District of Columbia Circuit in *Edison Electric Institute v. EPA* determined that sublethal and lethal limits were permitted under the Clean Water Act, and gave the agency a firm standing with which to develop sublethal limits. Following the D.C. Circuit decision, the agency informed its permitting states that it would be seeking sublethal limits in future permits, he said.

When SJRA sought a new permit in 2006 that did not include sublethal WET limits, Gillespie said, the agency denied the permit and drafted its own permit that included sublethal WET limits, to which the state and industry object.

"We said look, we've informed you that this is going to be what's required," Gillespie said. "It's required under the Clean Water Act. It's required under your water quality standards. And so that's when we objected to their permit."

07/02/2010

Activists Fear Local Push For Kansas Nutrient Limits Could Overwhelm EPA (*Inside EPA*)

Environmentalists are expressing concern that an effort by local activists to force EPA to develop numeric nutrient criteria for the Kansas River could cause an avalanche of similar demands on EPA, overwhelming the agency and ultimately forcing it to fight the suits rather than develop numeric limits.

Meanwhile, water resources offices are beginning to take notice of the Kansas effort as proof that such a suit can be brought virtually anywhere and are using that argument to urge states to begin developing numeric criteria on their own in order to preclude such a suit.

On June 2 Friends of the Kaw (FOK) -- a member of the Waterkeeper Alliance -- filed a 60-day notice of intent to sue EPA for its failure to establish numeric water limits for nitrogen and phosphorus in the Kansas River, which contribute to the hypoxic "dead zone" in the Gulf of Mexico.

In the complaint, FOK says EPA set out a policy in 1998 whereby all states would have either developed their own numeric nutrient criteria or adopted criteria established by EPA by 2003, but since Kansas has not yet adopted such a criteria, EPA is required to develop and impose them on the state per its 1998 determination that such an action would be required to meet the demands of the Clean Water Act. *The notice is available on InsideEPA.com.*

"EPA determined 12 years ago, in June 1998, that numeric water quality criteria for nutrients were necessary to meet the requirements of the Act," the notice reads. "Kansas, however, still has not imposed such numeric criteria. The time for 'prompt' response has long since passed in Kansas, and the Administrator is subject to a nondiscretionary duty to directly impose such standards."

But one environmentalist says that, while the circumstances in the Kansas River most likely do warrant EPA intervention, FOK's decision to file a notice of intent to sue EPA for failure to implement its 1998 determination could lead to a cascade of similar suits in other impaired waters nationwide, which in turn could overwhelm the agency and force it to fight the suits instead of begin the painstaking process of developing numeric criteria for those watersheds.

"The way EPA is going about [writing numeric criteria], it is really a lot of work," the source says. "To put it bluntly, if you tell EPA they have to do a lot of work . . . at some point they're going to decide it's just easier to have [the Department of Justice] fight these cases."

As part of a historic settlement between EPA and environmentalists last year, the agency agreed to establish numeric nutrient criteria for Florida, superseding the state's longstanding narrative criteria and causing a flurry of controversy among industry, states and activists, who say the Florida agreement could prompt the agency to establish similar requirements elsewhere throughout the country.

Activists in Wisconsin and the Mississippi River basin have cited the Florida settlement to press for numeric criteria in their states. Environmentalists last November sent EPA a notice of intent to sue for numeric criteria in Wisconsin, and other activists petitioned EPA to take action in the Mississippi River basin. The threat of a suit prompted Wisconsin officials to propose numeric criteria, activists say. And EPA in March met with activists to discuss efforts to curb nutrient pollution in the Mississippi River. In that meeting, agency officials reportedly said they were working to compel other states in the

Mississippi River watershed to develop numeric nutrient criteria, including in Ohio, Illinois and Iowa.

State officials, however, have cast doubt on a link between numeric criteria and improved ecosystems, with the Association of State & Interstate Water Pollution Control Administrators, in April comments on EPA's proposed limits for Florida, urging EPA not to establish similar criteria in other states.

The environmentalist source says the need for numeric criteria nationally is serious and widespread, but there comes a point after which suing EPA to nullify narrative standards in individual watersheds becomes counterproductive, and the environmental community has to be more judicious in which watersheds it chooses to target.

07/02/2010

Key Lawmakers Push Back On Strict New EPA Stormwater Requirements (*Inside EPA*)

Sen. John Kerry (D-MA) and other Massachusetts officials are pushing back against EPA's precedent-setting plans to require stringent new stormwater controls in three Bay State towns, requesting EPA pare back and delay strict permit requirements while calling on EPA to delay first-time use of its legal authority regulating private entities to give the towns time to develop an alternative approach.

In a June 21 letter to EPA Region I Administrator Curt Spalding, Kerry, together with Sen. Scott Brown (R) and Reps. Richard Neal (D) and James McGovern (D), reiterate calls from local officials for EPA to craft a "phased approach with less stringent achievable goals over a longer period of time," as well as "incentives or regulatory assistance to implement" the permit. *The letter is available on InsideEPA.com.*

Kerry is scheduled to meet with Spalding in Washington, DC, June 30, according to his spokeswoman. Neal and other local officials held a June 28 meeting with Spalding, according to press reports.

At issue is series of requirements that EPA is implementing in the three towns -- Milford, Bellingham and Franklin -- to control stormwater runoff, in particular to control phosphorus in the Charles River. The agency's actions are expected to set a precedent for stormwater regulation nationwide as EPA attempts to clean up stormwater pollution with more expansive use of its Clean Water Act (CWA) authority than it has in the past.

Among other things, the agency has exercised never-before used authority -- known as residual designation authority (RDA) -- to designate privately owned facilities greater than two acres, such as commercial parking lots and shopping centers, as sources of pollution that must be subject to CWA permits.

EPA has also proposed a draft municipal separate storm sewer system (MS4) permit for the three towns that sets strict limits on controlling stormwater runoff while also creating a novel pollution trading program as part of the permit.

But in their June 21 letter, which was sent to EPA before the comment period on the draft MS4 permit closes June 30, the lawmakers say the timetable for implementing the MS4 permit is too steep, especially for small towns that are already feeling pressure from the economic downturn, and includes a "multitude of milestones" in the early phase of the five-year permit, creating unachievable burdens.

"While many of [the draft permit requirements] would be achievable individually, requiring varied tasks during this permit cycle seems to be setting communities up for failure to comply. The communities believe that should the program be pared down to a list of achievable goals, there will be greater chance to meet the proposed standards," the letter says.

The lawmakers also fault EPA's use of RDA to require private entities to comply with municipal stormwater requirements. "This additional burden of having the private sector meet new stormwater standards could have serious implications for the economic development in the three towns," the letter says.

Instead, the lawmakers reiterate calls from town officials for EPA to delay the RDA while the agency considers a grant application from the towns to study the feasibility of forming a stormwater utility, that may eventually include a "Certified Municipal Phosphorous Program" (CMPP). "If formulated, the CMPP would be a viable alternative for the private landowners subject to the RDA. Private landowners could join the CMPP and projects may be done collaboratively and potentially save the towns money," the letter says.

07/02/2010

Senate Deal On Chesapeake Bay Bill Codifies EPA Power To Set TMDL (*Inside EPA*)

The Senate environment committee has approved legislation authorizing EPA to craft a strict nutrient cleanup plan for the Chesapeake Bay after the bill's sponsors agreed to Republican demands to limit the bill's regulatory requirements to the six-state watershed and Democrats in the region won funding increase for states and farmers.
While the amended version of the bill dropped court-mandated pollution load limits that were included in an earlier version of the bill, it preserved language codifying EPA authority to craft a broad pollution control plan, known as a total maximum daily load (TMDL) -- the top priority for local environmentalists but which industry officials have hinted they may challenge.

The bill's sponsor, Sen. Benjamin Cardin (D-MD) said after the June 30 Environment & Public Works Committee markup of S. 1816 that he plans to move the legislation along

with a slew of other watershed-based bills addressing the Great Lakes, Puget Sound, Gulf of Mexico and other watersheds in a combined "Great Waters" bill, though it is unclear when that may happen. *The bill is available on InsideEPA.com.*

Cardin said he hopes the bill will be on a "hotline," which allows for bills to be considered for approval by unanimous consent, and he hopes they can go to the Senate floor this Congress. He is also working closely with Rep. Elijah *Cummings* (D-MD), who introduced a House companion bill on Bay issues, Cardin said.

The Obama administration has placed a priority on cleaning up the nation's largest estuary and using successes there as a model for other watersheds nationally. President Obama issued an executive order last year requiring extensive federal planning and action to clean up the Bay, which has led EPA to plan a TMDL for the watershed.

Cardin's bill generally seeks to codify the executive order but lawmakers and industry have repeatedly raised concerns that the legislation expands EPA's authorities under the water act (*Inside EPA*, June 18).

Of particular concern is language authorizing EPA to set a TMDL. Environmentalists have urged Congress to provide EPA with explicit authority to set a TMDL in order to head of a possible industry challenge. Congress must pass a bill that would "legally reinforce the pollution budget . . . making it much more difficult for polluters to challenge the TMDL requirements," the Chesapeake Bay Foundation said earlier this year.

They were responding to suggestions from poultry and other industry groups that they may revive previously thwarted arguments challenging EPA's statutory authority to develop a TMDL, charging that the agency cannot act before states first develop such plans.

To resolve the issue, Cardin and Sen. James Inhofe (R-OK) crafted a deal that dropped numeric limits contained in a court order requiring EPA to issue a TMDL. The courts have already set those limits, Cardin said in an interview after the markup. "We don't think [pollution limits in the bill are] needed . . . as long as EPA has that hammer" from the courts, he said.

Cardin also emphasized that the bill grants no new authority to EPA and said the changes to legislation "provide a way to move forward."

Inhofe noted during the markup that he and Sen. John Barrasso (R-WY) had been "concern[ed] that this [bill] could be used as a template for watershed systems outside the Chesapeake Bay. I know it's your intention."

But Inhofe said amendments that Cardin had included in the chairman's mark "will allay the concerns that we had," though he added that there may be more work to do on the floor. Inhofe did not elaborate on what additional changes he would pursue.

Cardin acknowledged that there may be "remaining issues," and he is "prepared to clarify" whatever is necessary in the legislation, but declined to say what that might be. "None of us are trying to say that what works in the Chesapeake Bay should be used in another region," Cardin said in the interview after the markup, despite many assertions to the contrary by EPA.

In addition to Inhofe's amendments, Cardin also accepted several amendments from Democratic senators who represent Chesapeake Bay states, including a program to boost nutrient trading funds for farmers. Cardin said the provision was included was included on behalf of Sen. Mark Warner (D-VA), who is not on the committee but represents a key Bay state.

Sen. Kirsten Gillibrand (D-NY) won an increased funding set-aside for states in the northern part of the watershed that would not see the same economic benefits from cleaning up nutrient pollution as states in the lower part of the watershed. And Sen. Thomas Carper (D-DE) won an amendment to authorize a grant program for agricultural animal waste-to-energy projects that he said would be key for his home state, where chickens outnumber people 300 to 1.

And Sen. Arlen Specter (D-PA) crafted a successful amendment that would ensure that if a state fails to implement its watershed implementation plan -- part of the multi-state TMDL process set up by EPA and the Obama administration -- EPA would take over administration of the plan, focusing on compliance, "rather than on a revision of those in compliance in order to achieve targeted reductions. It provides a safe harbor for those agricultural producers in compliance with the watershed implementation plan," according to a summary.

Sen. John Barrasso (R-WY) offered an unsuccessful amendment that would require approval from a state secretary of agriculture or the U.S. secretary of Agriculture for regulators to issue a nonpoint source permit to an agricultural producer. The committee rejected the amendment during the markup.

Beyond Chesapeake Bay legislation, the committee passed a slew of other bills that Cardin expects will move in the Senate combined in a "Great Waters" bill. Those include S. 1311, for a program in the Gulf of Mexico; the Columbia River Basin Restoration Act, which is not yet numbered; S. 3073, to cleanup the Great Lakes; S. 3539, a priority of committee Chair Barbara Boxer (D-CA), to restore the San Francisco Bay; H.R. 4715, an estuaries bill; S. 2739, focused on Puget Sound recovery; and S. 3119, focused on Long Island Sound.

Also passed at the hearing was S. 3481, a Cardin bill that requires federal facilities to pay stormwater fees, rather than opting out and by considering the fees to be federal taxes. Cardin also included the bill in the Chesapeake Bay bill. A spokeswoman says the doubling up is to ensure the bill moves forward.

New snag for Cypress Creek (*St. Petersburg Times*)

Florida
July 2, 2010 Friday
PAN; Pg. 1PAN
BY LISA BUIE
Times Staff Writer

WESLEY CHAPEL - A federal judge has ordered the U.S. Army Corps of Engineers to revise its permit for the 500-acre Cypress Creek Town Center, finding the agency failed to ensure the protection of wetlands.

The order does not halt the work at the mall site at State Road 56 and Interstate 75, where crews have done earth-moving and road work preparations. But until the permit is revised, the developers proceed with any work at their own risk.

U.S. District Judge Royce C. Lamberth gave a harsh assessment of the corps in his 30-page memorandum that accompanied the order.

"The corps has failed to fulfill its statutory duties under (federal laws). Unfortunately, this is a familiar course of action for the corps when processing permit applications," the judge wrote. "As another member of this court has stated (in a separate case), the corps 'resorted to arbitrary and capricious meaning - manipulating models and changing definition where necessary - to make this project seem compliant (with federal laws) when it is not.'?"

The judge wrote that the corps failed to conduct an in-depth study that takes a "hard look" at potential environmental concerns and make a "convincing case" that there would not be significant environmental impacts. It also failed to consider the "cumulative effects" of proposed actions, he said.

The corps' assertion that the mall would not create a cumulative impact "flies in the face of logic," the judge wrote.

"It not only may have an impact, it already has," he continued, referring to muddy water that discharged into the creek in 2008.

It's too early to say what the ruling could mean for the project. The corps will craft a revised permit. The Sierra Club, which filed the legal challenge, will offer its input. Then the judge will determine what conditions to impose on the project.

Deanne Roberts, a spokeswoman for the town center, did not comment Thursday on the judge's ruling, saying officials were still in meetings regarding the case.

The proposed 1 million-square-foot mall is being developed by the Richard E. Jacobs Group of Cleveland and Sierra Properties of Tampa. Developers have said in the past

that they remain committed to the project, which they say will provide more than 3,800 full-time jobs, more than 1,000 construction jobs, annual revenue of $6 million for Pasco County and $2.4 million for the school district.

The project has been controversial from the start. Environmentalists raised concerns about pollution in a nearby creek that feeds the Hillsborough River. The river is a source of Tampa's drinking water.

The corps granted the permit in 2007. Then in February 2008, the corps suspended the permit after muddy water began spilling into the creek. Work stopped for 18 months.

The developers then paid about $297,000 in fines for violating the federal **Clean Water Act.**

Work recently resumed after a settlement in that matter was reached. In the settlement, the corps said the discharge was due to "human error" and not any flaw in the developers' plans.

That prompted U.S. Rep. Kathy Castor, D-Tampa, to call for a review by the U.S. **Environmental Protection Agency.** The agency agreed with the corps' findings.

"I have long been concerned about the environmental impacts of the Cypress Creek Town Center because of its location," Castor said Thursday in response to the judge's ruling. "I fear the detrimental impacts to Tampa's drinking water supply and wetlands. Now the U.S. Army Corps of Engineers, the Cypress Creek Town Center developers, the Sierra Club and the community have another chance to get it right."

The judge found that the corps got part of the review right: The agency properly ensured protection for endangered species, including the wood stork and the indigo snake, Lamberth found.

But environmentalists raised other objections during the application process, including concerns about the size of the parking lot and its effect on wetlands. Developers balked at reducing it, arguing it was too costly and saying an 8 percent profit was necessary for the project to be feasible.

In his review, the judge found that the corps relied on those claims from developers without independently verifying the data, which the law requires.

In calculating the developers' costs, the corps also accepted the developers' figures, which used only the market value of the property and failed to take into account the revenue expected from the sales of offices, hotels and homes. Had developers included that revenue, their project costs would have shrunk from $72 million to $46 million, the judge wrote.

He also said developers failed to prove why an 8 percent profit was necessary and that

records showed average profits at area regional malls are 7.6 and 7.7 percent.

Denise Layne of the Tampa Bay Sierra Club called the ruling "a national victory" and said it would have been much easier for developers to address the group's concerns nine years ago.

"If they had listened and worked with us, that mall would be open and functioning today," she said. "It was their greed that made it go this long."

Times staff writer Craig Pittman contributed to this report. Lisa Buie can be reached at buie@sptimes.com or (813) 909-4604.

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