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ADMINISTRATOR JACKSON

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Democrats Pushing Back Against Carbon Regulations From the EPA (*CNS News*)

Friday, February 05, 2010
By Chris Neefus
(CNSNews.com) – Three House Democrats are now pushing legislation that would stop the Environmental Protection Agency (EPA) from regulating carbon emissions—a decision the agency announced in December -- without express permission from the Congress.

Chairman of the House Agriculture Committee Collin Peterson (D-Minn.) and Rep. Ike Skelton (D-Mo.) introduced a bill on Tuesday that would amend the Clean Air Act to exclude regulations based on global warming effects, while Rep. Earl Pomeroy (D-N.D.) has a bill that would keep the EPA from regulating greenhouse gases at all unless approved by Congress.

In April 2009 the EPA proposed an "endangerment finding" for greenhouse gases, claiming that they "endanger the public health and welfare of current and future generations." An endangerment finding is necessary to regulate emissions under the Clean Air Act. On Dec. 7, the EPA Administrator Lisa Jackson officially signed the finding, opening the way to regulate emissions of gases like carbon dioxide and methane.

By complying with the rules of the Clean Air Act, the EPA claims it can begin regulating things directly, such as automobiles, without any new law from Congress. But some Democrats, contrary to the administration's views of the issue, are not satisfied with the EPA's new regulatory direction.

"I'm proud to help sponsor this bill because if Congress doesn't do something soon, the EPA is going to cram these regulations through all on their own," Rep. Peterson said in a statement.

The Peterson bill, which is co-sponsored by Rep. Jo Ann Emerson (R-Mo.), specifically curtails the Clean Air Act, which allows the EPA to regulate "air pollutants," so as to exclude from regulation six greenhouse gases that the agency thinks contribute to global warming.

"The term 'air pollutant,'" the bill reads, "shall not include any of the following solely on the basis of its effect on global climate change: (1) Carbon dioxide, (2) Methane, (3) Nitrous oxide, (4) Hydrofluorocarbons, (5) Perfluorocarbons, (6) Sulfur hexafluoride."

Peterson explained that the change was needed because the EPA was overstepping the original intended limits of the law. "The Clean Air Act was not meant for this," he said. "It was meant to clean up the air, to get lead out of the air. It was not meant to fight

global warming."

"I have no confidence that the EPA can regulate greenhouse gases under the Clean Air Act without doing serious damage to our economy," Peterson said. "Americans know we're way too dependent on foreign oil and fossil fuels in this country — and I've worked hard to develop practical solutions to that problem — but Congress should be making these types of decisions, not unelected bureaucrats at the EPA."

Emerson unveiled the legislation in Jefferson City, Mo., at the Missouri Rural Electric Cooperative's State Legislative Conference, and told attendees, "This legislation is a guarantee that the EPA will not use its rapidly expanding powers to enact policies which members of Congress know will create untold hardships in the rest of the country, especially in Missouri."

The other bill, from Pomeroy, takes a slightly different approach to the same end. It states that, "Comprehensive regulations to address global climate change must only be enacted—(A) at the direction of Congress; and (B) if Congress specifically intends such regulations to be implemented."

"Regulation of greenhouse gas emissions under the current provisions of the Clean Air Act is irresponsible and just plain wrong," said Pomeroy. "That is why I introduced the Save Our Energy Jobs Act, which would stop the EPA from moving forward with its proposal."

"I am not about to let some Washington bureaucrat dictate new public policy that will raise our electricity rates and put at risk the thousands of coal-related jobs in our state," said Pomeroy.

In the Senate, where a cap-and-trade bill now little chance of passing, Sen. Lisa Murkowski (R-Alaska) offered a "disapproval resolution" stating her discomfort with the EPA's strategy. Three Democrats in the Senate have joined the 35 Republican co-sponsors. These Democrats are Sens. Blanche Lincoln (D-Ark.), Ben Nelson (D-Neb.) and Mary Landrieu (D-Miss.).

Lincoln, Nelson, and Landrieu are considered among the most politically vulnerable in the upcoming 2010 mid-term elections.

The "disapproval resolution" has been referred to the Senate Committee on Environment and Public Works, which will consider whether to report it favorably to the full Senate.

"As the EPA moves closer and closer to issuing these regulations, I continue to believe that this command-and-control approach is our worst option for reducing the emissions

blamed for climate change," Murkowski said in introducing the resolution on Jan. 21.

The EPA originally placed the rationale for its endangerment finding in the Federal Register on April 24, 2009, claiming the gases were "very likely the cause of the observed increase in average temperatures and other climatic changes."

The EPA also proposed to regulate tailpipe emissions pursuant to the finding: "The Administrator (Lisa Jackson) shall by regulation prescribe (and from time to time revise) standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [her] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."

The EPA's first round of regulations, focusing on tailpipe emissions, is expected to emerge in March.

The Obama administration, however, is still urging Congress to pass a cap-and-trade bill. At the U.N. climate change summit in Copenhagen last month, Administrator Jackson said her new finding was not a replacement for cap-and trade. "This isn't an either/or moment," she said. "This is a both/and moment."

Final RFS Boosts Biofuels' GHG Benefits, Sparking Debate Over Science (*Inside EPA*)

2/5/2010
EPA's just-issued final renewable fuel standard (RFS) boosts the greenhouse gas (GHG) benefits of many types of biofuels compared to EPA's earlier proposed RFS, a move that allows biofuels such as corn ethanol and soy biodiesel to qualify for credit under the standard but that is sparking debate over the scientific validity of the changes.

The agency in its final rule signed Feb. 3 says new science and data compelled EPA to change the way it calculates biofuels' GHG emissions -- for example giving fuels more credit for animal feed by products and higher yield crop production practices -- which in turn allowed more fuels win credit under the final standard compared to its proposal. Some biofuels producers complained that the proposed RFS overestimated their GHG emissions.

The rule is already spurring concerns from some environmentalists that EPA "bent over backward" to allow "problematic" biofuels such as corn ethanol to qualify based on overly optimistic assumptions.

Refiners and some lawmakers are also raising questions over the scientific data that EPA used in the final standard, with petroleum industry officials separately attacking some of the RFS' fuel blending mandates as "likely unlawful."

But EPA Administrator Lisa Jackson during a Feb. 3 White House teleconference insisted that the changes did not result in "dumbing down" the standard and said the rule is based on the best science and compliance with the 2007 energy law that mandated the new RFS. *Relevant documents are available on InsideEPA.com.*

In addition to announcing the RFS, the Obama administration on the call unveiled a number of other steps aimed at boosting biofuels and "clean" coal. The measures include the release of an inter-agency work group's first report on ideas for increasing commercial development of biofuels, a proposed Agriculture Department (USDA) rule to boost efforts on converting biomass to bioenergy and bio-based products, and a new inter-agency task force to develop a comprehensive and coordinated federal strategy to speed the development and deployment of clean coal technologies.

But the final RFS is sparking the most immediate controversy. The final rule requires refiners to blend almost 13 billion gallons of biofuels into the fuel supply in 2010, including 6.5 million gallons of cellulosic biofuel and over one billion gallons of bio-based diesel. The standard is intended to boost biofuels use to eventually reach 36 billion gallons in 2022. The final volumes are similar to EPA's proposal, except for cellulosic biofuel, which the agency cut from 100 million gallons to 6.5 million gallons.

The rule also determines which fuels qualify for credit according to the 2007 energy law's requirement that biofuels reduce GHGs compared to gasoline. The law required renewable fuels such as corn ethanol to reduce GHGs by 20 percent, advanced biofuels and bio-based diesel by 50 percent and cellulosic biofuel by 60 percent. The law exempted from the 20 percent requirement corn ethanol facilities that were built or under construction when the law was passed.

EPA met fierce opposition when it issued its proposed RFS last spring, because it found that some kinds of biofuels, such as corn ethanol and soy biodiesel, would not meet the mandated reduction requirement.

However, as EPA officials had hinted before releasing the rule, the agency made major changes to its analysis based on new assumptions it developed between the proposal and final rule (*Inside EPA* Jan. 22).

For example, in the case of corn ethanol, the agency considered new studies that show crop yields increase more quickly in response to higher crop prices, which means that less land is needed domestically and globally for biofuels. New research also shows that animal feed byproducts are more efficient than the agency had assumed in its proposal, which means that exports were not as impacted as much as previously projected.

The agency also changed its calculations for international land use change, which accounts for emissions that occur when farmers in other countries clear land to grow crops to compensate for U.S. crops diverted to biofuels. Jackson said the agency used new satellite data to analyze land use change in 160 countries, rather than the 40 countries assessed in the proposal, and found that land impacts were not as great as the agency had predicted earlier.

As a result, corn ethanol plants that use highly efficient processes meet the 20 percent reduction threshold, compared to the 16 percent reduction predicted in the proposal. And using similar changes, EPA predicts that soy biodiesel meets the law's 50 percent reduction threshold, compared to the 22 percent reduction projected in the proposal.

Some environmentalists are already raising questions about the agency's changes to the rule. "EPA appears to have bent over backward to allow some highly problematic biofuels to meet the environmental criteria set by Congress," Jonathan Lewis of the Clean Air Task Force said in a Feb. 3 statement.

Refiners, who are responsible for blending biofuels into the fuel supply, are raising concerns about EPA's science. "We are concerned, for example, that politics may have trumped science with regard to the revisions to the [GHG] emissions from the production of soy-based diesel," National Petrochemical & Refiners Association President Charles Drevna said Feb. 3. In addition, the group says EPA's decision to require refiners to blend the volumes of biomass-based diesel volumes from both 2009 and 2010 into the fuel supply by the end of the year "is unfair and likely unlawful."

But EPA's Jackson insists the changes were made in response to agency staff recommendations and did not result in a "dumbing-down" of the standard between the proposal and the final RFS. "I would not sign a rule if I didn't believe that we met the requirements of the law," she said on the White House conference call.

Rep. Collin Peterson, (D-MN), chair of the Agriculture Committee and a long-time critic of EPA's RFS, said he was "pleased" that corn ethanol and soy biodiesel would meet the standard. However, he said he would continue to push a bill he co-sponsored, H.R. 4572, that would bar EPA from regulating GHGs under the Clean Air Act and bar the agency from considering international land use change in the RFS.

However, a range of environmental groups, including the Natural Resources Defense Council and the Environmental Defense Fund, and industry groups, including the National Biodiesel Board and Growth Energy, all hailed the standard. Sen. Tom Carper (D-DE) also gave his backing to the rule.

In a related development, the Biofuels Interagency Working Group -- co-chaired by EPA, USDA and DOE EPA -- released Feb. 3 its first report on suggestions for supporting the existing biofuels industry, as well as accelerating the commercial establishment of advanced biofuels and a viable long-term market.

USDA also proposed a rule for a biomass crop assistance program, a grants and loans program that aims to boost projects that seek to convert biomass to bioenergy and bio-based products.

Finally, the administration also announced a presidential memorandum seeking a comprehensive federal strategy on carbon capture and sequestration (CCS). DOE and EPA representatives will co-chair the task force, which will develop within 180 days “a plan to overcome the barriers to the deployment of widespread affordable CCS within 10 years, with a goal of bringing five to ten commercial demonstration projects on line by 2016,” according to a White House statement. The inter-agency plan should address incentives for CCS adoption and any financial, economic, technological, legal, institutional, or other barriers to deployment, the statement says. -- *Kate Winston*

United States:

EPA Releases Draft Recommended Preliminary Remediation Goals For Dioxin In Soil And CERCLA And RCRA Sites (*Mondaq News Alerts*)

04 February 2010
Article by Barnes & Thornburg LLP’s Environmental Law Department
In May 2009, during a visit to Midland, Mich. to review the ongoing cleanup of the Dow Midland plant and the Tittabawassee River, Environmental Protection Agency (EPA) Administrator Lisa Jackson committed to proposing new preliminary cleanup goals (PRGs) for dioxin by the end of 2009. Administrator Jackson also announced that she expected the Agency to complete its reassessment of dioxin risks and release it for public review within the same time frame.

On Dec. 30, 2009, EPA fulfilled the Administrator's commitment to issue new dioxin PRGs, but the Agency has not released a new draft dioxin risk assessment.

Under the National Contingency Plan, EPA generally establishes PRGs on a site-specific basis "based on readily available information, such as chemical-specific ARARs or other reliable information." PRGs are then modified, as necessary, based on the remedial investigation and feasibility study and final cleanup levels are established when a remedy is selected. 40 CFR 300.430(e)(2)(i).

In the case of dioxin, however, in 1998 EPA's Office of Solid Waste and Emergency Response (OSWER) established a uniform national PRG of 1 ppb for exposure to dioxin in residential soils. This level was consistent with the cleanup level established for Times Beach, Mo., and other dioxin sites around the country. Based on available science, it represents an upper-bound lifetime excess cancer risk of 2.5 x 10-4, which EPA considered to be within the NCP risk range, although at "the higher end of the range of excess cancer risks that are generally acceptable at Superfund sites." Approach for Addressing Dioxin in Soil at CERCLA and RCRA Sites, OSWER Directive

9200.4-26, April 13, 1998. In the guidance OSWER noted that EPA was reexamining the toxicity of dioxin and committed to reviewing the PRG when the dioxin reassessment was complete. Specifically, the guidance states: "The Office of Solid Waste and Emergency Response does not believe it is prudent to establish new, and possibly varying, precedents for Superfund or RCRA dioxin levels just prior to the release of this reassessment report."

Ironically, OSWER now may be doing just that. No reassessment of dioxin was ever released following issuance of the 1998 guidance, but Administrator Jackson has committed to release it shortly.

Notwithstanding the imminent release of a new dioxin risk assessment, EPA is now proposing change the PRG for dioxin in residential soils to 72 parts per trillion (.072 ppb). This corresponds to a 1 x 10-5 excess cancer risk. Public Review Draft, Draft Recommended Interim Preliminary Remediation Goals for Dioxin in Soil and CERCLA and RCRA Sites, OSWER 9200.3-56 (Dec. 30, 2009) (herein after Draft Dioxin PRGs). This new PRG is not based on any new science or "a new or independent review of dioxin toxicity." Draft Dioxin PRGs, at 3 (noting that the final dioxin reassessment is still under development). For cancer risks, draft PRG is based on a 1985 oral cancer slope factor derived by EPA's Office of Health and Environmental Assessment. For non-cancer risks, the draft PRG is based on ATSDR's 1998 minimum risk level of 1 pg/kg-day. Draft Dioxin PRGs, at 9.

To justify changing the PRG in the absence of new science, EPA states that the 1998 PRG for residential soil did not consider non-cancer effects or dermal exposure. Draft PRG, at 6. EPA uses the non-cancer effects to justify not using the full risk range when setting the PRG at a 1 x 1-5 cancer risk level. The non-cancer risk level is based on ATSDR data, even though ATSDR has been very careful to say that "ATSDR does not establish clean-up goals or preliminary remediation goal, but ATSDR believes that health risks associated with dioxins in soil below 1 ppb would be low under most scenarios where the primary exposure pathway is incidental ingestion through direct exposure to soil." Update to the ATSDR Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil, November 2008, at 3. As a result, EPA's justification for changing the PRG for dioxin in soil appears to rest entirely on the consideration of dermal exposure.

If EPA changes the PRG for dioxin, that will bring into question a number of CERCLA and RCRA cleanups. At a minimum, when conducting a 5-year review of a dioxin Superfund cleanup, EPA will revisit whether the cleanup is protective, and based on a new PRG guidance, may determine that cleanups of dioxin in residential soil to the 1 ppb level are not protective of human health. Under its standard consent decree reopeners, EPA can then require responsible parties to perform additional cleanup work.

EPA is taking comment on the Draft Dioxin PRGs until Feb. 26, 2010, and plans to issue the final dioxin PRGs in June 2010.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Families Want Answers from EPA Investigation (*CBS 47 News*)

Reported by: Alexandra Limon
Email: alimon@cbsfresno.com
Last Update: 9:32 am

There was an emotional hearing Wednesday night in Kettleman City as residents there blamed health problems on a toxic landfill.

The Environmental Protection Agency is now investigating a string of birth defects some in Kettleman City believe may be related to the dump.

The mothers of the children held a march on Wednesday and then spoke with the EPA Administrator. They say they now have some hope that they may finally get some answers.

Kettleman City only has about 1,500 residents and in the past two years, at least six babies have been born with birth defects and three of them died. Those number have raised the red flag for many, which is why the Governor ordered an investigation and why the EPA is now in Kettleman City.

Miguel Alatorre, whose nephew has birth defects said, “Some people think it’s Chem-Waste Management because they’ve been here throwing chemicals and supposedly their safe but their liners every once and a while.”

Chemical Waste Management denies the allegations and says their facility is safe.

Helen Herrera with Kettleman Waste Management said, “We believe we have a safe facility. We have a highly regulated site; we have permits under the U.S. EPA. He (EPA Administrator) was there to take a look at our operation.”

Waste Management defends their operation and has applied to expand the site to about double the size of the current facility.

The mothers of the babies born with birth defects say the EPA will be conducting an in-depth investigation over the next few weeks and also say they have filed a lawsuit to stop the expansion of the toxic waste dump.

EDITORIAL / OP-ED / COMMENTARY / LETTERS
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Letter to the Editor (*New York Times*)

February 5, 2010 Friday
Late Edition - Final

Section A; Column 0; Editorial Desk; LETTER; Pg. 24
DuPont in New Jersey

To the Editor:

Re "Old Story of Pollution; New Urgency This Time," by Peter Applebome (Our Towns column, Feb. 1):

DuPont has been actively involved for more than 20 years in completing the required state and federal regulatory processes by remediating soil, sediment and groundwater contamination resulting from former manufacturing operations in Pompton Lakes, N.J. In keeping with our commitment to safety, health and the environment, our technical team will continue to perform remediation work in a responsible and science-based manner.

We will complete all work under the direct oversight of the New Jersey Department of Environmental Protection and the federal **E.P.A.**

I want to reinforce our commitment to the Pompton Lakes community and our cleanup efforts. We encourage all homeowners who live within the groundwater plume to have a mitigation system installed, either by our contractor or by other contractors approved by the New Jersey Department of Environmental Protection.

David E. Epps Pompton Lakes, N.J., Feb. 2, 2010

The writer is project director, Pompton Lakes Works, DuPont Corporate Remediation Group.

URL: http://www.nytimes.com

Backing off on climate change (*Los Angeles Times*)

February 5, 2010 Friday
Home Edition

MAIN NEWS; Editorial pages Desk; Part A; Pg. 24
Backing off on climate change;
Washington appears to have lost its desire to attack the problem of global warming.
If changes in the public mood and the party alignment of the U.S. Senate have stalled healthcare legislation, they may have thrown the highly anticipated climate bill under a bus.

Even before Republican Scott Brown's stunning election to the Senate in traditionally Democratic Massachusetts last month, it was proving hard to corral moderate Democrats to support a bill capping greenhouse gas emissions. Now they're afraid to back anything that could be perceived as harmful to the economy. "Realistically, the cap-and-trade bills in the House and the Senate are going nowhere," Sen. Lindsey Graham (R-S.C.) told the New York Times. That's a distressing comment coming from one of the three senators supposedly crafting a compromise climate bill that's capable of achieving a filibuster-proof majority in the Senate.

President Obama has backed down too. On Tuesday, he signaled that cap-and-trade could go the way of healthcare reform's "public option," saying it could be removed from the climate bill. That would eliminate the market mechanism for pricing greenhouse gas pollution -- and without setting such a carbon price, other measures under consideration, such as a national renewable energy standard, won't go far enough to significantly slow **global warming.**

Global emissions of carbon dioxide and other greenhouse gases rise every year, and within decades are expected to hit a worrisome atmospheric concentration threshold of 450 parts per million. At that point, there's a high probability that average global temperatures will be at least 2 degrees Celsius higher than they were in 1850 (they're already 1 C higher). Our children would live in a world of mass migrations, wars and conflicts fueled by scarce water supplies, infrastructure destruction as rising sea levels swallow coastlines, extreme weather events, wildfires and increased poverty and disease. These are not the predictions of wild-eyed liberal pundits but of thousands of climate researchers around the world, along with organizations such as the Intergovernmental Panel on **Climate Change,** the U.S. Global Change Research Program and the National Academies of Sciences.

It gets worse. No one really knows what would happen if average temperatures hit 5 C higher than 1850 -- a level we could easily reach within a century under a business-as-usual scenario -- but changes to the physical geography of the planet become probable: land masses would vanish; ecosystems would collapse. Human civilization would change, and not for the better.

This process can still be slowed at a moderate economic cost, but time is short -- delays make both fighting **climate change** and adapting to it dramatically more expensive, and eventually could make it impossible. It's foolish to say we can't afford to pass a climate bill during a recession. We can't afford not to.

Even if the globe isn't warming, time to nix oil (*Washington Times*)

February 5, 2010 Friday
B, LETTERS; Pg. 2
Even if the globe isn't warming, time to nix oil
By: THE WASHINGTON TIMES
It is premature to declare global warming dead ("Osama and Obama on global warming," Editorial, Tuesday). We know that carbon dioxide traps heat in the atmosphere and that burning fossil fuel puts more carbon dioxide into the air. We don't understand the myriad interactions between carbon dioxide and tundra, rain forest, ocean and clouds. Nor do we understand the intervening variables of the earth's oscillations or solar cycles. It is clearly possible that we can have occasional cooler periods during a long-term warming.

But for the sake of argument, let's declare **global warming** dead and buried. Does that mean we can burn as much fossil fuel as we want? No, because we don't have as much fossil fuel as we want. America's oil production peaked 40 years ago, not because of concern about **global warming,** but because of depletion. Global oil discoveries also peaked more than 40 years ago, and for the past 30 years, we have been burning more oil than we are discovering. Peak oil isn't a theory - it is the inevitable result of using a non-renewable resource. Only the rate of depletion is in question.

Many oil experts believe that we already are facing declining oil production. It clearly is better to address the problem before declining production leaves us trying to meet our current energy needs while also trying to replace our energy infrastructure. We may be too late to avoid that problem now. **Global warming** or not, we must leave oil before it leaves us.

CARL HENN
Rockville, Md.

More regulators mean less innovation (*Washington Times*)

February 5, 2010 Friday
B, COMMENTARY; Pg. 3
More regulators mean less innovation;
Cut budgets so federal agencies focus on what's important
By Dr. Henry I. Miller SPECIAL TO THE WASHINGTON TIMES
Given the amount of fiscal tap-dancing by the president and his advisers these days, instead of bringing back former campaign manager David Plouffe, maybe they should have chosen someone like Fred Astaire or Bill "Bojangles" Robinson.

The Democrats' political vacillation is laughable - but the joke is on us taxpayers. In December, the Senate passed a spending bill that on average increased spending for a wide spectrum of federal departments and agencies by 10 percent to 12 percent. Suddenly, chastened by the "Massachusetts Miracle," the president announced a freeze on virtually all government spending across the board - but beginning only in 2011. Then he submitted a $3.8 trillion budget for the fiscal year that will begin in October that, in spite of massive tax increases, would create the largest deficits in the history of the planet. Heel click, toe punch, shuffle. ...

Completely forgotten is the president's commitment shortly after his election that budget officials would "go through our federal budget - page by page, line by line - eliminating those programs we don't need, and insisting that those we do operate in a sensible cost-effective way."

Nowhere will the effects of the out-of-control spending be greater than at federal regulatory agencies that act as a gatekeeper, or brake, on innovative products and technologies because they must grant pre-marketing approvals - agencies such as the **Environmental Protection Agency (EPA)** and the Food and Drug Administration (FDA). The reality is that budget increases cause bureaucrats to search for more things to do and to exert their power more aggressively. That makes regulation more stultifying, which in turn further stifles innovation.

Consider, for example, the ubiquitous FDA, which regulates products that account for more than 25 cents of every consumer dollar. Trimming, revising or eliminating programs that are ill-conceived and counterproductive would free up resources for essential functions, improve the efficiency and effectiveness of FDA regulation, reduce the costs of research and development performed by the private sector and stimulate innovation - but that's not on the president's agenda. Quite the opposite. As my late colleague economist Milton Friedman used to say, only in government do we see a program or project fail miserably and conclude that it needs to be expanded: At the dysfunctional and demoralized FDA, the 2010 budget rose to $3.2 billion, a 19 percent increase over the previous year, the largest boost in FDA history. For the next fiscal year, it would soar to $4 billion.

Had Mr. Obama kept his post-election promise, his Office of Management and Budget officials could have found flawed, anti-innovative FDA policies, programs and practices that are amenable to cost-cutting. Here are a few specific suggestions, a microcosm of what might be achieved throughout the government:

* Many FDA evaluations take far longer than they should. These include approvals of new drugs, vaccines, medical devices (such as artificial joints and pacemakers) and food additives. Not only is there minimal accountability for dilatory performance, but the agency's pervasive risk aversion actually rewards anti-drug bias. Greater accountability, more expeditious decision-making and improved risk-benefit balancing would expend existing and additional resources more efficiently.

* In 2007, the FDA announced a plan to perform a comprehensive assessment of the safety of some new drugs within 18 months after their introduction and to issue a report card on their performance. Although this may sound plausible, it is inconsistent with data showing that, in fact, newer drugs confer an advantage over older ones in reducing mortality. This plan is another candidate for elimination or could be limited to encompass only very widely prescribed drugs for which clinical trials raised a safety signal.

* Most day-to-day evaluations and approvals of drugs, medical devices and food products are performed autonomously within the FDA's various decentralized units, and yet there are massive, largely superfluous bureaucracies that serve the commissioner and a horde of deputy commissioners, associate commissioners and assistant commissioners. These should be trimmed drastically, freeing resources for the agency's essential programs.

* The current FDA leadership has permitted self-styled whistleblowers to flout the FDA's ethics rules by publicly contradicting agency policy and disparaging drugs and drug companies they dislike. More disciplined management would boost morale and increase productivity.

* A memorandum of agreement between two groups within the FDA entity that regulates medicines slows drug development and increases its costs. Under the accord, the drug review and drug safety offices have equal responsibility for "significant safety issues" pertaining to medicines that are under review or already have been approved for marketing. However, officials in the latter group are focused so narrowly on "safety" that they ignore the fact that because all drugs have side effects, safety cannot be evaluated in a vacuum. Instead, safety must be part of a risk-benefit judgment. Their motto might be: "If you don't approve new drugs, you avoid safety problems with them." These drug-safety zealots should be returned to a purely advisory role.

* The FDA is becoming increasingly risk-averse toward products other than drugs. A perfect example is its attitude toward bisphenol A (BPA), a chemical that, as FDA notes, "has been present in many hard plastic bottles and metal-based food and beverage cans since the 1960s." In spite of the agency's own admission that "studies employing standardized toxicity tests have thus far supported the safety of current low levels of human exposure to BPA," FDA recently announced that it will expend significant effort to re-examine the issue, crank up regulation and try to reduce exposures - largely in response to the baseless demands of activists.

"This isn't about big government or small government," the president said. "It's about building a smarter government that focuses on what works." Heel click, toe punch, shuffle, spin, spin, spin. ...

Dr. Henry I. Miller is a physician and fellow at Stanford University's Hoover Institution. An official at the FDA from 1979 to 1994, he is the author of "To America's Health: A Proposal to Reform the FDA" (Hoover Institution Press, 2000).

February 5, 2010

EPA Open Letter to the Yerington Community (*Reno Gazette Journal*)

The U.S. Environmental Protection Agency (EPA) recently released information on groundwater conditions near the former Anaconda mine site. An Associated Press article published in November 2009 used this information, and we would like to clarify some topics presented in the article.

City of Yerington water supply

Water supplied to residents by the City of Yerington Water System is not impacted by the mine site. City water is regularly tested and complies with federal drinking water requirements. Information on the City of Yerington Water System is available at www.yerington.net.

Groundwater and private well contamination

EPA's information shows that shallow groundwater contamination from the mine has migrated off-site near the north boundary. EPA continues to gather data to further define how far the contamination extends, both vertically (how deep below the ground surface) and horizontally (how far from the mine).

It is likely that a number of private water supply wells North and possibly West of the site have been impacted by contamination from the mine. EPA is investigating this further because most of the currently available data is from 50-60 feet below the ground surface, while private wells generally use groundwater from much deeper in the aquifer. In addition, the primary contaminants, uranium and arsenic, also occur naturally in local groundwater, and we will be conducting studies to help determine how much of the contamination in the wells is coming from the mine.

Measures to protect the health of residents with private wells

EPA is improving its Domestic Well Monitoring Program to protect residents with wells North and West of the site from exposure to mine contamination. The program, which was initiated in 2003 by the Nevada Division of Environmental Protection, the Bureau of Land Management and the EPA, tests the wells for uranium and other contaminants. Improvements to the program include more thorough and frequent testing. The revised program will sample about 70 private wells quarterly and more than 50 wells semi-annually.

As a precautionary measure, Atlantic Richfield Company (ARC), the company that EPA holds responsible for some of the contamination, provides bottled water to residents whose well water contains over 25 parts per billion uranium (the federal standard for uranium is 30 parts per billion).

Addressing immediate threats from the mine site

In addition to providing bottled water to affected private well owners, EPA has taken other actions to address immediate concerns from mine site contamination. We have capped areas of the site to reduce dust, implemented systems to protect birds, repaired leaking heap leach fluid collection ponds, and cleaned up kerosene-contaminated soil leftover from the bankrupt Arimetco.

We are continuing to conduct work that improves conditions at the site. Over the next year, we will perform additional removal actions to address electrical hazards, radiation and asbestos in select locations at the site. We are also removing a tire pile that may present a fire threat and a deteriorating building at the site fence line that contains asbestos. We had planned to cover the former Anaconda evaporation ponds this year to reduce dust and protect wildlife. However, we are re-evaluating our plans for these evaporation ponds, which will delay this work but help make the capping more effective in the long term.

We are preparing a fact sheet on groundwater issues to explain them in greater detail and will continue updating the community on other aspects of EPA's work. If you have questions, please contact us.

Jacquelyn Hayes, Domestic Well Monitoring Program
David Seter, Groundwater
Nadia Hollan Burk, Overall site questions

AIR
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Posted: February 5
Updated: Today at 4:25 AM

Panel: EPA regulation needed

Environmentalists say failure to regulate greenhouse gases poses health risks (*Franklin News Post*)

By Rory Sweeneyrsweeney@timesleader.com
Staff Writer

If an effort in the U.S. Senate to prohibit the Environmental Protection Agency from regulating greenhouse gases succeeds, Pennsylvanians will face unnecessary health risks, according to a panel of environmental advocates.

Speaking on Wednesday during a teleconference call, the panel – which included a physician, a lawyer and representatives of two advocacy groups – said stripping the EPA's authority could exacerbate symptoms for a large population, from teenagers and the elderly to those with chronic respiratory conditions.

"I have patients who feel they're in charge of their health &hellip and yet these ideas put them at risk for symptom aggravation," said Dr. James Plumb, who directs the Center for Urban Health at Thomas Jefferson University and Hospital in Philadelphia.

"Walking in the city, which is &hellip the most sustainable form of exercise, may be harmful."

The issue is particularly important in Pennsylvania, which creates 1 percent of the world's greenhouse gas emissions, said Kevin Stewart of the American Lung Association.

Plumb noted that much of that pollution likely comes from power plants that burn fossil fuels and emit carbon dioxide.

At issue is a resolution from U.S. Sen. Lisa Murkowski, R-Alaska, to stop the EPA from regulating greenhouse gases under the Clean Air Act. Forced by the U.S. Supreme Court to decide, EPA found that such gases represent a danger worthy of regulation, but Murkowski's resolution would disapprove that finding.

The panel participants called on U.S. Sens. Arlen Specter, D-Philadelphia, and Bob Casey Jr., D-Scranton, to oppose the resolution.

Paul Burroughs, an environmental attorney on the Erie County Board of Health, said the action has gone through a decade of bureaucratic process, and "now a senator wants to set that all aside, essentially &hellip slapping that in its face."

It's a "socially irresponsible action and will lead to unnecessary illnesses and death," Plumb said.

Ann Crowley of the Union of Concerned Scientists said impending climate legislation isn't enough.

"We still need to have strong enforcement by the EPA because the dirtiest polluters &hellip can still continue to pollute while still technically be following any regulation under (emissions) cap-and-trade" programs.

Anti-pollution plan: Ban idling (*Columbus Dispatch*)

Regulation wouldn't apply when temperature below 32, above 85
Friday, February 5, 2010 3:13 AM
By Doug Caruso
THE COLUMBUS DISPATCH

As central Ohio faces tougher federal restrictions on smog, some are proposing that Columbus and its suburbs outlaw idling vehicles.

With some exceptions, the ban would mean a police officer or health inspector could write a ticket if you let your car idle for more than five minutes.

The ban would mean a significant drop in pollution and would save drivers money on gas, said David Celebrezze, director of air and water special projects for the Ohio Environmental Council.

It's a rough estimate, he said, but if every vehicle in the region cut out five minutes of idling per day, it would save nearly 26 million gallons of gasoline every year.

Burning 1 gallon of gasoline produces 19.4 pounds of carbon dioxide and about 1 pound of other pollutants, according to the U.S. Environmental Protection Agency.

"Even if those numbers are half correct or a third correct, you're still seeing millions of dollars saved in central Ohio," Celebrezze said.

His group is working with the Mid-Ohio Regional Planning Commission to propose the idling ban. They've also approached the Columbus Chamber to get business leaders on their side.

The idea is in its early stages here, with preliminary meetings with officials in Columbus and the suburbs, said Ashley Lester, air-quality program coordinator for MORPC.

The Columbus City Council's staff is exploring the idea, said John Ivanic, the council's spokesman.

"It's an interesting proposal," he said. "We're just beginning to learn about it."

Cleveland and three of its suburbs have idling bans. Columbus has a no-idling policy for the city's fleet of cars and trucks, and several central Ohio school districts prohibit idling in front of buildings.

Illinois bans idling in regions of the state that do not meet the U.S. EPA's air-quality standards.

New standards the agency proposed in January would place 32 Ohio counties in violation of smog standards, including Franklin, Delaware, Knox, Licking and Madison.

"Around the country, as air-quality standards are getting tighter, communities are taking innovative means to address that issue," Celebrezze said.

The environmental council's proposed ordinance would make idling for more than five minutes a minor misdemeanor, carrying a fine of as much as $150.

The ban would not be enforced when temperatures drop below 32 degrees or above 85 degrees so that drivers can run their heaters and air-conditioners. It also would include exemptions for emergency vehicles and trucks that need to power refrigeration units or maintain heat or air-conditioning while a driver sleeps.

Trucks in designated loading zones could idle for as long as 10 minutes. And drivers stuck in traffic jams also would be exempt.

"Some of the concerns from the logistics community seem to be addressed from those exemptions," said Lester, of MORPC.

Steve Tugend, vice president for government relations at the Columbus Chamber, has been gauging whether businesses would support the ban. He surveyed members about it recently.

Chamber members are concerned that the new EPA smog regulations will hurt the region's ability to attract employers because they won't be able to get permits to install equipment, he said, a mark in favor of the idling ban.

"We're for finding ways that are business friendly to improve the quality of our air so that those restrictions on our economic development are lifted," he said.

"But we don't want to support regulations that would hinder our existing businesses from growing."

dcaruso@dispatch.com

EPA: Ogden air plan a bust; Utah Air Quality Board asks for reconsideration (*StandardNet*)

By Di Lewis (Standard-Examiner staff)
Last Edit: Feb 4 2010 - 11:55pm
OGDEN -- Although particulate matter 10 in Ogden air has decreased since 2005, the state may have to go through another expensive, yearslong process to develop a PM10-reduction plan.

The Environmental Protection Agency recently submitted a proposed disapproval of the Utah Division of Air Quality's plan to maintain areas in Utah with air polluted with small particles known as PM10. The polluted areas are called nonattainment areas.

The issue is the plan was submitted in 2005, but in the time between the submission and the response in December 2009, the EPA changed some of its rules.

The agency is using that as a reason to not approve the maintenance plan for those nonattainment areas in Ogden city and Utah, Salt Lake and Davis counties.

Bryce Bird, Division of Air Quality branch manager, said the EPA has three main problems with Utah's maintenance plan: existing state rules that are inconsistent with EPA policy, technical issues with the submission and a conflict with a rule change made in 2007, after the plan had been submitted.

The potential denial is particularly frustrating, he said, because the state spent three years developing the plan and the EPA was involved during the entire process.

Now the Air Quality Board is drafting a response to the EPA that Bird said will address the three concerns and point out that the plan has created better air quality.

Since the plan was created, Bird said, the areas have never exceeded the PM10 level of 150 micrograms per cubic meter in a 24-hour period. The closest they have come to the limit is 70 percent, he said.

According to the EPA, Ogden had PM10 violations before 2005 but has not had any since.

Bird said the Air Quality Board is hopeful the EPA will reconsider.

"We went through the process already. We submitted a plan, and it's been effective," he said. "We shouldn't go back and re-create history but use those in future plans for PM2.5 rather than waste staff time."

Not only would it take years to make a new plan, but it would also take millions of dollars the state doesn't have right now to do studies such as air modeling, Bird said.

If the plan is ultimately denied, he said, the state could lose federal transportation dollars.

February 4, 2010

Planned Calif. Power Plant Would Be Nation's First With GHG Emissions Limits (*New York Times*)

By ROBIN BRAVENDER AND COLIN SULLIVAN of Greenwire

Calpine Corp. is poised to build the first U.S. power plant with federal limits on greenhouse gas emissions in California after clearing a final regulatory hurdle today.

The Bay Area Air Quality Management District granted the Houston-based utility its final air quality permit today, allowing the company to proceed with the planned construction of a 600-megawatt natural gas-fired Russell City Energy Center. The 15-acre project site is in Hayward, just east of the San Francisco Bay.

The Russell City plant will produce 50 percent fewer greenhouse gas emissions than even the most advanced coal-fired plants, Calpine said, and will emit 25 percent fewer heat-trapping gases than the California Public Utilities Commission's standard. Construction on the facility plant is expected to begin later this year.

"We applaud the BAAQMD and Calpine for going beyond existing federal law and being the first in the nation to require an enforceable greenhouse gas limit," said Linda Adams, secretary of the California EPA. "This action furthers efforts at a statewide level to balance our economic needs while meeting our environmental challenges."

The Prevention of Significant Deterioration, or PSD, permit was issued with an eye on greenhouse gas restrictions set to be implemented in California in less than two years. The state's Air Resources Board is still in the process of putting together rules for a cap-and-trade market intended to help cut greenhouse gases to 1990 levels by 2020; that market goes live Jan. 1, 2012.

Utilities like Calpine will most likely be participants in that market, though it is unclear how permits issued before the advent of the market might be counted under a regulated regime. Calpine is also promoting the project as a means to help achieve the state’s 33 percent renewable power standard by 2020, claiming gas-fired plants would back up intermittent sources like wind and solar. So-called peaker plants, which only run when demand is highest, are often older and powered by coal.

Calpine spokeswoman Norma Dunn said the company intends to run the Russell plant as baseload generation, selling its power to Pacific Gas & Electric Co. Terms of that deal were not disclosed. Dunn has not replied to questions asking how a baseload plant could be considered "back up" power to wind and solar.

The Calpine permit is coming against the backdrop of rising political pressure to suspend California's climate law, A.B. 32. Voters will most likely get to decide for themselves this fall whether climate regulations should go forward, as opponents of A.B. 32 are in the process of gathering signatures to place on the November ballot a measure that would tie the law to high unemployment levels. If the measure makes it

onto the ballot, and voters approve it, California could see its climate law delayed until unemployment dips below 5.5 percent.

Calpine is an active player in the renewable power industry in California. The company owns and operates the Geysers in Sonoma and Lake counties in Northern California, which is the largest complex of geothermal power plants in the world.

Precedent?

Environmentalists hailed the development as a signal that steep reductions in utilities' greenhouse gas emissions can be made under existing federal air laws, while some opponents insist that the Clean Air Act is an inappropriate tool for tackling global warming emissions.

"It's an example of what is possible," Sierra Club chief climate counsel David Bookbinder said. "Calpine is leading the way and showing how it's possible to generate all the electricity that America needs with half the greenhouse gases."

U.S. EPA is expected to soon begin regulating greenhouse gas emissions from stationary sources under the Clean Air Act. The agency is planning to finalize standards next month to limit automobile emissions of the heat-trapping gases, which would automatically trigger permitting requirements for industrial sources. EPA is planning to require only the largest stationary sources to install greenhouse gas controls but has not yet issued guidance about what pollution controls will be required for those facilities.

"This could become an important precedent," Clean Air Watch President Frank O'Donnell said of the Calpine permit. "It shows that the current Clean Air Act can be used to limit greenhouse gas emissions from power plants."

But Scott Segal, an industry attorney and director of the Electric Reliability Coordinating Council, said existing clean air permitting laws are inappropriate for regulating greenhouse gases.

"As a general proposition, we believe that the use of permitting conditions to advance a CO2 regulatory agenda is an inflexible mechanism that is likely to have a number of unintended consequences," Segal said.

By limiting greenhouse gases through air permits, Segal said, facilities located in other regions of the country -- including coal-rich areas -- would be at a disadvantage. "There is no mechanism to either contain cost or allow for trading if you use permit conditions as a basis for regulating CO2," he said.

Air quality alert for northeastern Iowa (*Associated Press*)

Story also appeared: *Chicago Tribune*

8:15 PM CST, February 4, 2010
WINDSOR HEIGHTS, Iowa
The Iowa Department of Natural Resources has issued an air quality alert for the northeastern part of the state.

The department says fine particulate pollution levels in excess of the U.S. Environmental Protection Agency health threshold were measured Thursday morning in northeastern Iowa. It says fine particulate levels near EPA health standards are expected to persist until Friday morning.

Because of the pollution, the DNR recommends that northeastern Iowa residents with respiratory or heart disease, as well as the elderly and children, limit prolonged outdoor exertion until air quality conditions improve.

Fine particles are emitted by vehicle traffic and other combustion sources, and are formed by chemical reactions in the atmosphere. Stagnant air masses do not allow the fine particles to disperse, and pollutant levels rise.

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Calpine gets OK to build 1st plant with carbon limit;Energy (*San Francisco Chronicle*)

(California)
February 5, 2010 Friday
FINAL Edition
Business; Pg. D1
Calpine gets OK to build 1st plant with carbon limit;
Energy
By: David R. Baker, Chronicle Staff Writer

The Bay Area will soon contain the nation's first power plant to have its greenhouse gas emissions capped by a federal government permit.

Calpine Corp. won regulatory approval on Wednesday to build in Hayward its long-delayed Russell City Energy Center, which will burn natural gas and generate enough electricity to power 450,000 typical homes.

The project's final permit from the U.S. **Environmental Protection Agency** limits the

amount of carbon dioxide and other greenhouse gases the plant can produce - a first.

Calpine volunteered for the cap.

Although the federal government has not yet imposed greenhouse gas limits on power plants in general, it is widely expected to do so. And Russell City's design makes complying with a cap easy. The project is a "combined cycle" power plant, which recycles heat that other plants give off as waste.

"As we looked at the lay of the land, we saw the new administration coming in," said Calpine Senior Vice President Joe Ronan. "And it occurred to us, we need to get ahead of the game."

According to Calpine, Russell City will produce 50 percent fewer greenhouse gas emissions than a modern coal-fired plant and 25 percent fewer than most natural gas plants. Construction could begin later this year, creating 650 construction jobs.

Ralph Cavanagh, with the Natural Resources Defense Council, said the project shows that some businesses are ready to compete in a carbon-constrained world.

"Our expectation is that this is the wave of the future," said Cavanagh, co-director of the council's energy program. "I think Calpine is to be commended for going first. Now the challenge is to make this the norm."

California already limits greenhouse gas emissions from power plants, although in a very different way. Under rules adopted in 2007, the state's utilities can only buy electricity from plants whose emission levels are the same or lower than a typical natural gas power plant's. The rules effectively blocked the construction of coal-fired plants.

Calpine, headquartered in Houston but formerly based in San Jose, has been trying to build Russell City for years.

The project faced stiff opposition from some Hayward residents who didn't want to live downwind from it and questioned its proximity to the bay's shoreline. Others worried that hot air rising from the plant's stacks would interfere with flights into the Hayward Executive Airport. But the California Energy Commission granted the project a license in 2007, and last year, Pacific Gas and Electric Co. received regulatory approval to buy the plant's electricity.

The Bay Area Air Quality Management District awarded Russell City its federal permit, acting on behalf of **EPA.** The district will have the responsibility for ensuring that the plant complies with its greenhouse gas limits.

Calpine will probably agree to greenhouse gas limits at other plants that it builds, said Don Neal, the company's vice president for environmental health and safety.

"I can't think of a reason we wouldn't do it, because we have the ability to do it," he said.

"It occurred to us, we need to get ahead of the game."

Joe Ronan, Calpine senior vice president

February 5, 2010

Sen. Lamar Alexander helps push bill for cleaner air (*Tennessean*)

By Nicole Gaudiano | TENNESSEAN WASHINGTON BUREAU
and Anne Paine | THE TENNESSEAN
WASHINGTON — Sens. Lamar Alexander and Tom Carper introduced legislation Thursday to curb mercury and pollutants that cause smog and acid rain.

As the future of legislation targeting carbon emissions remains uncertain, Alexander, R-Tenn., and Carper, D-Del., said they hope to amend the Clean Air Act to reduce the three other pollutants from coal-fired power plants.

They say a legislative fix is necessary after court challenges have slowed, and in many cases invalidated, the Environmental Protection Agency's efforts to regulate such emissions since the 1990s.

Citing EPA figures, they say their legislation would save lives and more than $2 trillion in health-care costs by 2025 while costing families less than $2 a month.

"For Tennesseans, this is a bill about our health. It's about tourism in our state and it's about our jobs," Alexander said. "Our state simply cannot clean up our air all by ourselves without strong national standards to require the rest of the country to stop producing dirty air that blows into our state."

Carbon isn't in mix

Stephen Smith, executive director of the Southern Alliance for Clean Energy in Knoxville, said the senator is leaving out the "elephant in the room."

"We support his efforts to reduce emissions, but you've got to put carbon in that mix," Smith said.

"What would really be leadership is for him to reach across the aisle in a bipartisan manner and try to find the way to control not only these emissions, but carbon also."

Limits on carbon emissions would create a market that would bring new jobs in clean

technology, he said.

The bill as proposed would cut sulfur dioxide emissions by 80 percent by 2018, nitrogen oxide emissions by 53 percent by 2015, and mercury emissions by at least 90 percent no later than 2015.

It would build on a national trading program for sulfur dioxide and create two regional trading programs for nitrogen oxide to make emissions reductions more cost effective.

Democrats on the Environment and Public Works Committee, on which Alexander sits, passed climate change legislation in November without any Republican votes.

Alexander said while that legislation is still being debated, "there's no excuse for waiting" to target other pollutants.

Waterloo residents warned of air conditions (*Waterloo Cedar Falls Courier*)

Posted: Thursday, February 4, 2010 1:45 pm
WINDSOR HEIGHTS - Iowans with respiratory or heart disease and elderly and young children are warned to limit their time outdoors until air conditions improve.
According to the Department of Natural Resources, fine particulate pollution levels in excess of the U.S. Environmental Protection Agency health threshold were measured this morning in Northeast Iowa.

Fine particulate levels near EPA health standards are expected to persist until Friday morning.

The EPA's 24-hour health threshold for fine particles is 35 micrograms per cubic meter.

At noon today fine particle levels:

- averaged in the 30s across Iowa

- Cedar Rapids - 39
- Clinton - 42
- Davenport - 40
- Iowa City - 41
- Lake Sugema - 36
- Muscatine - 35,
- Waterloo - 42.

Fine particles are emitted by vehicle traffic and other combustion sources and are formed by chemical reactions in the atmosphere. Stagnant air masses do not allow the fine particles to disperse, and pollutant levels rise.

New power plant OK'ed with greenhouse gas limits (*Associated Press*)

Story also appeared: *Silicon Valley Mercury News*

Posted: 02/04/2010 12:00:28 PM PST
Updated: 02/04/2010 12:00:28 PM PST
HAYWARD, Calif.—San Francisco Bay area air quality regulators have approved a federal permit that places strict limits on a new power plant's greenhouse gas emissions.

Environmentalists hail it as an important precedent in controlling pollution from specific power plants.

The Bay Area Air Quality Management District, acting on behalf of the U.S. Environmental Protection Agency, approved the permit for Calpine Corp. on Wednesday, clearing the way for building the Hayward plant.

Construction is scheduled to begin later this year.

Calpine says the 600-megawatt, natural gas-fired plant will be equipped with the newest pollution controls and will produce 50 percent fewer greenhouse gas emissions than the most advanced coal-fired plant. It also will produce 25 percent fewer emissions than current state standards.

EPA Sees Support Of BACT Process For GHGs Despite Impasse On Key Issues (*Inside EPA*)

2/5/2010
EPA officials say a just-issued report by its air advisers on greenhouse gas (GHG) permitting shows support for using the traditional best available control technology (BACT) process for GHGs, despite an impasse among the advisers on key issues they referred back to EPA, including how to assess fuel switching and efficiency in BACT reviews.

Janet McCabe, principle deputy to EPA air chief Regina McCarthy, said Feb. 3 that a key finding of the climate change work group of EPA's Clean Air Act Advisory Committee (CAAAC) was that the so-called top-down BACT processes, which analyzes available and feasible technologies one-by-one, can be applied to GHGs.

“One of the things that I took from the report is that the BACT process can be used to address greenhouse gases in permitting and these tools are there and are flexible,” McCabe said at a CAAAC full committee meeting in Arlington, VA to discuss the recommendations. However, she acknowledged the difficulties in executing the process, saying, “That doesn’t mean that there are not a lot of questions that remain unanswered.”

McCabe’s comments come in response to the highly anticipated initial findings of the climate change workgroup of the CAAAC new source review (NSR) subcommittee. The full committee approved the first of a two-phase report on how to permit GHGs from stationary sources. The phase one report will now be submitted to EPA for formal review.

While the advisers reached consensus on some issues, including that efficiency should be part of a BACT review, the group failed to reach consensus on other key issues, including when efficiency requires too many changes to a facility to be considered and how many parts of the facility should be assessed for efficiency measures. The lack of consensus shifts the onus back to EPA to resolve questions over some controversial BACT questions, and defers consideration of more novel approaches to BACT, such as demand-side management, to a second phase of the report. *Relevant documents are available on InsideEPA.com.*

The second phase of the report will address whether EPA can approach BACT for GHGs differently than for the agency’s so-called criteria pollutants, for example, by using emissions trading and offsets. But both EPA officials and advisers agree that the second phase issues are even more controversial than those considered in the first phase, which could set the work group up for similar stalemates in the future (*see related story*).

BACT is the technology standard that facilities must meet in areas that are in attainment with agency air standards. EPA has been wrestling with which technologies or approaches could qualify as BACT for GHGs. BACT is part of the agency’s Clean Air Act NSR program that regulates criteria pollutant emissions.

The group’s first report addresses which parts of a facility should be analyzed for BACT controls, the criteria for determining the feasibility of controls, the criteria for removing certain technologies from BACT consideration, and the needs of states and stakeholders. But a version of the report circulated at the Feb. 2 meeting reveals deep divisions within the work group and, as a result, defers some key issues to EPA to decide.

For example, the work group failed to forge consensus on whether regulators must consider requiring facilities to switch from burning fuels like coal to using low-GHG fuels like natural gas, as some activists argue, or whether such fuel-switching would unlawfully redefine the source, as industry argues. As a result, the group argues that

EPA should provide guidance on how clean fuels should be considered in the BACT process for GHGs.

The work group also urges EPA to define the terms “fundamental business purpose” and a project’s “basic design,” which courts have used to determine whether fuel switching or other process changes redefine a source. The group also recommended that EPA provide guidance on evaluating energy efficiency in BACT on a sector-by-sector basis.

The group also disagreed on the definition of the source of emissions that should be considered in the permitting process, which in turn defines the scope of energy efficiency measures that can be required. Some advisers said the BACT analysis should consider possible efficiency gains in parts of the facility or process outside of the new or modified unit. However, others argued that defining the source as including more than the modified portion is inconsistent with statutory language and unworkable because it would be open to wide interpretation.

But the group reached consensus on some broad issues, agreeing that EPA should consider the feasibility of both capturing and sequestering carbon dioxide in deciding whether to require carbon capture and sequestration as BACT, consider energy efficiency as part of BACT, and other issues.

The advisers also agreed that EPA should continue to apply BACT requirements to new or modified facilities, which is the approach EPA uses for conventional pollutants. And the group agreed that EPA should expand its clearinghouse of BACT and other permit requirements to include GHGs, and expand a GHG mitigation database currently under development by the Office of Research & Development to include information on foreign sources.

The advisers also agreed that EPA should use aspects of its 1990 draft NSR workshop manual to determine whether a technology is feasible, for example if it has been demonstrated in practice, and to determine whether technology can be transferred among industries, for example, if the process has been used on similar gases and does not unacceptably affect process operations -- key considerations for reviewing technologies as BACT for cutting GHGs.

EPA formed the group to develop recommendations on BACT for GHGs in advance of EPA issuing its final first-time GHG rules for automobiles, slated for release next month. Those rules will trigger a Clean Air Act requirement for the agency to regulate GHGs from stationary sources such as power plants by including GHG limits in air permits.

In advance of the initial report’s release, several sources said it was not expected to address some of the more radical and divisive recommendations for GHG BACT, including novel approaches such as demand-side management and combined heat-and-power, which have not traditionally been considered control technologies. These

are likely to be more fully explored in the recently launched second phase report after the final February report is issued. -- *Kate Winston*

Posted: February 5
Updated: Today at 4:25 AM

Panel: EPA Regulation needed (*Wilkes Barre Times Leader*)

Environmentalists say failure to regulate greenhouse gases poses health risks.
By Rory Sweeneyrsweeney@timesleader.com
Staff Writer
If an effort in the U.S. Senate to prohibit the Environmental Protection Agency from regulating greenhouse gases succeeds, Pennsylvanians will face unnecessary health risks, according to a panel of environmental advocates.

Speaking on Wednesday during a teleconference call, the panel – which included a physician, a lawyer and representatives of two advocacy groups – said stripping the EPA's authority could exacerbate symptoms for a large population, from teenagers and the elderly to those with chronic respiratory conditions.

"I have patients who feel they're in charge of their health &hellip and yet these ideas put them at risk for symptom aggravation," said Dr. James Plumb, who directs the Center for Urban Health at Thomas Jefferson University and Hospital in Philadelphia.

"Walking in the city, which is &hellip the most sustainable form of exercise, may be harmful."

The issue is particularly important in Pennsylvania, which creates 1 percent of the world's greenhouse gas emissions, said Kevin Stewart of the American Lung Association.

Plumb noted that much of that pollution likely comes from power plants that burn fossil fuels and emit carbon dioxide.

At issue is a resolution from U.S. Sen. Lisa Murkowski, R-Alaska, to stop the EPA from regulating greenhouse gases under the Clean Air Act. Forced by the U.S. Supreme Court to decide, EPA found that such gases represent a danger worthy of regulation, but Murkowski's resolution would disapprove that finding.

The panel participants called on U.S. Sens. Arlen Specter, D-Philadelphia, and Bob Casey Jr., D-Scranton, to oppose the resolution.

Paul Burroughs, an environmental attorney on the Erie County Board of Health, said the

action has gone through a decade of bureaucratic process, and “now a senator wants to set that all aside, essentially &hellip slapping that in its face.”

It’s a “socially irresponsible action and will lead to unnecessary illnesses and death,” Plumb said.

Ann Crowley of the Union of Concerned Scientists said impending climate legislation isn’t enough.

“We still need to have strong enforcement by the EPA because the dirtiest polluters &hellip can still continue to pollute while still technically be following any regulation under (emissions) cap-and-trade” programs.

Environmentalists Suggest Lawsuit Over ‘Illegal’ EPA Ozone Fee Guidance (*Inside EPA*)

2/5/2010
Environmentalists are warning EPA that the agency will likely face a legal challenge over what they say is a “flatly illegal” guidance giving states significant flexibility in how they implement a Clean Air Act requirement to impose large fines on polluters in areas that remain significantly out of attainment with national ambient ozone standards.

The warning comes as Texas regulators are preparing to implement one of the nation’s first ozone fee programs in a manner activists fear will exempt most polluters from section 185 of the Clean Air Act, which requires sources subject to the fees to pay $5,000 per ton of pollution above 80 percent of a pre-determined baseline during a calendar year.

EPA’s Jan. 5 guidance gives states large flexibilities on implementing the fees, which the air act says must be levied on stationary pollution sources in air districts deemed in “severe” or “extreme” noncompliance with the1997 1-hour national ambient air quality standard (NAAQS) for ozone when EPA issued initial attainment designations for the 1997 8-hour ozone NAAQS. The act requires states to collect the fees and for EPA to step in if states fail to do so.

In the guidance, EPA gives states the option to implement alternatives that are not less stringent than the expected emissions cuts the fees would be expected to produce (*Inside EPA*, Jan. 22).

However, EPA in the guidance allows states to avoid imposing the fees for areas that are meeting either the 1997 1-hour or 8-hour standard. Activists fear that industries that contributed to emissions exceedances for years will escape paying fees in areas that meet the 8-hour standard -- but not the revoked 1-hour standard.

The latter situation has been known to occur in Texas, one local air activist says, where brief bursts of pollution from industrial facilities can push ozone levels very high for short periods of time but allow the area to remain in attainment over the longer eight-hour measurement.

“We are sorely disappointed, to say the least, because the agency’s guidance is flatly illegal,” says a source with the National Resources Defense Council (NRDC), who claims the guidance offers too much flexibility that is not allowed under the Clean Air Act. While the group has no imminent plans to sue EPA over the guidance, the source says EPA “will land in court” quickly if it approves an alternative fee program that contravenes the air act.

The NRDC source claims EPA is improperly reading section 172 of the air act “as an alternative universe” to section 185, when activists maintain the act does not allow such latitude. “EPA has opened the door to illegal activity” with the guidance, says the source. The source adds that NRDC and Earthjustice prevailed in a related 2006 legal challenge of a Bush EPA attempt to “effectively repeal” the section 185 fee requirement in the U.S. Court of Appeals for the District of Columbia Circuit case *South Coast Air Quality Management District v. EPA*.

The source now sees a parallel push by industry in Texas to undermine the section 185 fee program proposed by the Texas Commission on Environmental Quality (TCEQ) Nov. 18, 2009.

TCEQ took public comment through Jan. 25 on the proposal, which contains several controversial methods for alternative compliance, including exempting fees for sources in areas that failed to meet the 1-hour ozone NAAQS but are thought to be in attainment with the 1997 8-hour standard.

EPA in Jan. 25 written comments to TCEQ confirms that its Jan. 5 guidance “provides that a fee program for failure to attain the 1-hour ozone standard would no longer be required if EPA determines through rulemaking that the area is attaining the 1-hour or the 1997 8-hour standard.” The agency adds, “If Texas is interested in pursuing such a determination we ask Texas provide a request including documentation that the improvements in air quality are due to permanent and enforceable reductions.” *Relevant documents are available on InsideEPA.com.*

Court Set To Rule On Industry Suit Over Key Test Of EPA Air Permit Policy (*Inside EPA*)

2/5/2010
A key federal appeals court will soon issue a ruling on an industry lawsuit arguing that EPA unlawfully used a routine applicability determination (AD) under an air permit

program to implement a major policy change, with industry saying a win would seriously undermine EPA's ability to use ADs for a similar goal in the future.

The U.S. Court of Appeals for the District of Columbia Circuit will decide the case, *American Petroleum Institute (API), et al. v. EPA*, based on briefs, canceling previously scheduled oral argument set for Feb. 9.

In the suit, API and other groups are challenging an AD that EPA issued for a Shell refinery in Washington state. In a Feb. 1 order, the court canceled the oral argument, saying, "The court concludes, on its own motion, that oral argument will not assist the court in this case. Accordingly, the court will dispose of the petition for review without oral argument on the basis of the appendix submitted by the parties and the presentations in the briefs."

Industry claims that the AD significantly broadens EPA's definition of a major modification at a refinery flare and applies across the industry, mandating strict pollution controls at refineries whenever they make any change to the flares. They also say if the AD stands, EPA could enforce against refineries that made similar changes up to 35 years ago.

However, EPA counters that the AD is site-specific, that the definition of modification that it included in the determination is within its statutory authority, and that the AD does not have the broad relevance industry claims.

Industry routinely requests that EPA's Office of Enforcement & Compliance Assurance (OECA) issue ADs for projects under a variety of clean air permit programs to help determine whether the planned project is a major modification that would trigger a Clean Air Act requirement to install stringent emission controls. API argues that the Shell AD at issue immediately changes how petroleum refiners across the country must treat similar projects.

One industry source says the case is crucial because OECA routinely uses ADs as the basis for enforcement actions at other facilities, and expects industry to comply with the determinations to avoid triggering such actions.

API wants the court to strike down the AD, and the industry source says that if the court agrees it could force EPA to follow the burdensome Administrative Procedure Act notice-and-comment process for issuing a wide range of ADs, and dramatically limit EPA's attempts to pursue policy changes through provisions in the ADs.

"The stakes are pretty high," the industry source says, because EPA runs the risk of having the court question how OECA conducts ADs, raising the prospect that OECA could be forced to go through notice-and-comment rulemaking on certain controversial determinations for new source review (NSR), new source performance standards (NSPS) and other air permits. The source says notice-and-comment would be a huge burden, requiring review by other EPA offices -- including the Office of General Counsel

-- that may slow the process and therefore make EPA less willing to pursue policy changes in the ADs.

In the Shell permit, OECA found that a plan by the company to make a change to an upstream refinery process triggered NSPS permitting requirements because it “could result in an operational change to the flare as a result of additional fuel gas being released to the flare. Combusting gas streams not previously combusted in the flare is a change in how the flare operates, whether these streams are routed on a routine or intermittent basis.”

Previewing the argument industry may have made at canceled oral arguments, API in its Dec. 10 final brief said, “The impact of the rule cannot be minimized simply because EPA asserts that it only applies to one facility. EPA’s determination is wholly untethered to any particular facts or circumstances. Thus, the agency’s words announce a rule that is generally applicable and immediately changes how petroleum refiners across the country must treat projects at their facilities.” *Relevant documents are available on InsideEPA.com.*

The industry source says that OECA’s decision that the Shell project triggers NSPS “means that any time a refiner makes a small change, such as adding a pipe to any part of the flare system, that triggers NSPS and possibly” NSR permitting requirements, which industry sees as an unlawful policy expansion.

A second industry source says that if the court upholds the AD, then OECA could use it to launch enforcement actions against any other facility that also makes any change upstream of flaring systems and does not install NSPS controls. The AD is a “backdoor way of imposing a change to the definition of modification without a way for people affected by it to be involved” because EPA argues the NSPS has always included the requirement, the source says. Any such change should be made through a regular rulemaking and not through a site-specific AD, industry says.

Additionally, the source says refineries routinely make the kind of changes that Shell did to its flaring unit. The industry brief also seeks to stress this point. “Any refinery in the country over the last 35 years could have vented a new sulfur-containing gas stream for a process unit to the flare system, and, according to EPA today, that would have triggered NSPS J on those minimal facts alone,” the brief claims.

EPA in its Dec. 8 final brief to the court strongly opposes the industry claims, arguing that the D.C. Circuit is not the proper venue, questioning the plaintiffs’ standing and wholly rejecting all of API’s claims about the significance of the AD.

“It is unclear why petitioners are seeking to elevate EPA’s statement in a single sentence addressed to a single inquirer about a single project at a single refinery to the status of a national declaration of a purportedly new enforcement policy. . . . What is clear is that EPA’s interpretation of its own regulation was well within its discretion . . .

statutory authority, and wholly consistent with how the courts have directed EPA to apply the NSPS program," EPA says.

EPA adds it is "unnecessary" to go through notice-and-comment rulemaking to issue a single AD, "regardless of whether others may be concerned that the rationale delineated for EPA's project-specific conclusion might have some application in other circumstances. Indeed, such a requirement would quickly destroy the AD program."

But the first industry source calls that a "bogus argument" because OECA routinely cites ADs as evidence to bring enforcement actions. OECA says, "You should have known because we publicly issue these determinations that you have access to, so you should know a similar project also triggered" major modification requirements, the source says.

The court's pending ruling comes as EPA is expected to finalize this spring a revised refinery NSPS that broadens the definition of modification, particularly as it pertains to flaring, but does not go as far as the AD being challenged, the industry sources say. The agency proposed the NSPS changes in December 2008. If the AD stands, "90 percent of flares out there will be subject to NSPS limits, which will require major capital improvements," the first source adds.

An EPA spokeswoman declined to comment, while the industry sources say there are no ongoing settlement talks aimed at resolving the litigation ahead of the ruling.

A third industry source notes that the D.C. Circuit previously rejected EPA's motion to dismiss but adds it is unclear whether the court's decision to cancel the oral argument helps industry's case. -- *Dawn Reeves*

EPA Air Advisers Doubt Agreement On Novel BACT Approaches For GHGs (*Inside EPA*)

2/5/2010
EPA's air advisers are expressing serious doubt that they will be able to reach agreement on any "out of the box" unconventional approaches to best available control technology (BACT) reviews for greenhouse gases (GHGs), after the advisers failed to reach broad consensus on how to apply conventional BACT reviews to address GHGs.

The climate change workgroup of EPA's Clean Air Act Advisory Committee (CAAAC) Feb. 2 and 3 met in Arlington, VA, to discuss its recent report to EPA that backs the use of the traditional BACT process for GHGs but fails to reach consensus on key issues, including how to assess fuel switching and efficiency in the process. BACT is the technology standard that facilities must meet in areas that are in attainment with agency air standards.

The group's failure to agree on many issues in the first phase report punts a number of key issues back to EPA (*see related story*). After releasing the initial first phase of the report which focused on conventional BACT, the group will now turn its attention to a second approach that will look more closely at unconventional approaches.

However, members of the committee are expressing serious concerns that they will struggle to reach any consensus in the second phase report. Bill Becker of the National Association of Clean Air Agencies (NACAA) said the panel failed to agree on the "in the box issues" addressed in the first phase report, and so stands little chance of resolving the "out of the box" approaches that it would consider in the second phase of the committee's discussions.

Among the novel approaches -- not currently used in the BACT process -- that the group may weigh are the use of increased energy efficiency or demand reductions at units to qualify as BACT, whether emissions averaging or trading can be BACT for GHGs, and whether there is a need for a new approach to conducting BACT reviews as applicable to GHGs in order to promote "innovative" control technologies, according to the interim phase one report that the CAAAC climate workgroup circulated at the meeting.

The panel will next week submit to EPA its ideas for what the group should consider in the second phase, sparking debate over the scope of the review.

EPA and NACAA's Becker at the meeting pushed for a small number of issues to be considered -- fewer than seven or eight -- provoking a vigorous protest from other advisers concerned that the agency would dictate which techniques should be considered. "We are advisers and it is our job to advise," noted one industry representative, defending the right of panelists to include issues as they see fit as they conduct the second phase review.

EPA and Becker conceded in return that the list of ideas could include both EPA's preferred options, and some favored by industry, as long as it remains short enough to manage.

EPA is under intense time pressure to issue guidance on what constitutes BACT for GHGs as it is expected to issue a rule next month to regulate GHG emissions from automobiles. Under the Clean Air Act, that will trigger a duty for EPA to issue GHG rules for stationary sources. The agency intends next month to also finalize a "tailoring" rule establishing the threshold for applying first-time BACT requirements for some GHG sources. But there is lingering uncertainty about what constitutes BACT for GHGs, prompting EPA to seek the panel's advice.

One industry representative at the meeting warned that if EPA's advisers and the agency do not quickly clarify the permitting situation, it could ultimately undercut President Obama's aim of creating millions of jobs and associated economic growth, by stalling investment in new GHG control technologies. -- *Stuart Parker*

Texas Emissions Report May Aid Bid For Strict Oil, Gas EPA Air Rules (*Inside EPA*)

2/5/2010
Texas' environmental agency has released a report finding that emissions from some oil and gas production in the state exceed Texas' limits for short and long-term exposure to air toxics and other pollutants, which could aid activists' bid for strict Clean Air Act rules for the facilities.

The Texas Commission on Environmental Quality (TCEQ) issued a report Jan. 27 compiling data from monitoring sites in the Barnett Shale, the area leading the United States in the fast-growing gas production method from such deep and fuel-rich shale formations. The state began collecting data last year on emissions of nitrogen oxides and volatile organic compounds (VOCs) and screening for hydrogen sulfide and carbon disulfide at five counties in the Barnett Shale area. *The report is available on InsideEPA.com.*

The report found two sites where the ambient concentration of benzene -- a VOC -- exceeded TCEQ's short-term health-based "comparison value" of 180 parts per billion (ppb), and the agency is recommending an immediate reduction in ambient levels at those sites. TCEQ also found that 21 sites monitored exceeded the long-term comparison levels of 1.4 ppb, and the state in its report recommends more monitoring at those sites.

The findings could bolster calls by environmentalists to close "loopholes" in the Clean Air Act, which they say allows gas drilling companies to operate without stringent air toxics limits.

EPA Moves Closer To Strict Emissions Limits For Stationary Engines (*Inside EPA*)

2/5/2010
Despite widespread opposition from industry, EPA is moving closer to setting strict new emissions standards for two classes of stationary engines that are widely used in construction and emergency equipment at stationary sources.

The agency late last month sent to the White House Office of Management & Budget its final rule setting strict new air toxics standards for gas- and diesel-fired reciprocating internal combustion engines that are located at stationary sources, a rule that the agency is under court order to complete by Feb. 10.

The final rule is expected to use a so-called pollutant-by-pollutant method that sets an emissions floor for the entire category based on the best performing sources of each individual air toxic emitted by a source, an approach that industry charges creates a "Franken plant" with emissions standards that no single source can ever achieve.

At the same time, the agency appears to be making progress in its talks with the American Petroleum Institute (API) over the group's long-stalled litigation challenging a related rule that would set new source performance standards for stationary internal combustion engines.

API lawyers recently told a court reviewing the suit -- *American Petroleum Institute v. EPA* -- that it is preparing a settlement proposal and will soon launch two new studies of engine emissions, "the results of which may cause API members to modify or supplement the concerns they have about the final rule." An API source is hopeful that the case, now before the U.S. Court of Appeals for the D.C. Circuit, will be settled by the parties soon, though the source says that no settlement is "imminent."

EPA Calls Vacatur Of Air Toxics Waiver Wrong But Resists Court Review (*Inside EPA*)

2/5/2010
EPA says that a key appellate court erred in vacating a long-standing exemption to general air toxics rules during periods of startup, shutdown and malfunction (SSM), when emissions can spike significantly and are difficult to control, but is nevertheless urging the Supreme Court to decline an industry petition seeking to overturn the lower court ruling.

"Because the practical significance of the question presented in the petition for *certiorari* is slight, and because EPA is taking appropriate steps to minimize any disruption that might be caused by the court of appeals' merits decision, review by this Court is not warranted," the Solicitor General told the high court in a Jan. 27 brief filed on EPA's behalf. *Relevant documents are available on InsideEPA.com.*

At issue is a 2008 ruling, *Sierra Club v. EPA*, from the U.S. Court of Appeals for the District of Columbia Circuit that struck down EPA's 1994 rule exempting emissions during industrial SSM events from enforceable air toxics emissions limits. The SSM exemption was contained in the general provisions of EPA's air toxics program and was either incorporated by reference or written into specific sectors' national emission standards for hazardous air pollutants.

But the appellate court held that EPA had "constructively reopened" the judicial review period for the rule when the agency altered the regulatory context by scrapping related requirements meant to limit the scope of the exemption (*Inside EPA*, August 14).

Industry petitioners say the ruling may open up other long-standing agency rules to judicial review via a subjective test.

Since the court ruled, EPA has encouraged industry to enter into sector-by-sector orders that impose limits on “upset” emissions during SSM periods but also aid industry compliance. The agency has also begun to revise sector-specific air toxics rules to clarify compliance obligations during SSM periods.

While two industry sectors are challenging EPA’s interpretation of the vacatur in court, agency lawyers are in negotiations with the plaintiffs. EPA last month moved, unopposed by industry plaintiffs, to stay two suits over the agency’s interpretation of the court vacatur, citing ongoing “discussions” and the potential resolution of the petitioners’ concerns.

The agency on Jan. 21 filed a joint motion with the petitioner in the case *American Forest & Paper, Inc. v. EPA* to stay the case for 90 days, a motion which is still pending. On Jan. 13 the agency filed a joint motion with the petitioner in a similar case, *The Aluminum Association v. EPA*, and the court granted that motion Jan. 15.

But in broader concerns outlined in the Supreme Court petition, industry representatives say the vacatur significantly alters the standard courts use when deciding whether plaintiffs can target a rule that was promulgated years prior to their challenge.

A coalition of industry groups, led by the American Chemistry Council, filed an Oct. 22 petition for *certiorari* arguing that the D.C. Circuit’s application of the constructive reopening doctrine violates the Clean Air Act, as well as principles of administrative procedure, and creates a circuit split on the issue.

The Chamber of Commerce in an *amicus* brief filed Nov. 29 reiterated that point, saying the ruling creates uncertainty for the regulated community by reducing the ability for businesses to make long-term plans to comply with rules. “The D.C. Circuit has created a subjective test with no clearly defined parameters for the agency, the public, or industry to determine when an agency action is ‘final,’” according to the brief.

In its Jan. 27 brief, EPA generally agrees with industry that the appellate court erred in its application of the “constructive reopening” test, which the D.C. Circuit first used in 1996. The test has “some hypothetical potential to cause confusion” since the standard for when “constructive reopening” has occurred is less clear than when rules are actually reopened, the agency’s brief says.

But the agency says the high court should decline review because plaintiffs and the court have only very rarely invoked the doctrine since it was first used in 1996; that the industry petitioners have not presented “sound reason” that the court would apply the doctrine more frequently in the future; and that subsequent case law since the 1996 ruling indicates the court will continue to exercise restraint in applying the doctrine at issue.

“Although the court of appeals erred in invoking the ‘constructive reopening’ doctrine to find Sierra Club’s attack on a 1994 regulation timely, the petition should be denied,” according to the EPA brief.

Planned Calif. power plant would be nation's first with GHG limits (*Greenwire*)

Robin Bravender and Colin Sullivan, E&E reporters
02/04/2010
Calpine Corp. is poised to build the first U.S. power plant with federal limits on greenhouse gas emissions in California after clearing a final regulatory hurdle today.

The Bay Area Air Quality Management District granted the Houston-based utility its final air quality permit today, allowing the company to proceed with the planned construction of a 600-megawatt natural gas-fired Russell City Energy Center. The 15-acre project site is in Hayward, just east of the San Francisco Bay.

The Russell City plant will produce 50 percent fewer greenhouse gas emissions than even the most advanced coal-fired plants, Calpine said, and will emit 25 percent fewer heat-trapping gases than the California Public Utilities Commission's standard. Construction on the facility plant is expected to begin later this year.

"We applaud the BAAQMD and Calpine for going beyond existing federal law and being the first in the nation to require an enforceable greenhouse gas limit," said Linda Adams, secretary of the California EPA. "This action furthers efforts at a statewide level to balance our economic needs while meeting our environmental challenges."

The Prevention of Significant Deterioration, or PSD, permit was issued with an eye on greenhouse gas restrictions set to be implemented in California in less than two years. The state's Air Resources Board is still in the process of putting together rules for a cap-and-trade market intended to help cut greenhouse gases to 1990 levels by 2020; that market goes live Jan. 1, 2012.

Utilities like Calpine will most likely be participants in that market, though it is unclear how permits issued before the advent of the market might be counted under a regulated regime. Calpine is also promoting the project as a means to help achieve the state’s 33 percent renewable power standard by 2020, claiming gas-fired plants would back up intermittent sources like wind and solar. So-called peaker plants, which only run when demand is highest, are often older and powered by coal.

Calpine spokeswoman Norma Dunn said the company intends to run the Russell plant as baseload generation, selling its power to Pacific Gas & Electric Co. Terms of that deal were not disclosed. Dunn has not replied to questions asking how a baseload plant could be considered "back up" power to wind and solar.

The Calpine permit is coming against the backdrop of rising political pressure to suspend California's climate law, A.B. 32. Voters will most likely get to decide for themselves this fall whether climate regulations should go forward, as opponents of A.B. 32 are in the process of gathering signatures to place on the November ballot a measure that would tie the law to high unemployment levels. If the measure makes it onto the ballot, and voters approve it, California could see its climate law delayed until unemployment dips below 5.5 percent.

Calpine is an active player in the renewable power industry in California. The company owns and operates the Geysers in Sonoma and Lake counties in Northern California, which is the largest complex of geothermal power plants in the world.

Precedent?

Environmentalists hailed the development as a signal that steep reductions in utilities' greenhouse gas emissions can be made under existing federal air laws, while some opponents insist that the Clean Air Act is an inappropriate tool for tackling global warming emissions.

"It's an example of what is possible," Sierra Club chief climate counsel David Bookbinder said. "Calpine is leading the way and showing how it's possible to generate all the electricity that America needs with half the greenhouse gases."

U.S. EPA is expected to soon begin regulating greenhouse gas emissions from stationary sources under the Clean Air Act. The agency is planning to finalize standards next month to limit automobile emissions of the heat-trapping gases, which would automatically trigger permitting requirements for industrial sources. EPA is planning to require only the largest stationary sources to install greenhouse gas controls but has not yet issued guidance about what pollution controls will be required for those facilities.

"This could become an important precedent," Clean Air Watch President Frank O'Donnell said of the Calpine permit. "It shows that the current Clean Air Act can be used to limit greenhouse gas emissions from power plants."

But Scott Segal, an industry attorney and director of the Electric Reliability Coordinating Council, said existing clean air permitting laws are inappropriate for regulating greenhouse gases.

"As a general proposition, we believe that the use of permitting conditions to advance a CO2 regulatory agenda is an inflexible mechanism that is likely to have a number of unintended consequences," Segal said.

By limiting greenhouse gases through air permits, Segal said, facilities located in other regions of the country -- including coal-rich areas -- would be at a disadvantage. "There is no mechanism to either contain cost or allow for trading if you use permit conditions as a basis for regulating CO2," he said.

Rural Utah counties sue EPA over inclusion in cleanup plan (*Greenwire*)

02/04/2010
Utah's Tooele and Box Elder counties have sued U.S. EPA in federal court, saying they do not belong on the list of regions considered to be exceeding the Clean Air Act's particulate matter limits.

The rural counties, along with three local cities and Brigham City, Utah-based ATK Launch Systems Group, protested their inclusion in EPA's air cleanup plan for the Wasatch Front because their pollution levels are typically lower than the more-developed counties included in the plan.

Amanda Smith, director of the state's Department of Environmental Quality, said state officials are using computer modeling to examine pollution levels and develop a strategy to bring the state into compliance with the Clean Air Act. She said the state's findings might indicate that Tooele and Box Elder counties should be removed from the list of "nonattainment areas."

"If the data at the end of the day shows those areas should not be included," Smith said, "then we will petition EPA for their removal."

The counties filed suit in the U.S. Circuit Court of Appeals in both Washington, D.C., and Denver. It has not yet been decided where the case belongs (Judy Fahys, *Salt Lake Tribune*, Feb. 3). **– GN**

BUDGET
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Despite Cut, EPA FY11 Budget Targets Increases For State Aid, GHG Rules (*Inside EPA*)

2/5/2010
President Obama's proposed fiscal year 2011 budget for EPA would cut the agency's funding modestly from roughly $10.3 billion to $10 billion, but would increase spending for state assistance programs, reflecting the administration's push to help state governments deal with widening budget gaps amid a sputtering economy.

Despite the overall decline in agency funding, the proposed budget directs spending for implementing core regulatory efforts, including $43 million to develop and implement a

slew of Clean Air Act rules to reduce greenhouse gas (GHG) emissions. *Relevant documents are available on InsideEPA.com.*

The proposed budget will likely be a disappointment to a coalition of environmentalists that last week released its funding priorities for the agency, seeking $1.5 billion in additional funds for various air, waste, water, toxics and other programs. EPA union officials were also pushing for a budget increase. The proposal could also rile Republicans who are seeking to “defund” EPA as a way to limit climate change rules and other controversial regulatory initiatives.

The budget was submitted Feb. 1 to Congress, where the House and Senate will craft their own appropriations bills for EPA that may vary significantly from the president’s requested funding level for the agency. President Obama’s overall FY11 budget request for the United States is $3.8 trillion.

The proposal would slightly increase funding for a number of EPA programs, including almost $1.3 billion for the state and tribal assistance grant (STAG) fund that supports states in implementing agency programs. The requested level is a 14-percent increase from the FY10 enacted level, and includes a proposed $58 million increase for air quality management grants. States have repeatedly pushed for big boosts to the account, which funds work including monitoring, modeling, enforcement, and drafting plans for meeting EPA national air standards.

The proposal also requests $43 million in new funding for regulatory initiatives to control GHG emissions under existing Clean Air Act authorities. The president requests $21 million -- an increase of $4 million over FY10 enacted levels -- to implement EPA’s GHG registry that will provide data to serve as the basis for climate policy.

The requested funds include a boost to the STAG account that would give $25 million to aid states in implementing the agency’s pending rule on requiring GHG limits in new source review and Title V operating permits, and $7 million for EPA to develop new source performance standards to cut GHGs from a “few categories” of major stationary sources. It also requests an increase of $6 million to support rules to reduce GHGs from mobile sources.

The proposal reiterates the president’s support for a “comprehensive, market-based climate change policy” to cut U.S. GHG emissions more than 80 percent below 2005 levels by 2050, and a near-term target in the range of a 17 percent reduction by 2020. President Obama’s FY10 budget proposal for EPA sought slightly different reductions in GHG emissions of 14 percent below 2005 levels by 2020 and 83 percent below 2005 levels by 2050.

In addition to the $25 million proposed to help states conduct GHG permitting activities, the budget says it is boosting the STAG account because it “recognizes state fiscal constraints,” according to an EPA budget summary. As a result, the White House proposes a $45 million increase for state water pollution control grants under STAG,

and $30 million for a new tribal multimedia grant program in STAG targeted at tribes that can implement program requirements on tribal lands. The White House's Web site also includes a map detailing the infrastructure and other benefits the budget will bring to the states.

EPA's brownfields account that provides funds for redeveloping contaminated land would get an increase from $100 million in FY10 to $138 million in FY11. "To stimulate economic growth and job creation in economically distressed areas, the budget provides a substantial increase for the brownfields program to integrate area-wide planning and environmental remediation activities," according to the White House's budget proposal.

Some programs face proposed cuts, including a modest reduction to the agency's operating budget -- which funds most of its core research, enforcement and regulatory work -- from $3.94 billion in FY10 to $3.84 billion in FY11. Still, that level is higher than the $3.28 billion operating budget the agency received in FY09.

EPA's clean water and drinking water state revolving funds (SRFs) also face proposed cuts under the president's outline, with the budget seeking $2 billion for the clean water SRF in FY11, a drop from the FY10 level of $2.1 billion. The drinking water SRF would be cut from $1.39 billion in FY10 to $1.29 billion in FY11.

The SRFs provide low-interest loans to communities, with repayments and interest on those loans recycled back into the program. The budget notes that the SRFs continue to generate funding for new loans as interest and principal payments are returned to the program, producing approximately $5 billion in repayments each year. "As the funds have grown, the need for federal capitalization will decline over the next decade," the budget says.

EPA intends in FY11 to pursue reforms to the SRFs to "improve the long-term financial, managerial, and environmental sustainability" of the accounts, the proposal says. As part of that strategy, federal funds provided through the SRFs will "act as a catalyst for efficient system-wide planning, improvements in technical, financial and managerial capacity, and the design, construction and ongoing management of sustainable water infrastructure."

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

Other programs also face proposed cuts, including a slight drop in the Superfund program from $1.31 billion in FY10 to $1.29 billion in FY11. Other cuts that the president

is proposing include a $20 million reduction in grants to fund clean diesel activities, from $80 million in FY10 to $60 million in FY11. -- *Anthony Lacey*

EPA FY11 Budget Predicts Revenues From Reinstating Superfund Fax (*Inside EPA*)

2/5/2010
President Obama's fiscal year 2011 budget proposal includes detailed projections for how much revenue EPA would receive if Congress reinstates the expired Superfund tax on industry, predicting that the taxes would generate about $1.3 billion in new revenue.

The estimate is consistent with an FY10 budget outline EPA released last year in which the agency assumed the taxes would generate "over $1 billion" in FY11. The FY11 estimates released by the White House Office of Management & Budget Feb. 1 are somewhat more detailed compared to the FY10 documents, in that they estimate $586 million from Superfund excise taxes and $763 in Superfund corporate income taxes, for a total of about $1.3 billion.

The Obama EPA first formally announced its support for reinstating the long expired Superfund taxes in the FY10 budget proposal, saying the "reinstated taxes will not begin until 2011 after the economy recovers." Environmentalists and congressional Democrats applauded the statement, but recently some activists and Democratic proponents of the taxes have said the effort to reinstate them may be stalled another year.

With the debate on healthcare and climate legislation continuing to lag, it may not be possible to make a concerted effort to push for Superfund legislation before 2011, one activist said recently. The issue may be something that has to wait until "the second half" of Obama's current term in office, the activist said.

CLIMATE CHANGE
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Administration denies contention that the creature won't survive climate change (*Los Angeles Times*)

February 5, 2010 Friday
Home Edition
LATEXTRA; Metro Desk; Part AA; Pg. 3
CALIFORNIA;
U.S. declines to list American pika as endangered;
Administration denies contention that the creature won't survive climate change.

By Margot Roosevelt
The Obama administration Thursday declined to list the American pika as endangered, denying environmentalists' contention that the tiny mountain-dwelling creature will be unable to survive climate change.

The rabbit-like mammal lives on the high slopes of California's Sierra Nevada and in parts of nine other Western states. It is highly sensitive to small changes in temperature.

Larry Crist, a Utah field supervisor for the U.S. Fish and Wildlife Service, which reviewed scientific literature on the pika, said the creature can adapt and find suitable habitat despite a predicted summertime rise of 5.4 degrees Fahrenheit in the animal's current range by 2050.

"We believe that in some low elevations pikas are likely to decline, but we see no danger of extinction through 2050," Crist said, adding that there are no reliable estimates of the creature's total population.

Shaye Wolf, a biologist with the Center for Biological Diversity, a Tucson-based nonprofit group, disputed the finding, saying that "scientific studies clearly show that the pika is disappearing from the American West due to **climate change.**"

A University of Nevada study in 2003 found that six of 25 pika populations in the Great Basin had disappeared because of rising temperatures.

Rising temperatures would shorten the period available for pikas to gather food, alter the plants they eat and shrink the insulating snowpack that protects them from cold snaps in the winter.

Because of their thick fur, higher summer temperatures can cause them to die of heat stroke, according to Wolf.

But the agency's 71-page report on the pika noted that the creature tends to live in loose rock crevices below ground and is thus able to escape the heat in summer and gain insulation in winter.

The pika is thriving at low mountain elevations near Bodie, Calif., at California's Lava Beds National Monument and at Idaho's Craters of the Moon National Monument, it noted. There, pikas have altered their habits "to perform daily activities during the cooler morning and evening periods," it said.

The center sued the agency in 2007 to force it to list the pika as endangered based on the threat of **climate change.** That could have provided leverage for efforts to force reductions in greenhouse gases from power plants, cars and factories, which are trapping heat in the atmosphere.

If listed, the pika would have been the second animal to gain federal protection because of **climate change.** After court battles, the Bush administration in 2008 listed the polar bear as a threatened species because of **global warming** that has melted ice in Arctic waters.

Last year, the Fish and Wildlife Service denied endangered status to the spotted seal, which environmentalists also view as threatened by melting Arctic ice.

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Species feel the squeeze of environmental change (*USA TODAY*)

February 5, 2010 Friday
FIRST EDITION
NEWS; Pg. 4A
No higher ground for butterflies;
Species feel the squeeze of environmental change
By Brian Winter

A study of beleaguered butterflies in California provides some of the best clues yet as to how other animals may react to climate change, scientists say.

The unprecedented, 35-year analysis of butterfly populations in the Sierra Nevada details how several species are fleeing to higher elevations to escape warming temperatures.

Those butterflies that already live on mountaintops and can't adjust to the heat have "nowhere else to go but heaven," says Arthur Shapiro, a biologist at University of California-Davis who collected the data.

Butterflies have long been regarded as an early warning indicator for **climate change.** Their short life cycles and high sensitivity to temperature make them especially vulnerable, says Matthew Forister, a biologist at the University of Nevada-Reno and the study's lead author.

"Like polar bears, these high-elevation butterflies were already living in extreme environments, and now they don't have any options" for escape, Forister says. He says butterfly populations have always shifted over time, but the destruction of their habitat has occurred at an accelerated pace in recent years because of urbanization and warming temperatures.

"Their environment is changing so quickly that they just can't cope," Forister says.

The study, published last month in the journal Proceedings of the National Academy of

Sciences, tracked 159 species of butterflies at 10 locations. It's one of the best compilations of data on how any species has reacted to environmental changes in recent decades, says Gary Langham, lead scientist in California for the National Audubon Society, a conservation group.

A separate study published in September in Biology Letters said **climate change** was one possible explanation for a sharp decline in female monarch butterflies in the eastern United States and Mexico. British researchers have tracked a decline in several species of butterflies since the 1960s.

"What's happening to butterflies is an indication of what's happening, and what could happen, to many different kinds of plants and animals," Langham says. "It underscores the importance of protecting habitats."

Utah legislative panel OKs resolution on climate-change (*Deseret News*)

By Amy Joi O'Donoghue
Deseret News
Published: Thursday, Feb. 4, 2010 9:54 p.m. MST
SALT LAKE CITY — Citing cataclysmic impacts to the economy — from ranching to mining to small-business interests — a legislative committee Thursday threw its support behind a resolution urging the U.S. Environmental Protection Agency to halt its carbon-dioxide reduction policies.
"We are responsible to look at the big picture," said Rep. Kerry Gibson, R-Ogden, sponsor of the measure. "The economy is as important as the environment."

Fueled by concerns over devastating impacts to Utah's farmers, ranchers, mining industry, businesses and consumers, HJR12 is intended to send a message to the federal government that the regulation of carbon dioxide as a greenhouse gas is fraught with economic impracticalities and based on unproven global warming theory.

"Sometimes when we don't have all the answers, we need to have the courage to do nothing," said Rep. Mike Noel, R-Kanab, arguing forcefully on behalf of the resolution. Making reference to the medical profession's Hippocratic oath, Noel said, "As policymakers, we should first do no harm."

The cornerstone of concern is the "endangerment finding" by the EPA that carbon dioxide constitutes a greenhouse-gas emission and by extension falls under the purview of the agency to be regulated under the Clean Air Act.

Critics of that practice, such as the National Farm Bureau, have gone into a tailspin, fearful that ranching and farming activities will fall under the agency's hammer.

Randy Parker, chief executive officer of the Utah Farm Bureau, said such regulation would be "crippling" to Utah's agricultural industry.

"Agriculture is being regulated and taxed to death because of this mentality," he said. "We are at the breaking point. … The cost of producing food in this country is on the verge of being unsustainable for the agricultural industry."

Explicit in the resolution is the dismissal of global warming as a sound phenomenon and the assertion that the premise has given rise to a climate-change "gravy train" supported by an annual $7 billion in federal grants. At the same time, the resolution states, manipulating alarmists thwart the voices of skeptics.

"We seem to have lost our common sense in some of these matters," said Gibson, a dairy farmer from Weber County. "People pushing this squelch all the voices of opposition."

Supporters of the resolution pointed out that there are similar measures being introduced and discussed in the halls of Congress. Mike Peterson, with the Utah Rural Electric Association, said the Clean Air Act was never intended as a vehicle to regulate carbon dioxide.

Even one of its crafters, U.S. Rep. John Dingell, D-Michigan, has said the regulation of carbon dioxide as a greenhouse gas by the EPA would constitute a "glorious mess," Peterson said.

Rep. Phil Riesen, D-Salt Lake, was the lone dissenter on the committee and disapproved of the resolution, saying steps need to be taken now to preserve the environment for generations to come. Joining in his opposition was a University of Utah engineering professor, who in testimony got caught up in a confrontational debate with Noel over carbon dioxide and its classification as a pollutant.

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CORRECTION

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Correction (*New York Times*)

February 5, 2010 Friday
Late Edition - Final

Section A; Column 0; Metropolitan Desk; Pg. 2
Correction

An article on Thursday about an Obama administration initiative to increase production of biofuels misstated the projected decrease in annual oil consumption if the nation meets its biofuels target by 2022. It would fall by 328 million -- not billion -- barrels, according to the Environmental Protection Agency.

URL: http://www.nytimes.com

ENVIRONMENTAL JUSTICE
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Agencies Take Small Steps To Increase Focus On Environmental Justice (*Inside EPA*)

2/5/2010
Obama administration officials are taking some small steps toward increased consideration of environmental justice in federal decisions but are not yet taking the bigger steps activists say are needed to address historical discrimination resulting from environmental decisions in poor and minority communities.

Over the past few weeks, EPA and other administration officials have made a series of public announcements indicating a stronger commitment to consider environmental justice issues in decision making. They include an EPA Region IX announcement to investigate its actions at a California landfill and a tour led by agency Administrator Lisa Jackson to highlight the impact of harmful environmental decisions on several Southern communities.

But the administration has not yet committed to the formal inquiry into the agency's actions in many Southern communities that many activists are seeking.

The agencies have also been taking a similar approach in private. During a Feb. 2 meeting, EPA and other top officials promised to pursue a coordinated response to activists' calls for the agencies to make environmental justice a key consideration in addressing mountaintop mining operations but stopped short of committing to the strict equity approach for Appalachia the activists are seeking (*see related story*).

“As a reflection of the importance of [environmental justice] concerns, the agencies are working very closely on [environmental justice] issues arising in the Appalachian coalfields in general, and on a response to the [activists’] petition, in particular,” an EPA source says.

And the agency has launched a landmark review of the environmental justice impacts of its definition of solid waste rule -- which exempts some waste disposal from strict environmental controls -- but some sources say the methodology EPA has crafted could underestimate the rule’s impacts.

Overall, “we feel a cautious optimism,” says an environmental justice advocate in California. “I can’t say there’s trust, because for so many years the public has been polluted and poisoned with the implicit approval of EPA.”

Jackson, who has long vowed a commitment to environmental justice issues, suggested recently that the gains activists are seeking may take time and effort to achieve. “The inauguration of the first African American president, and my confirmation as the first African American Administrator of this Agency, has begun the process [of] change. But as we all know -- and have certainly seen in the last 12 months -- change takes work. Progress takes a time and struggle. And it’s going to take the same thing today to keep us marching forward,” she told EPA’s Conference on Environmental Justice, Air Quality, Goods Movement and Green Jobs Jan. 25 in New Orleans.

In her speech, Jackson reiterated her past approach that addressing environmental justice is part of a broader effort to sell environmentalism to a wider audience, noting that one of her recently issued priorities for 2010 includes “Expanding the Conversation on Environmentalism and Working for Environmental Justice.”

Jackson has also urged environmental justice advocates not to expect the administration to grant all their requests. Early in her tenure in 2009 she told a conference of environmental justice activists opposed to a cap-and-trade system to address greenhouse gas emissions that while she and the groups “may not always agree,” their calls “are being heard.”

While activists welcome the initial steps, many say that more is needed. One advocate says the decision by Region IX Administrator Jared Blumenfeld to investigate the agency’s decisions at a landfill in Kettelman City, CA -- where a cluster of birth defects among poor migrant workers has raised environmental justice concerns -- stands in contrast to Region IV, which has so far not agreed to activists’ calls to investigate a history of inequitable decisions.

Advocates have long argued that Region IV and the state environmental agencies it oversees have allowed minority and economically disadvantaged communities to bear the brunt of pollution problems in the area, most recently by allowing coal ash that spilled from a Tennessee power plant in 2008 to be disposed near an environmental justice community in Alabama.

The Region IX decision shows that some regions are much more progressive than Region IV, the source says. The difference between regions and the lack of action so far in Region IV show the need for a push from Washington to overcome problems in the South, just as occurred in the civil rights movement, the source says.

The source praised Jackson's decision to tour environmental justice sites in EPA regions III and IV with members of the Congressional Black Caucus. The tour, which began in January in Mississippi and will include stops in Georgia, South Carolina and Maryland, sends a signal to communities that the administrator cares enough about the issue to take a first hand look at their situation, the source says.

The tour could also uncover information to lend support to advocates' long-standing calls for a formal EPA Inspector General or Government Accountability Office investigation into the region's equity record, the source says. While Region IV is conducting a preliminary investigation of the issue, community members are concerned that the same problems that have plagued the region's environmental efforts will also plague their investigation, the source says.

Meanwhile, the California activist says Region IX's decision to investigate the Kettelman City landfill could serve as a template for EPA's treatment of environmental justice communities elsewhere. "It is a model, it is a test case, it is is a litmus test," the source says.

However, the source warns that if EPA issues a permit for the waste disposal facility in spite of Blumenfeld's attention to the issue, the agency will "lose all credibility." -- *Jonathan Strong & Kate Winston*

FUEL

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Panel rejects ethanol funds (*Los Angeles Times*)

February 5, 2010 Friday
Home Edition
LATEXTRA; Metro Desk; Part AA; Pg. 7
Panel rejects ethanol funds;
Southland group says no to $11 million in stimulus money to set up fueling stations.
By Catherine Saillant
A regional panel Thursday turned down nearly $11 million in federal stimulus dollars targeted to build 55 ethanol fueling stations across Southern California, saying it had policy concerns about ethanol as an alternative to gasoline.

Corn-based ethanol causes more harm than good for the environment because it has to

be trucked from farms in the Midwest, said council members of the Southern California Assn. of Governments.

Several also voiced concern that the council's usual process for submitting grant applications had not been followed, and that the funds would be contracted to a single recipient, San Diego-based Pearson Fuels.

"We're saying no to money from Washington," said Thomas Buckley, a Lake Elsinore representative. "It probably doesn't happen too often."

Paul Wuebben, a clean fuels officer for the South Coast Air Quality Management District, urged the council to accept the dollars. Ethanol is not perfect, he said, but its wider use would reduce dependence on gasoline and remove pollutants from the air.

About 500,000 vehicles in California are equipped to run on the ethanol blend that would have become more widely available if the stations were built, Wuebben told the panel.

He called the panel's decision a "major lost opportunity for the region." The infrastructure created by the ethanol stations could evolve over time to accommodate fuels made from other stocks. Stations could also be adapted for electric/flexible-fuels hybrid vehicles that are expected to become more popular on the market, Wuebben said.

Mike Lewis, chief of Pearson Fuels, said the project is dead without the grants. It would have created 221 jobs, he said. "Dependence on foreign oil is the result of 1,000 little decisions and a few big decisions," he said. "This was a big decision."

The $10.9-million project was at first approved by the regional governments association in November and was set to be administered by Clean Cities, a government-industry coalition sponsored by the Department of Energy.

Thursday's vote came after the association's executive committee asked the wider panel to reconsider its decision. Lewis told council members that the project's fuel, a blend of 85% ethanol and 15% gasoline, would remove 27,000 tons of greenhouse gases from the air and eliminate the need for 700 million gallons of petroleum.

But a majority of the panel could not be swayed.

"We agree to reduce dependence on foreign oil," said Keith Millhouse, a Moorpark representative and chairman of the Metrolink governing board. "This methodology, while well intended, is a bad way to go."

Last year there were 1,950 fueling stations nationwide offering so-called E-85 ethanol fuels. In the six-county Southern California region, there are six.

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Obama Calls For Support In Promoting Clean Fuels (*New York Times*)

February 4, 2010 Thursday
Late Edition - Final
Section B; Column 0; Business/Financial Desk; Pg. 3
Obama Calls For Support In Promoting Clean Fuels
By JOHN M. BRODER
WASHINGTON
President Obama moved on Wednesday to bolster the nation's production of corn-based ethanol and other alternative liquid fuels and ordered the rapid development of technology to capture carbon dioxide emissions from the burning of coal.

The president is trying to expand the portfolio of American energy sources to reduce emissions of greenhouse gases, a factor in global warming, and spur advances in alternative technologies. Last week he expressed support in his State of the Union address for increased generation of nuclear power and offshore drilling for oil and gas.

Mr. Obama's motives are environmental, economic and political. He is trying to address climate change by replacing dirty fuels with cleaner sources, jump-start an American clean-energy industry, reduce dependence on foreign oil and attract Republican votes for legislation to do all three.

Efforts to pass a broad energy and climate bill remain mired in the Senate, with some senators challenging the notion that the earth is warming.

"Now, there's no reason that we shouldn't be able to work together in a bipartisan way to get this done," Mr. Obama said after opening a meeting with several cabinet officers and a bipartisan group of about a dozen governors to discuss his energy agenda.

"I know that there is some concern about how energy fits together with climate change," he said. "I happen to believe that climate change is one of the reasons why we've got to pursue a clean energy agenda, but it's not the only reason."

"So even if you don't believe in the severity of climate change, as I do, you still should want to pursue this agenda. It's good for our national security and reducing our dependence on foreign oil. It's good for our economy because it will produce jobs."

To that end, the administration announced that it was completing a rule to try to meet a mandate in a 2007 energy bill to produce 36 billion gallons of ethanol and advanced biofuels a year by 2022. The United States now produces 12 billion gallons of biofuels, mostly corn-based ethanol. The country does not have the capacity to triple that production.

The Environmental Protection Agency said that meeting the 2022 standard would reduce oil use by 328 billion barrels a year. To qualify under the biofuels program, the agency said, producers must demonstrate that their fuels produce fewer greenhouse gas emissions than oil does throughout the life cycle -- growing, processing, transport and burning.

The Agriculture Department said it would provide financing to farmers, ranchers and foresters to convert biomass -- farm and forest waste, sugar cane, switch grass and other materials -- into liquid fuels for land, air and sea transportation.

And the Energy Department said it would try to build five to 10 projects by 2016 to capture and store carbon dioxide emissions from the burning of coal.

"Our nation's economy will continue to rely on the availability and affordability of domestic coal for decades to meet its energy needs, and these advances are necessary to reduce pollution in the meantime," said Steven Chu, the energy secretary.

Representatives of the biofuels industry generally welcomed the announcement. But they expressed concern about whether adequate federal support would be available to ensure financing for the plants and pipelines needed to make biofuels competitive with oil. They said that rules on life cycle emissions might be so strict as to favor oil.

URL: http://www.nytimes.com

FEBRUARY 4, 2010, 9:35 A.M. ET

Biofuel Production Falls Far Short of Targets (*Wall Street Journal*)

By RUSSELL GOLD And SIOBHAN HUGHES
The Environmental Protection Agency said Wednesday that it expects the biofuels industry to produce 6.5 million gallons of cellulosic ethanol this year, a fraction of the volume anticipated by Congress.

The announcement suggests that government goals for turning inedible crops into transportation fuel have been unrealistic and too optimistic about the private sector's ability to advance existing technology and finance new refineries for biofuels.

In 2007, Congress had mandated that 100 million gallons of cellulosic ethanol—a fuel additive to gasoline made from switchgrass, sugar cane bagasse and other plants—be blended into the nation's fuels this year. By next year, the mandate was for 250 million gallons, heading up to 16 billion by 2022.

"It is certainly going to be a challenge," said Michael J. McAdams, president of the Advanced Biofuels Association, a trade group that represents companies working on cellulosic ethanol and other technologies.

The failure of the cellulosic ethanol industry to even come close to meeting the mandated goals could give a boost to advocates and lawmakers who believe setting goals for individual fuel technologies is the wrong approach.

Biofuels advocates fault the recession and tight credit conditions in 2008 and 2009 for freezing development. "The economy slowed things down as the starter pistol fired," said Brent Erickson, an executive vice president of the Biotechnology Industry Organization, a trade group that represents several large companies investing in biofuels.

Other problems also cropped up. In April, the EPA said Alabama-based Cello Energy would generate about 70 million gallons in 2010. A federal jury ruled last summer that the company had defrauded investors, but Cello said the ruling had not been entered yet and could be vacated. The EPA said Wednesday that these legal issues had "constrained the company's capital" and revised its forecast to two million gallons.

The EPA also noted that Range Fuels Inc.'s Georgia wood-to-ethanol plant, despite $150 million in federal grants and loan guarantees, would produce only a quarter of the anticipated 10 million gallons. Range Chief Executive David Aldous said he expected to slowly start up the facility in the second quarter.

The agency also issued several new standards about which biofuels meet greenhouse-gas reduction targets and qualify for addition to the nation's motor-fuel supply, determining winners and losers from among a host of crops and production processes.

The winners included sugarcane-based ethanol and cellulosic ethanol, which the EPA said were cleaner than traditional gasoline and would qualify as the sort of advanced biofuels that the 2007 law mandates. The EPA also indicated that some corn-based ethanol plants may be considered clean, provided that they operate using "new efficient technologies."

Currently, corn-based ethanol is the predominant biofuel, but a 2007 law limits the amount of biofuel that may be derived from corn starch.

Lobbyists for the oil industry, which stands to see some of its market displaced by these new plant-based fuels, say they are "deeply concerned" the new rules would raise pump prices.

The EPA's announcement came as a group convened by President Barack Obama outlined a broad agenda Wednesday for ensuring that the country increases the amount of biofuels used in cars, trucks, and airplanes.

The recession has hurt financing for biofuels development, said the President's Interagency Working Group. It also blamed insufficient coordination among government agencies.

Mr. Obama in May created the biofuels working group, led by the secretaries of energy and agriculture and the EPA administrator. He unveiled its report, as well as a new task force to work on clean-coal technology, after meeting a group of governors to discuss energy policy.

"Even if you disagree on the threat posed by climate change, investing in clean-energy jobs and businesses is still the right thing to do for our economy," Mr. Obama said. "Reducing our dependence on foreign oil is still the right thing to do for our security. We can't afford to spin our wheels while the rest of the world speeds ahead."

The president said the clean-coal task force would be charged with figuring out how to deploy affordable technology for reducing emissions from coal on a widespread scale within 10 years. By 2016, he said, 10 commercial demonstration projects should be up and running.

"I am convinced that America can win the race to build a clean-energy economy, but we have to overcome the weight of our own politics," Mr. Obama said.

To boost financing for biofuels, the working group said that research loans and loan guarantees from the energy and agricultural departments "could be targeted more effectively to support the emerging industry."

Developers of next-generation biofuels have complained that Energy Department loan guarantees were difficult to win because the industry's economics didn't fit neatly into traditional project-finance models.

The group suggested that the EPA could lift the limit on the amount of ethanol in the gasoline supply from 10% to 15% or 20% if testing showed the higher blends to be suitable in light-duty vehicles. The EPA has promised to make a decision by midyear.

—Henry J. Pulizzi contributed to this article.

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Gov. Mike Rounds says he pushed for South Dakota needs in energy meeting (*Associated Press*)

Story also appeared: *Los Angeles Times*

CHET BROKAW

Associated Press Writer
2:42 PM PST, February 4, 2010
PIERRE, S.D. (AP) — Gov. Mike Rounds said Thursday he pushed for federal action that would help South Dakota develop ethanol plants and wind-generated electrical power when he met this week with President Barack Obama and top federal officials.

Rounds said he urged that the Environmental Protection Agency speed up work on fuel standards that would change the typical ethanol blend from 10 percent to 15 percent, which would increase the use of corn to distill ethanol.

The governor said he also asked that federal agencies consider using existing power lines that serve hydropower plants at Missouri River dams to carry power generated by wind turbines. Projects are being developed to build large transmission lines from wind-power states to Chicago and other cities, but existing power lines could be upgraded in the meantime to carry wind-generated power, Rounds said.

South Dakota has a huge potential to build more wind farms, but many projects are not feasible because they cannot hook up with transmission lines, he said.

"Until we get a way to get that energy to markets, it's not going to happen," Rounds said.

Rounds was one of 11 governors who met Wednesday with the president and top federal officials.

Afterward, the White House released a recommendation for using more biofuels like ethanol. The EPA issued a new rule requiring U.S. companies to produce at least 13 billion gallons of renewable fuels this year, up from about 11.1 billion gallons last year. Congress has set a goal of 36 billion gallons of renewable fuel by 2022.

Obama also announced a new task force to study ways to increase the use of coal to meet U.S. energy needs without increasing pollution that contributes to global warning.

Rounds said U.S. Agriculture Secretary Tom Vilsack, who used to be Iowa's governor, assured him that a part of the renewable fuel standards dealing with land use in other countries will not harm Midwestern ethanol plants.

The rule includes calculations that take into account environmentally damaging land use in other countries, such as clearing land for crops to make up for the loss of U.S. crops when land is shifted to biofuel production.

The EPA has suggested the rule is necessary because as the U.S. refines more crops into biofuel, countries like Brazil may plow up their carbon-reducing forests and grasslands to produce crops for food or fuel.

Vilsack said other language in the rules should protect ethanol plants from the land-use

calculations, Rounds said.

Matt McGovern, state director of Repower America, a group formed by former Vice President Al Gore to promote clean energy, said the president's announcements will help South Dakota develop more jobs in wind energy and give farmers a chance to sell more corn to ethanol plants. South Dakota also would benefit if Congress passes comprehensive legislation on energy and climate change, McGovern said.

Rounds said he also told federal officials that if they move ahead with plans to capture carbon emissions from businesses and power plants, the proposed Hyperion oil refinery in southeastern South Dakota would be a good place to test the technology.

US EPA Updates Renewable Fuel Standards (*Plastemart.com*)

US Environmental Protection Agency (EPA) has updated renewable fuel standards (RFS2), - leading to a major increase in the use of biofuels in the nation's fuel supply. The update mandates that more than 15 bln gal pa of renewable fuels enter US fuel tanks by 2012. As per ICIS, US ethanol and biodiesel companies have commended most of the provisions in the new rule. The new standards will provide an impetus to domestic demand for biofuels refined using current technology and create financial incentives to develop the next generation of biorefineries. Current and prospective ethanol producers require stable federal policy offering market assurances they need to commercialise new technologies. By 2022, RFS2 calls for over 15 bln gal pa of corn-based ethanol, 21 bln gal pa of non-food crop ethanol, 16 bln gal pa of cellulosic ethanol and 1 bln gal pa of biodiesel by 2022. Meanwhile, the National Petrochemical & Refiners Association (NPRA) has been critical of the rule and criticised the EPA for not detailing the rules months ago, while also questioning the science of the new methods. NPRA opines that combining biomass-based diesel volumes from 2009 with 2010 and making portions of the final rule retroactive to 1 January 2010 is unfair.

Factbox: EPA sets 2010 U.S. renewable fuel standard (*Reuters*)

Thu Feb 4, 2010 10:04am EST
(Reuters) - The U.S. Environmental Protection Agency said that ethanol and other renewable fuels must account for 8.25 percent of total gasoline and diesel sales in 2010 to meet Congress' mandate that nearly 13 billion gallons (49.2 billion liters) of renewable fuels be produced this year.

That is lower than last year's 10.21 percent renewable fuel standard that the EPA announced in November 2008.

These rules are separate from the amount of ethanol the EPA now allows to be blended into each gallon of gasoline, which is in most cases 10 percent.

In other rulings:

* The agency lowered the original 100 million gallon cellulosic ethanol output target Congress set for this year to 6.5 million gallons.

* The EPA said it does not think the 100 million gallon target can be met because many of the 30 cellulosic companies it contacted have delayed or canceled their expansion projects.

* In addition, the EPA set the 2009/2010 combined biomass diesel output target at 1.15 billion gallons, which has to be reached by the end of this year.

MEASURING EMISSIONS

The EPA also issued final rules for measuring carbon dioxide emissions from ethanol and other biofuels:

* The renewable fuels standard includes a measure of carbon emissions for biofuels known as indirect land use change.

That method measures emissions that result from land cleared abroad to grow more biofuels or food as a result of large amounts of land being used in the United States to grow feedstock crops for ethanol, such as corn.

Federal law required the EPA to analyze the life cycle greenhouse gas emissions from increased renewable fuel use. The new rules also require some biofuels to meet certain greenhouse gas reductions compared to the gasoline and diesel fuels they replace.

Below are some of EPA's findings on biofuel emissions:

* Ethanol produced from corn starch at a new natural gas, biomass, or biogas fired facility using advanced efficient technologies will meet the 20 percent emission reduction threshold, as required by federal law, compared with the 2005 gasoline baseline.

* Biobutanol from corn starch also meets the 20 percent threshold.

* Biodiesel and renewable diesel from soy oil or waste oils, fats, and greases will meet the 50 percent GHG threshold for biomass-based diesel compared to the 2005 petroleum diesel baseline.

* Biodiesel and renewable diesel produced from algal oils will also comply with the 50 percent threshold should they reach commercial production.

* Ethanol from sugarcane complies with the applicable 50 percent reduction threshold for advanced biofuels.

* Cellulosic ethanol and cellulosic diesel would comply with the 60 percent GHG reduction threshold for cellulosic biofuel.

(Reporting by Ayesha Rascoe and Tom Doggett; Editing by Marguerita Choy)

Corn ethanol, 'clean coal' are winners in Obama energy strategy (*Chicago Tribune*)

February 4, 2010 Thursday
Chicagoland Final Edition
NEWS ; ZONE C; Pg. 14
White House boosts biofuels;
Corn ethanol, 'clean coal' are winners in Obama energy strategy
By Jim Tankersley, Tribune Newspapers
WASHINGTON
The Obama administration gave a boost to the corn and coal industries on Wednesday, announcing a series of moves to accelerate biofuel use and deploy so-called clean coal technology in power plants.

Unveiling the actions in a meeting with energy-state governors at the White House, President Barack Obama said the steps would create jobs in rural areas, reduce foreign energy dependence and curb the emissions that scientists blame for **global warming.**

"It's important for us to understand that in order for us to move forward with a robust energy policy," Obama said, "we've got to have not an either/or philosophy but a both/and philosophy -- a philosophy that says traditional sources of energy are going to continue to be important for a while so we've got to just use technologies to make them cleaner and more efficient."

Most notably, the **Environmental Protection Agency** made final a regulation that could give corn ethanol a much larger share of the renewable fuel market mandated by Congress in 2007. An earlier version of the rule included a controversial calculation -- since reworked by **EPA** scientists -- that would have minimized corn ethanol's role because of concerns about the fuel's overall impact on pollution.

The administration said the **EPA** rule alone would lead to a $41.5billion reduction in oil imports and take the equivalent of 27 million vehicles off the road.

Administration officials also announced a revamped strategy to put the nation on track to meet the congressional mandate of 36 billion gallons of biofuel by 2022, in hopes of fixing a government effort that officials acknowledge has fallen short in its attempts to wean cars and trucks away from fossil fuels and toward crop-based fuels. The nation currently produces about 12billion gallons, mostly from corn ethanol, and the federal government projects the country will not meet the 2022 goal.

And Obama issued a presidential memorandum to speed the development of technologies that capture and store the carbon-dioxide emissions from coal plants, with a goal of bringing five to 10 commercial-scale projects online by 2016.

Many industry groups cheered the decisions, particularly corn-ethanol boosters, who have lobbied hard for an expanded role under the **EPA's** Renewable Fuel Standard.

Under a draft of the regulation released last year, **EPA** scientists determined that corn ethanol led to too much greenhouse gas emissions to qualify as a renewable fuel, effectively limiting its role.

The finding was controversial because it included a scientifically debated calculation of the "indirect" land-use effects of corn ethanol production.

EPA scientists revised their calculations for the final regulation to include new information on crop productivity and a more global view of indirect land use effects, and they concluded corn ethanol produced in the most energy-efficient manner would meet the standard, **EPA** Administrator Lisa Jackson said.

"We weren't trying to appease any particular industry or reach any particular outcome," she said, adding: "Based on what we know now, there is no basis to exclude these fuels."

Some environmental groups praised the **EPA** for continuing to calculate indirect land-use, despite pressure to exclude it.

Indirect land use

When the **EPA** calculates biofuels' environmental impact, it weighs the possibility that growing corn for fuel domestically could spur farmers overseas to cut down trees and plant crops such as soybeans.

Obama announces steps to boost biofuels, clean coal (*Reliable Plant*)

RP news wires

President Barack Obama on February 3 announced a series of steps his Administration is taking as part of its comprehensive strategy to enhance American energy independence while building a foundation for a new clean energy economy, and its promise of new industries and millions of jobs. At a meeting with a bipartisan group of governors from around the country, the President laid out three measures that will work in concert to boost biofuels production and reduce our dangerous dependence on foreign oil.

The Environmental Protection Agency (EPA) has finalized a rule to implement the long-term renewable fuels standard of 36 billion gallons by 2022 established by Congress. The U.S. Department of Agriculture has proposed a rule on the Biomass Crop Assistance Program (BCAP) that would provide financing to increase the conversion of biomass to bioenergy. The President's Biofuels Interagency Working Group released its first report – Growing America's Fuel. The report, authored by group co-chairs, Secretaries Vilsack and Chu, and Administrator Jackson, lays out a strategy to advance the development and commercialization of a sustainable biofuels industry to meet or exceed the nation's biofuels targets.

In addition, President Obama announced a Presidential Memorandum (linked below) creating an Interagency Task Force on Carbon Capture and Storage to develop a comprehensive and coordinated federal strategy to speed the development and deployment of clean coal technologies. Our nation's economy will continue to rely on the availability and affordability of domestic coal for decades to meet its energy needs, and these advances are necessary to reduce pollution in the meantime. The President calls for five to ten commercial demonstration projects to be up and running by 2016.

President Obama said, "Now, I happen to believe that we should pass a comprehensive energy and climate bill. It will make clean energy the profitable kind of energy, and the decision by other nations to do this is already giving their businesses a leg up on developing clean energy jobs and technologies. But even if you disagree on the threat posed by climate change, investing in clean energy jobs and businesses is still the right thing to do for our economy. Reducing our dependence on foreign oil is still the right thing to do for our security. We can't afford to spin our wheels while the rest of the world speeds ahead."

"Advancing biomass and biofuel production holds the potential to create green jobs, which is one of the many ways the Obama Administration is working to rebuild and revitalize rural America," said Agriculture Secretary Tom Vilsack. "Facilities that produce renewable fuel from biomass have to be designed, built and operated. Additionally, BCAP will stimulate biomass production and that will benefit producers and provide the materials necessary to generate clean energy and reduce carbon pollution."

"President Obama and this Administration are strongly committed to the development of carbon capture and storage technology as a key part of the clean energy economy. We can and should lead the world in this technology and the jobs it can create," said Energy Secretary Steven Chu.

"The actions President Obama has taken today will create jobs, slash greenhouse gas emissions and increase our energy security while helping to put America at the leading edge of the new energy economy," said EPA Administrator Lisa P. Jackson. "The renewable fuel standards will help bring new economic opportunity to millions of Americans, particularly in rural America. EPA is proud to be a part of the President's effort to combat climate change and put Americans back to work – both through the new renewable fuel standards and through our co-chairmanship with the Department of

Energy of the Interagency Task Force on Carbon Capture and Storage."

Background on the February 3 announcements:

Renewable Fuels Standard: EPA has finalized a rule implementing the long-term renewable fuels mandate of 36 billion gallons by 2022 established by Congress. The Renewable Fuels Standard requires biofuels production to grow from last year's 11.1 billion gallons to 36 billion gallons in 2022, with 21 billion gallons to come from advanced biofuels. Increasing renewable fuels will reduce dependence on oil by more than 328 million barrels a year and reduce greenhouse gas emissions more than 138 million metric tons a year when fully phased in by 2022. For the first time, some renewable fuels must achieve greenhouse gas emission reductions - compared to the gasoline and diesel fuels they displace – in order to be counted towards compliance with volume standards. To read the rule:
http://www.epa.gov/otaq/renewablefuels/index.htm

Biomass Crop Assistance Program: USDA has proposed a rule for Biomass Crop Assistance Program (BCAP) to convert biomass to bioenergy and bio-based products. USDA provides grants and loans and other financial support to help biofuels and renewable energy commercialization. BCAP has already begun to provide matching payments to folks delivering biomass for the collection, harvest, storage, and transportation of biomass to eligible biomass conversion facilities. To read the rule:
http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ener&topic=bcap

Biofuels Working Group: In May, President Obama established the Biofuels Interagency Working Group – co-chaired by USDA, DOE, and EPA, and with input from many others – to develop a comprehensive approach to accelerating the investment in and production of American biofuels and reducing our dependence on fossil fuels. Today the Working Group released its first report: Growing America's Fuel – a new U.S. Government strategy for meeting or beating the country's biofuel targets. The report is focused on short term solid government solutions supporting the existing biofuels industry, as well as accelerating the commercial establishment of advanced biofuels and a viable long-term market by transforming how the U.S. Government does business across Departments and using strategic public-private partnerships. To read the full report:
http://www.whitehouse.gov/sites/default/files/rss_viewer/growing_americas_fuels.PDF

Presidential Memorandum for a Comprehensive Federal Strategy on Carbon Capture and Storage: Charting the path toward clean coal is essential to achieving the Administration's clean energy goals, supporting American jobs and reducing emissions of carbon pollution. Rapid development and deployment of clean coal technologies, particularly carbon capture and storage (CCS), will help position the U.S. as a leader in the global clean energy race. The President's memorandum establishes an Interagency Task Force on Carbon Capture and Storage to develop a comprehensive and coordinated federal strategy to speed the development and deployment of clean coal technologies.

The Task Force will be co-chaired by representatives of from DOE and EPA and include participants from at least 9 different agencies and offices. The Task Force shall develop within 180 days a plan to overcome the barriers to the deployment of widespread affordable CCS within 10 years, with a goal of bringing five to ten commercial demonstration projects on line by 2016. The plan should address incentives for CCS adoption and any financial, economic, technological, legal, institutional, or other barriers to deployment. The Task Force should consider how best to coordinate existing federal authorities and programs, as well as identify areas where additional federal authority may be necessary. The Task Force shall report progress periodically to the President, through the Chair of the Council on Environmental Quality. To read the full memorandum: http://www.whitehouse.gov/the-press-office/presidential-memorandum-a-comprehensive-federal-strategy-carbon-capture-and-storage

GENERAL

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IBM will inch up heat in new data center (*ComputerWorld*)

Will start at 75 degrees and potentially run at up to 80.6, thanks to sensor technology
Patrick Thibodeau

February 5, 2010 (Computerworld) IBM has opened a football field-size data center in North Carolina it says will rely heavily on outside air for cooling as it turns up the heat inside, gradually.

This new data center, about 60,000 square-feet in the Research Triangle Park N.C., incorporates IBM's latest approaches to energy. It includes thousands of sensors that dynamically monitor temperature, humidity, air flow and circuits all of which is integrated into the building's management and IT systems. The data center will be supporting cloud platforms.

"What we tried to do here is have a data center that is more instrumented, interconnected and intelligent than anything we have done before," said Joe Dzaluk, IBM's vice president of infrastructure and resource management at the Global Technology Services division. The data center will use about 6 MWs of power initially, but is designed to be expanded to 100,000 square feet and 15 MWs.

Among the things the company is doing to reduce energy usage is to adopt latest environmental recommendations by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, which allow the temperature for data center equipment from the old recommendation of 77 degrees Fahrenheit to 80.6, reflecting improvements in equipment design.

The maximum temperature involves certain moisture ranges as well. IBM will start at 75 degrees and inch its way up over time, in part because the data center will have some non-IBM equipment running in it.

The data center will also use outside air to cool radiators and chill water, and the company believes it will be able to take advantage of outside temperatures for cooling more for more than half the year.

Dzaluk said that once measurements are taken he expects the data center will be among the most efficient in the world, with a Power Usage Effectiveness (PUE) ratio of about 1.2 to 1.3. Facebook Inc. recently announced a new data center in Prineville, Ore., that it says it expects a PUE ratio of 1.15.

PUE is the ratio of total facility power, including everything from the cooling systems, UPS, and lighting, to IT equipment power, the load associated with all IT equipment, and the servers and storage.

The PUE rating isn't perfect. David Cappuccio, chief of research, infrastructure at Gartner, said PUE rating doesn't tell you how efficiently someone is running their equipment.

Nonetheless, the U.S. Environmental Protection Agency to be moved up on a method for data center managers to compare their efficiency against industry standards. The EPA has been gathering data from more than 100 companies to develop a benchmarking standard, along the lines of its Energy Star, that may use the PUE or a close relative to assess the power efficiency of a data center. It may be released in April.

Cappuccio said he expects that the EPA standard will increase pressure on data center managers who will likely be asked to explain how they compare with that federal recommendation. That may drive more data center construction business, he said.0

The big vendors, such as IBM, Hewlett-Packard and most recently Dell with its acquisition of Perot System last fall, have been adding capability to meet the data center needs of their clients.

Cappuccio said data center consulting is a line of services that could help could help these companies across their other lines. "If I contracted IBM to help me build a data center and they did a good job, the likelihood that I would use IBM services for something else is pretty high," he said.

Patrick Thibodeau *covers SaaS and enterprise applications, outsourcing, government IT policies, data centers and IT workforce issues for* Computerworld*. Follow Patrick on Twitter at @DCgov or*

HAZARDOUS WASTES

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Broad New ESA Suit Expands Group's Push For EPA To Assess Pesticides (*Inside EPA*)

2/5/2010
The Center for Biological Diversity (CBD) is vowing to file a massive new suit targeting EPA's failure to assess the impacts of 394 pesticides on almost 900 aquatic and terrestrial species protected under the Endangered Species Act (ESA), in a move that the group hopes will overhaul how the agency assesses pesticides' impacts and limit their release.

CBD in a Jan. 28 notice-of-intent-to-sue EPA says the agency must begin consultations with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service about the possible impacts of pesticides on species listed under the ESA. Additionally, CBD says EPA is in violation of the Migratory Bird Treaty Act because pesticides have impacts on species not listed under the ESA but protected under the treaty. The letter says CBD will sue if EPA does not act within 60 days. *Relevant documents are available on InsideEPA.com.*

"It's time for [EPA] to finally reform pesticide use to protect both wildlife and people," CBD said in a statement. "For too long this agency's oversight has been abysmal, allowing the pesticide industry to unleash a virtual plague of toxic chemicals into our environment."

A source with the group says the threatened suit stems from "frustration" with the Obama administration's failure to examine the effects of the pesticides on the listed species. EPA "needs to do the hard work of examining pesticides' effects on each species," the source says. While there is a large backlog of pesticides to examine, the source says there are "shortcuts" EPA could pursue, such as examining similar pesticides or species at the same time.

The threatened suit marks a significant expansion of the group's efforts to force EPA to assess the impacts of pesticides on listed ESA species. CBD sued EPA in 2007 to address pesticide impacts in the San Francisco Bay area, and in December the group filed suit against EPA arguing that the agency did not consider risks to polar bears from pesticides that were able to travel off farms and adversely affect the Arctic food web.

"It was time to focus in on a bigger picture," the CBD source says.

Regional official visits Calif. town near waste dump (*Greenwire*)

02/04/2010
U.S. EPA's Pacific Southwest director visited Kettleman City, Calif., yesterday to see a nearby controversial toxic waste dump and meet with mothers whose babies had birth defects.

Jared Blumenfeld's visit to the city came less than a week after he ordered an internal investigation of his agency's oversight of the waste dump and Gov. Arnold Schwarzenegger (R) directed the state Department of Public Health to launch a comprehensive study of the community's environmental and health issues.

The impoverished community of mostly Spanish-speaking farmworkers is home to the largest hazardous waste facility in the western United States and the only one in the state permitted to accept cancer-causing PCBs.

Community members who have conducted health surveys say at least five of the 20 babies born in the community between September 2007 and November 2009 suffered serious birth defects, among them cleft palates and lips. Kings County authorities say 64 babies were born during that period, and six had birth defects of various kinds.

Many residents of Kettleman City suspect the landfill is causing the defects and adding toxins to the community's air, water and soil.

Political tensions have been on the rise in the city, located halfway between Los Angeles and San Francisco, since the Kings County Board of Supervisors dismissed calls in December for a full investigation into the reported birth defects before approving a proposal to expand the Chemical Waste Management landfill.

"All we want is an investigation. If they had investigated earlier, maybe this wouldn't have happened to all these mothers," said Lizbeth Canales, whose fetus died in August and had heart problems, and clubbed feet and hands.

Another mother of a baby born with a cleft palate said Blumenfeld had suggested the possibility of having "an independent doctor" meet with residents with health problems.

On Tuesday, the state Department of Public Health is expected to release the results of its own comprehensive review of birth defects in the area (Louis Sahagun, *Los Angeles Times*, Feb. 4). **-- DFM**

POLITICAL
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Thursday, February 4, 2010

'Holds' a two-edged sword for Obama (*Washington Times*)

Stephen Dinan and Kara Rowland
President Obama blasted Senate Republicans Wednesday for using "holds," a Senate tactic that delays consideration of nominees - even though as a senator he used the technique to block several of President George W. Bush's appointments.
A year into his tenure, Mr. Obama and his fellow Democrats in the Senate lashed out this week at the long months some nominees have waited to be confirmed by the Senate, saying it's part of their effort to force Republicans to move beyond obstruction and help govern.

Mr. Obama complained that Republican objections have created "a huge backlog of folks who are unanimously viewed as well qualified" but who get held up because a single senator is trying to force the administration's hand on an issue. He said that's the case with Martha Johnson, his nominee to head the General Services Administration.

"Let's have a fight about real stuff. Don't hold this woman hostage. If you have an objection about my health care policies, then let's debate the health care policies. But don't suddenly end up having a GSA administrator who is stuck in limbo somewhere because you don't like something else that we're doing," he said.

But that's exactly what Mr. Obama did in two instances when, as a senator, he blocked all Environmental Protection Agency nominees in late 2005 to try to force release of new rules on lead paint and, a year later, blocked a Federal Aviation Administration nominee to try to force the FAA to decide whether Midwest wind farms would interfere with radar.

In 2007, Mr. Obama also put a hold on Hans A. von Spakovsky, whom Mr. Bush had nominated to serve on the Federal Election Commission. Mr. Obama disagreed with Mr. von Spakovsky's support for allowing states to impose voter-identification requirements at the polls.

Mr. von Spakovsky, who is now senior legal fellow at the Heritage Foundation, said that was funny because federal courts had upheld voter-identification laws in Georgia and Indiana.

"He's the last person that should be complaining about holds being put on nominees, because of the hold he put on me, which he had no reason to put on me other than pure politics," Mr. von Spakovsky said.

In the Senate, a hold on a nominee is a lawmaker's way of saying he or she would object to bringing the nominee to the floor for a vote. If the majority leader insists on bringing the nominee to the floor anyway, a hold can develop into a filibuster, which requires 60 votes to overcome.

The process is so time-consuming that holds are often respected out of necessity.

Faced with that prospect, Democrats are attempting to draw political blood over some of Republicans' holds.

On Tuesday, Senate Majority Leader Harry Reid said Republicans are endangering the country by delaying nominees at the State and Homeland Security departments.

"For political reasons, a handful of Republican senators are standing between these experts and their offices. And that means they are also standing between the American people and their security," Mr. Reid said.

Nominations can be a political hot potato. In 2002 and 2004, Republican senators said Democrats' filibusters of Mr. Bush's judicial nominees were a rallying cry that helped them boost conservative turnout. One senator estimated the judicial nominations issue was worth a couple of percentage points of support in close races.

The Senate is slated to vote on two of those long-stalled nominees on Thursday: Patricia Smith, whom Mr. Obama nominated to be solicitor at the Labor Department and who was approved by a committee on Oct. 7, and Ms. Johnson, the GSA pick, who was approved by a committee on June 8.

In his remarks to Senate Democrats, Mr. Obama specifically called out Republicans' leader, Sen. Mitch McConnell, saying he'll talk with the Kentucky Republican about ways to overcome holds.

But McConnell spokesman Don Stewart said the president's encouragement would be better directed at Democrats.

"We don't schedule the votes on the floor. The majority schedules the votes on the floor," Mr. Stewart said. "They chose to have this vote now, rather than six months ago."

When the White House was asked about Mr. Obama's own history of holds, spokesman Bill Burton didn't respond directly, instead repeating the president's call for action.

"What I'm saying is that people are holding up nominees who are actually really popular and that the United States Senate would support, given the opportunity. And we need a full team in order to take on the things that we've got going here," Mr. Burton said.

SUPERFUND

February 4, 2010

EPA still needs permissions for Evansville cleanup (*Associated Press*)

Story also appeared: *Louisville Courier-Journal*

EVANSVILLE, Ind. — The federal government has yet to get permission from more than 50 property owners for a project to remove contaminated soil from an Evansville neighborhood starting next month.

The $5 million cleanup scheduled to begin in March in the city's Jacobsville neighborhood is expected to take four to five years. A contractor will remove lead- and arsenic-contaminated soil in the yards of about 350 homes and replace it with clean soil. The tainted soil will be disposed of at a regulated landfill.

However, the U.S. Environmental Protection Agency, which is overseeing the Superfund project, has yet to get access agreements from 52 of the property owners, said Dave Novak, community involvement coordinator for the agency. Sixteen property owners have denied permission, he said.

“For the most part, these are properties for which we haven't found the owners or they are vacant lots. Some are in foreclosure,” said Mary Tierney, the EPA's project manager for Jacobsville.

She said a project manager for contractor Environmental Restoration of St. Louis is expected to visit Evansville as early as next week.

EPA contractors cleaned up 83 of the neighborhood's most contaminated yards in 2008 using $900,000 in emergency funding.

The cleanup involves carefully removing the contaminated topsoil down to about 12 inches and replacing it with clean soil. Any bushes, flowers or fences removed or damaged will be replaced, and the clean soil will be seeded or covered with sod. Cleanups of individual properties should take one to two days and will be done block by block, Tierney said.

The EPA is looking for landscapers to assist in restoring the excavated yards. The agency also is seeking disposal sites for the removed soil and a location in the neighborhood from which to stage the cleanup, Tierney said.

A proposed third phase of the cleanup would affect up to 4,000 properties. Tierney said that work could begin as early as 2011, depending on funding.

The original cleanup area was placed on the Superfund's waiting list in 2004, but additional soil testing found the contamination was more widespread.

The contamination is believed to have come from air pollution from several industries located in the neighborhood during the early 1900s.

TOXICS

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EPA Proposes New Use Rule for Multi-walled Carbon Nanotubes (*EP Magazine*)

- **Feb 05, 2010**

The Environmental Protection Agency has proposed a significant new use rule (SNUR) for multi-walled carbon nanotubes under Section 5(a)(2) of the Toxic Substances Control Act .

The proposed rule does not identify all types of companies or organizations that would be affected, but it does say manufacturers, importers, or processors of the tubes (NAICS codes 325 and 324110), such as chemical manufacturing and petroleum refineries, could be.

If the rule is finalized, anyone intending to manufacture, import, or process multi-walled carbon nanotubes for an activity that is designated as a significant new use would have to notify EPA at least 90 days in advance, giving the agency time to evaluate the intended use and prohibit it, if necessary.

EPA is accepting comments until March 5 (citing docket ID number EPA-HQ-OPPT-2009-0686) via www.regulations.gov.

Section 5(a)(2) of the act says EPA must consider all relevant factors before determining a use of a chemical substance is a significant new use, including:

- projected volume of manufacturing and processing of a chemical substance,
- extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance,
- extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance,
- reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

EPA said it also considered relevant information about toxicity, likely human exposures, and environmental releases associated with possible uses in this case.

This SNUR applies only to the multi-walled carbon nanotubes described in P-08-199 as generic multi-walled carbon nanotubes (no CAS number available) that will be used as an additive/filler for polymer composites and support media for industrial catalysts. "Based on test data on analogous respirable, poorly soluble particulates and on other carbon nanotubes (CNTs), EPA identified concerns for lung effects, immunotoxicity, and

mutagenicity from exposure to the . . . substance," the proposed rule states. "For the uses described. . . , worker inhalation and dermal exposures are minimal due to the use of adequate personal protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance without the use of gloves and protective clothing, where there is a potential for dermal exposure; use of the substance without a National Institute for Occupational Safety and Health-approved full-face respirator with an N100 cartridge, where there is a potential for inhalation exposure; or use other than as described . . . may cause serious health effects."

Tests Show Top Tuna Brands Have High Mercury Levels (*Yahoo News*)

Thu Feb 4, 11:49 pm ET
THURSDAY, Feb. 4 (HealthDay News) -- Tests on more than 300 samples of canned tuna from the top three brands in the United States revealed that more than half contained mercury levels above what's considered safe by the Environmental Protection Agency.
Researchers from the University of Nevada, Las Vegas (UNLV), found that 55 percent of the samples had mercury levels higher than the EPA standard of 0.5 parts per million (ppm) and 5 percent had levels higher than the 1.0 ppm safety level set by the U.S. Food and Drug Administration for commercially sold fish.
The health effects of mercury poisoning include central nervous system damage, hearing loss and vision problems.
"Canned tuna accounts for up to a quarter of the nation's seafood consumption and creates some significant regulatory challenges," study author Shawn Gerstenberger, an environmental and occupational health professor, said in a UNLV news release. "With pregnant women and children the most susceptible to mercury poisoning -- yet also among the top consumers of canned tuna -- federal agencies need to urge distributors to expressly state mercury levels in their products."
The researchers found significant differences in mercury concentration by type (white and light) and brand. One brand had consistently elevated mercury levels, and white tuna from all three brands had the highest concentrations of mercury. White tuna comes from albacore, a different species of fish than "light" tuna.
"Mercury concentration in fish has a lot to do with the environment they're in, but since the locations of where the fish are harvested are not made available to consumers, it is very difficult to positively identify and reduce the source of the exposure," Gerstenberger said.
The researchers said federal regulators should require canned tuna producers to provide detailed information to consumers about the mercury content of each product and to disclose tuna harvest locations. In addition, the EPA and FDA need to have similar tuna consumption guidelines to lessen consumer confusion.
The study is published in the February issue of Environmental Toxicology & Chemistry.

Many states have adopted EPA guidelines on tuna consumption, which suggest an average child consume only one can of tuna roughly every two weeks to ensure an acceptable level of mercury exposure.
More information
The U.S. Agency for Toxic Substances and Disease Registry has more about the health effects of mercury.

Town says plight finally heard (*Monterey County Herald*)

Probe into effects of toxic dump
By CYNDEE FONTANA
McClatchy Newspapers
02/05/2010 01:28:35 AM PST
FRESNO — For months, activists and residents of the poor Kings County town of Kettleman City clamored for an investigation into a rash of birth defects and infant deaths.

To little avail. The pleas of a tiny, largely Latino community got little traction with distant government officials — until the last few weeks.

Now, agencies ranging from the state's health department to the U.S. Environmental Protection Agency are rushing to examine the concerns of the town situated only a few miles from the largest hazardous waste landfill west of the Mississippi.

Why the sudden flood of interest? Academic, political and other experts say the issue finally reached a boiling point — influenced by a lawsuit over landfill expansion, in-your-face activism by residents and environmental groups, and a crescendo of publicity about the town's complaints.

"It just becomes a critical mass," said Simon Weffer-Elizondo, assistant professor of sociology at the University of California-Merced.

Robin DeLugan, assistant professor of anthropology at UC-Merced, said the families' now well-publicized stories are too compelling to ignore: "It's hard for the appropriate levels of government to turn a blind eye."

But — to hear the residents and activists tell it — that's exactly what has happened. They say they repeatedly asked government agencies to investigate why six babies were born with birth defects in a 15-month period starting in late 2007. Three babies died.

Complaints became more public and heated last year as activists and residents in the town of about 1,500 protested expansion of the Waste Management Inc. landfill about three miles away. Some suspect birth defects are linked to toxic waste stored there.

Kings County officials approved the expansion in December. Environmental groups countered with a lawsuit to block those plans.

During the past few months, news media outlets carried stories and pictures of babies born with cleft palates. Photos and videos of protests and families surfaced on YouTube and Facebook.

While few official pronouncements were made, the issue was gaining steam in government offices. A new EPA regional administrator started work. And the governor — after a briefing on a health department review of the birth defects — on Jan. 29 ordered an investigation.

Wednesday, Jared Blumenfeld, the EPA's new administrator for the Pacific Southwest region, met privately with families after a private tour of the waste facility. The families said afterward that Blumenfeld spoke generally about the need for better health monitoring.

He has ordered an internal investigation into the EPA's handling of complaints about the landfill.

Experts watching the drama unfold have similar theories about why agencies now are reacting at lightning speed.

Professor Julie Sze, founding director of the Environmental Justice Project for the University of California-Davis' John Muir Institute for the Environment, said Kettleman City's history is an important factor.

Back in the 1990s, Kettleman City protests helped block plans for a toxic-waste incinerator. In 2006, Pacific Gas & Electric Co. agreed to pay $295 million to settle claims in Kettleman City and other areas that water supplies had been contaminated by chromium 6, the cancer-causing chemical made famous in the movie "Erin Brockovich."

In the environmental justice movement, Kettleman City's story is familiar — and demonstrates residents' organizing skills.

"The residents have been politicized around the issue of environmental health and inequality," Sze said. "The birth defects fall into that already pretty defined experience and framing of the issues."

Tom Holyoke, assistant professor of political science at California State University-Fresno, said, "They've been able to make use — politically — of the birth defects." And "nothing gets attention like a lawsuit."

The issue rose on the EPA's radar because the Obama administration, after a year to settle in, is ready to look at companies with possible environmental problems, Holyoke said.

County and landfill officials say they also played a role in the recent state and federal response.

Kit Cole, spokeswoman for Waste Management, said the company has pushed since last summer for an investigation into the birth defect cases. The fact that the company and Greenaction agree on that "is something the regulators can't ignore," she said.

Multiple studies show that the landfill is not a hazard to human health or the environment, Cole said. But, she added, "the reality is these families in Kettleman City deserve answers."

Calif. city near landfill hopeful after EPA visit (*BusinessWeek*)

By TRACIE CONE
KETTLEMAN CITY, Calif.
It was the day the families of this rural farm community had long awaited.
After nearly two years of pleading for someone to listen to their concerns about an abnormally high number of birth defects, families bonded by the suffering of their children got one of the biggest ears in the West on Wednesday.
Jared Blumenfeld, newly appointed regional director of the EPA's Pacific Southwest division, sat as mothers of modest means hugged sons born with cleft palates.

The mothers believe six children were born in the area with defects during an 18-month period because they live three miles downwind from the biggest hazardous waste landfill west of the Mississippi River.

"The medical people tell us we have to have evidence before we can say they are the ones who are to blame," said Daria Hernandez, whose 20-month-old son Ivan has been through two surgeries to repair a cleft palate and needs more treatment.

Blumenfeld has promised to determine what his agency has done to analyze whether the problem is linked to the Chemical Waste Management Inc. landfill, which wants to expand.

Bob Henry, manager of the waste facility, maintains the operation is safe and hopes the government scrutiny will improve lives of the community.

Kettleman City, population 1,500, is a crossroads on Interstate 5, California's main north-south artery. Thousands of diesel trucks pass by every day. The town also is

bisected by high-tension power lines and surrounded by the farm fields where many of the residents work in fields sprayed with pesticides and chemical fertilizers.

The mother want to know what is to blame for the problems if not the landfill full of PCBs and pesticides.

"We are asking him to support us because a lot of women are scared," Hernandez said. "We have so many questions."

Blumenfeld met privately with families after a private tour of the waste facility. The families said afterward that Blumenfeld spoke generally about the need for better health monitoring. They called it a victory.

"They made a promise that they would investigate, and I hope they keep the promise," said Magdalena Romero, whose daughter who died of Crone's disease would have been 2 on Tuesday.

Blumenfeld said little about the meetings that his aides had described earlier as a listening session.

"It's an emotional thing to talk about," he said after spending 80 minutes in the home of Maura Alatorre, whose son, Emmannuel was born 2 years ago with a cleft palate. "I learned a lot, and, hopefully, they feel better being able to share."

Afterward he issued a written statement thanking the families for sharing their stories.

"I am deeply moved by their honesty and ability to speak so candidly about their heartbreaking experiences," Blumenfeld said.

Gov. Arnold Schwarzenegger has promised that two state agencies would look into the health issue after being hounded for nearly two years by Greenaction, an environmental justice group.

The birth defects became a rallying point last year for residents trying to stop the expansion plans of the waste facility.

Their stories of miscarriages and the photographs they carried of children with facial defects failed to convince the Kings County Board of Supervisors that the company's expansion plans should not go forward.

The families said they would move away from the impoverished community if they could find work in another place where they could afford to live.

"We would be the first to go because my family's health is important to me," said Alatorre, who had to feed her son by squirting formula into his mouth with a syringe

because his cleft palate made him unable to suckle when he was born. "Unfortunately we do not have that opportunity."

She said she won't have more children while the questions remain and was hopeful that Blumenfeld's visit marked a turning point.

"I think he's going to support us," she said. "I think he will create a change."

Jacobsville meetings with EPA lay groundwork for cleanup (*Evansville Courier & Press*)

Story also appeared: *Henderson Gleaner*

By Dan Shaw
Thursday, February 4, 2010
EVANSVILLE — Over the next couple of months, Jacobsville residents will have opportunities to influence the plans used to clean up lead contamination in their neighborhood.

On Thursday, the U.S. Environmental Protection Agency held two informational meetings at the Evansville Vanderburgh Central Library to tell the public what to expect from the project, which will remove contaminated soil from an area bordered by Mary Street to the west, Iowa Street on the north, Elliot Street to the east and Division and Illinois streets on the south.

Mary Tierney, the EPA project manager for Jacobsville, said the work will proceed in three basic steps.

The first will consist of preconstruction meetings, which will begin taking place in the next six to eight weeks. During those, contractors hired by the EPA will discuss which parts of a property they plan to excavate, how deep they will dig and what trees and other natural features they will replace after finishing.

Photographs will be taken to help crews restore a property to its original appearance, she said. She said residents should place a priority on attending the meetings.

"I know everyone is busy, and it's hard to fit another meeting into your schedule," she said. "But we are willing to work with you."

The next step will include the actual excavation and subsequent restoration of the property.

Tierney said contractors will remove up to 2 feet of dirt and then restore the yard using uncontaminated backfill.

The ground will then be reseeded and sodded.

The EPA will water the yard for the next four to six weeks, after which that task falls back to the homeowner. The work usually takes from one to three days, she said.

Tierney provided answers to a few common questions about such projects.

For one, a resident doesn't have to leave a home while the work proceeds.

Second, the contractors won't need to enter a residence to perform the work, she said.

The final step will be a postconstruction meeting. In that, the EPA contractors will review their own work, making sure they restored the property as they had promised.

Tierney said she couldn't yet tell residents the exact dates of individual meetings. The EPA will provide that information by mailings, phone calls or other means, she said.

Tom Hazen, who lives on Indiana Street and attended the meeting, said he welcomes the project.

"If there really is a danger, they are making efforts to do something about it without a direct cost to us," he said.

"They could have just as easily told us to leave."

Feb 4, 2010 11:29 am US/Pacific

EPA Supports $29M Plan To Clean Toxic Rialto Site (*Associated Press*)

Story also appeared: *KCAL News, KGET.com, Mercury News*

RIALTO, Calif. (AP)
Federal environmental regulators say they will recommend a $29 million plan to clean up a toxic industrial site in Rialto.

The 160-acre site in San Bernardino County was once used by private companies and the government to store, test and manufacture munitions, rocket motors and fireworks.

It is contaminated with perchlorate from the rocket fuel and an industrial solvent called

trichloroethylene.

Both have seeped into the aquifer forming a huge uncontrolled plume of perchlorate in a drinking water supply.

The Environmental Protection Agency studied four alternatives but at a Feb. 10 public meeting will pitch a pump-and-treat option.

It would include cleansing the water with a charcoal-like material and ion exchange, and building pipelines and pumps to move it for treatment and delivery.

EPA Poised To Reverse Bush Exemption For 'Existing' Nanomaterials (*Inside EPA*)

2/5/2010
EPA is poised to reverse a Bush-era policy that considered nanoscale materials "existing" chemicals under the Toxic Substances Control Act (TSCA) if their bulk form appeared on the TSCA inventory, as opposed to "new" materials that would be subject to more regulation. EPA toxics chief Steve Owens, who is expected to announce the shift Feb. 5, said last year that the agency "will be taking a fresh look at this issue and at the basis and reasoning for the decision." A senior agency source says new reporting requirements could result in the agency receiving a deluge of data over the next year. EPA last year launched a new rule to redefine uses of existing nanomaterials as "new."

On Eve Of Bill's Release, States Back Push To Reverse TSCA Test Burden (*Inside EPA*)

2/5/2010
A key group of state regulators is backing calls from EPA and environmentalists to require industry, not the agency, to bear the burden of showing that chemicals are safe under the Toxic Substances Control Act (TSCA), lending new weight to the approach shortly before proponents unveil a long-awaited TSCA reform bill requiring the new stance.

But the state officials are silent on the brewing debate of what safety standard industry must meet before new chemicals may be introduced into commerce.

"Federal policies need to reverse the prevailing assumption that all chemicals are safe unless proven otherwise," the cross-media committee of the Environmental Council of the States (ECOS), a group representing state environmental commissioners, says in a new report. The panel "strongly supports having manufacturers provide the necessary information to allow EPA to conclude that new and existing chemicals are safe . . .

before they enter commerce," according to the Jan. 29 report, "State Experiences With Emerging Contaminants: Recommendations For Federal Action." *The report is available on InsideEPA.com.*

At issue are provisions in current law requiring EPA to prove substances pose an "unreasonable risk" before they can be regulated but EPA, environmentalists and others have been pushing to shift the standard to require manufacturers to prove their products are safe before they can be introduced to the market, an approach that the European Union has also required.

Critics of current law say it sets too high a bar for regulators, allowing industry to introduce into commerce scores of chemicals that pose a risk. "We need to do a more effective job of preventing harmful chemicals from entering the marketplace, and for this reason, I look forward to considering reforms of the [TSCA] in the coming months," House Energy & Commerce Committee Chairman Henry Waxman (D-CA) said recently.

Sen. Frank Lautenberg (D-NJ), who in past Congresses has introduced legislation shifting the burden to industry, is expected in the coming weeks to introduce the latest version of his bill, with a companion measure likely to be considered in Waxman's panel.

Lautenberg, who chairs the Senate Subcommittee on Superfund, Toxics, and Environmental Health, is scheduled to hold a hearing Feb. 4 to examine "the current science on public exposures to toxic chemicals," which could help him make the case for his bill.

While the ECOS panel is backing calls by EPA and others to shift the burden to industry to show that chemicals are safe, the report appears to sidestep the thorny question of what safety standard to set.

Past versions of Lautenberg's bill have proposed that manufacturers must demonstrate a "reasonable certainty of no harm" before they can introduce new chemicals -- an approach that is drawn from federal pesticide law. But some industry groups oppose that standard, arguing it is vague and could be hard to meet.

Industry Seeks To Halt New Great Lakes Toxics Plan Pending TSCA Reform (*Inside EPA*)

2/5/2010
Industry groups are seeking to block plans by a U.S.-Canada working group that is aiming to use a draft chemical screening framework to target dozens of new high-risk substances for action under a bilateral Great Lakes agreement, saying the effort should wait until Congress reforms the Toxic Substances Control Act (TSCA) and policymakers in Canada reform their chemical control regime.

“We want to do something right . . . but not in a way that will complicate and confuse what’s happening [with pending reforms to TSCA]. It needs to be integrated with TSCA,” one industry source says.

But environmentalists, who have long blamed inadequate implementation of TSCA for contamination in the Great Lakes, say use of the working group’s screening framework should proceed as soon as possible because it provides a unique opportunity to keep emerging contaminants out of the watershed that provides drinking water to millions.

A report prepared for Great Lakes regulators earlier this year found that existing policy in the United States and Canada is not adequate to control chemicals of emerging concern in the watershed, citing the lack of an integrated system for managing chemicals, and a “slow and cumbersome” testing and assessment approach to chemicals of concern.

Environmentalists are also seeking to strengthen the agreement by making its management provisions mandatory, an approach that industry also opposes.

The debate over how to select chemicals for oversight in the Great Lakes echoes the emerging debate over TSCA reform in Washington, where industry and environmentalists are at odds over how to prioritize chemicals for action once the law is revised. Lawmakers have not yet introduced TSCA reform legislation but Sen. Frank Lautenberg (D-NJ) is expected to do so in the coming weeks.

In the Great Lakes, the debate over how to prioritize high-risk chemicals is playing out in the context of recently announced efforts by EPA and Environment Canada (EC) to renegotiate the Great Lakes Water Quality Agreement (GLWQA), a binational agreement for international cooperation in cleaning up contaminants in the Great Lakes, which also includes the Great Lakes Binational Toxics Strategy (GLBTS) to set milestones for reducing the levels of toxic substances in the lakes through remediation, discharge limits and other measures.

The agencies held a Jan. 14 Webcast where they detailed their planned process for public input on the new agreement. The agencies also issued a report last month announcing the development of a draft “General Framework for Identifying Substances to be Considered in the Great Lakes Basin” to add new contaminants to the agreement.

The framework is considering adding more than 30 substances as potential additions, including pesticides, chlorinated paraffins, synthetic musks, and pharmaceuticals.

But the industry source says that having regulators in the two countries set their sights on a framework for identifying new contaminants independently of ongoing efforts to reform TSCA is counterproductive, because the contaminants in question are present elsewhere in both countries and they should be addressed nationally, not regionally.

“If there is a real unique risk in the Great Lakes basin, then it should be different,” the source says. “But if there’s no different risk in the basin then we should rely on TSCA.”

But environmentalists say there is a unique risk to the Great Lakes because it provides drinking water for millions of people. One source says the bilateral framework provides a way to create a uniform and collaborative cleanup effort throughout the basin in a way that might not be achieved if the United States and Canada were to develop standards on their own.

Another environmentalist says the forum’s focus on emerging contaminants, when coupled with the renegotiation of the GLWQA, provides both countries with a unique opportunity to develop frameworks that not only identify new toxics for regulation but provides a framework to prevent them from contaminating the environment at all.

“We’re really looking at this whole issue in a broader context, including more up-front measures to keep toxics out of the environment in the first place,” the source says. “We’ve had discussions with EPA and EC, and there’s interest in some of these approaches. But their hands are sort of tied in the regulatory approaches in each country, so there’s opportunity for progress in the region . . . because the governments are just starting to renegotiate the Great Lakes agreement.” -- *John Heltman*

WATER

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Activists’ Petitions Forcing Stricter EPA Oversight Of State Water Rules (*Inside EPA*)

2/5/2010
Environmentalists are increasingly petitioning EPA to withdraw states’ authority to administer the Clean Water Act (CWA) in a tactic that is already winning stricter agency oversight of some states’ water quality programs -- and may even bolster Obama administration vows to strengthen state programs.

EPA Region I officials recently struck down a draft discharge permit issued by regulators for a facility in Vermont -- one of the states activists are targeting -- in the first such action by the region, possibly ever, sources say. The agency charged that the state permit relaxed allowable nitrogen pollution limits without considering downstream impacts on impaired waters in another state.

The region’s action comes in the wake of a slew of petitions environmentalists have filed urging EPA to withdraw states’ delegated authority. In the latest of these petitions,

groups in Alabama Jan.14 urged EPA to withdraw the Yellowhammer State's delegated authority to administer the water act, citing lax collection of monitoring data, delayed and inadequate permits and a failure to inspect major dischargers, the petition says. *The petition is available on InsideEPA.com.*

The Alabama petition is the latest in a series of requests environmentalists have filed over the past 18 months that activists say are aimed not at removing the state's authority to enforce the federal law but to prompt stronger federal oversight and stricter state rules. The Alabama petition follows similar actions in Alaska, Indiana, Illinois, Iowa, and last December, Maryland -- a state that is already subject to strict EPA oversight as part of the agency's push to clean up the Chesapeake Bay.

The petitions -- which target states with delegated CWA programs -- focus on a diverse number of issues, with the groups in Illinois and Iowa concerned about inadequate state rules governing concentrated animal feeding operations (CAFOs), Indiana groups focused on antidegradation provisions, and activists in Alabama and Maryland concerned about inadequate state stormwater and other point source permits.

To address the concerns, the groups are seeking closer EPA scrutiny of the state programs as well as other measures to strengthen the state programs. For example, the petition against Maryland's program urges EPA to require the state to increase permit fees, provide greater transparency and other measures.

The petitions are not coordinated efforts, activists say, but rather demonstrate a growing trend among groups to seek stronger oversight from EPA in state implementation of the CWA, particularly given EPA Administrator Lisa Jackson's vows to strengthen state programs.

Since taking office, the Obama administration has ramped up oversight of state programs, in the wake of an agency study that found significant flaws in state enforcement of the water act and other delegated programs. Last year, for example, Jackson unveiled an action plan to bolster state enforcement, a plan that Region I is citing as one reason for blocking the Vermont permit.

At the same time, Jackson has also said that she is willing to consider withdrawing states' authority if states do not comply with agency efforts to strengthen their programs. "Many of these state programs are 20, 30 years old, and we might even need to hit the reset button and say, 'OK, we're going to hold you to a standard. If you're doing your job, great, but if you're not, we're going to be here going inside until you are'," the administrator told the New Orleans *Times-Picayune* last year. "We often say we're partners, but we're also delegating our authority to a state, and of course, ultimately that means your ultimate answer would be to take it back," she said.

While some environmentalists admit that Jackson is more intensely focusing on state programs that the past administration, they believe that filing the petitions forces the agency to look at specific states and how they implement the CWA.

A source involved with the petition targeting Vermont's program says that some of the petitions are aimed at rectifying problems that arose during the Bush administration when EPA was granting states too much deference. "I don't think it's surprising that after eight years of a hands-off approach that you'd see state programs have slipped," the source says.

The source welcomed Region I's recent objection to Vermont's draft permit, saying the agency's concerns echo concerns raised in activists' petition seeking to withdraw the state's authority. "Vermont is not responsive to the bottom line. I'm not surprised that things have gotten to the point with Vermont that EPA is taking formal action to say 'yes, you're out of compliance.' There is going to have to be a dramatic change in the way Vermont implements the program," the source says.

An environmentalist involved in the Maryland effort says petitioners do not expect EPA to actually withdraw the state authority -- an approach EPA has long opposed given the increased resource burden the agency would face if federal officials were to step in. "Realistically, if we get a strong reaction from EPA," and perhaps an audit of the state program with either recommendations or mandates for change, "I would certainly be satisfied with that," the source says.

"Ultimately we . . . took this action because we felt like there [were] Band-Aids put over these . . . problems," the source says. The environmentalists "felt we needed to do something to say it's more systemic than that." Sources say there has been no formal response yet from EPA on the Maryland petition, and there is no legal timeline for response.

But such petitions give activists considerable leverage over both EPA and state programs and they are already bearing fruit.

In addition to Region I's opposition to the Vermont permit, other states are also responding to the pressure. In Illinois, regulators last month revised the state's permitting requirements for CAFOs that went beyond some EPA public participation requirements to comply with demands in a long-pending withdrawal petition filed by the Environmental Integrity Project and other groups. Environmentalists who filed the petition say that while they are pleased the state has strengthened its permit, they are leaving the petition in place to ensure the state implements its new CAFO permit. "We're still pursuing the petition," a source said.

And in North Carolina, activists succeeded in having EPA block a controversial state guidance for mitigating water quality harms from hydroelectric projects -- though without a formal petition seeking to withdraw the state's delegated authority.

A state source agrees that it is unlikely EPA will remove authority from any of the states facing petitions, since "it will cost them double what they're paying now, if not triple," to implement the CWA. "And that is something that they're going to have a very difficult time absorbing in very many places," the source says.

“We feel like the states have a very strong role in these programs,” and that the “difficulties that we’re facing now are largely budget ones.” To that end, the source says that state agents recently met with EPA leadership and, in part, discussed problems that states are facing, particularly with budgeting shortfalls and implementation of new rules coming out of the agency.

For instance, the source says, Georgia has seen a 43 percent cut to its program over the last year. The source says that EPA and the states are hoping to work together in the future to discuss “process improvement programs” to better streamline state actions.
-- *Erica Martinson*

PCB work plans differ n GE and the EPA are at odds over how to clean the Housatonic River (*Berkshire Eagle*)

By Benning W. De La Mater
Updated: 02/05/2010 12:02:44 AM EST
Thursday February 4, 2010
Berkshire Eagle Staff
PITTSFIELD -- General Electric is disputing several of the U.S. Environmental Protection Agency directives laid out in a work plan for cleaning a polluted portion of the Housatonic River.
Officials from GE and the EPA will meet in the coming weeks to discuss the issues, but the dispute could slow the cleanup efforts.

It concerns two conditions that the EPA detailed in a Jan. 15 letter that gave the go-ahead to GE to submit a new proposal for cleaning a 10-mile stretch of the Housatonic River contaminated with PCBs.

The area of concern flows south from Fred Garner Park in Pittsfield to Woods Pond in Lee.

GE’s proposal for a cleanup in that area was first submitted in February 2007 and gave several scenarios for remediation, ranging from doing nothing at all to staging a full-scale dredging mission.

Alternative proposed

After several back-and-forths between the two groups and a public comment period, the EPA asked GE to consider a second set of remedial alternatives, including a dredging technique different than the one used in the first 2 miles of the Housatonic cleanup (from Newell Street to Fred Garner Park), which some believe was too intrusive on the surrounding environment.

The EPA asked GE to look at a plan in which crews and their equipment would actually work in the river to dredge PCBs rather than from the banks.

But GE believes this would dramatically slow the cleanup process and cause more PCBs to become "resuspended" in the water.

"There are many reasons we've presented to the EPA why dredging from the bottom of the flowing river is slower than dredging from barges in downstream reaches," GE project coordinator Andrew Silfer writes in a prepared statement. "Heavy equipment operating on the bottom of a flowing river would resuspend more sediment and PCBs than barge-mounted equipment."

Silfer goes on to say that the EPA's required timeline and resuspension rates for the work "are incorrect."

Talks planned

Under the consent decree, GE can dispute any of the conditions or directives laid out by the EPA. The first step after such an objection is informal talks.

Jim Murphy, a community involvement coordinator from the EPA, said EPA project manager Susan Svirsky and Silfer will meet within the next two weeks to discuss the issues.

"They have different opinions on two of the conditions," he said. "They're saying our standards are too high. So we'll sit down and talk and see if we can come to some kind of resolution."

If an agreement cannot be reached, a more formal set of meetings will be scheduled. Murray said these types of disputes have happened occasionally in the nearly 10-year history of the consent decree and he doesn't anticipate anything more than a "few weeks" of delay.

GE used PCBs, or polychlorinated biphenyls, in Pittsfield until 1977, when the federal government banned the chemical after studies showed links to cancer, reduced IQ levels, heart disease, stroke, diabetes and other ailments.

The consent decree ordered GE to pay for the bulk of the cleanup efforts at its complex and in the Housatonic River and its floodplain -- a bill that when totaled could top the $1 billion mark.

GE has until July 15 to submit a new plan for the cleanup.

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Last updated February 4, 2010 2:13 p.m. PT

Much higher tritium levels found at nuclear plant (*Associated Press*)

MONTPELIER, Vt. -- Tritium levels in groundwater samples taken at the Vermont Yankee nuclear plant are up more than nine times over previously recorded levels.

Plant and Nuclear Regulatory Commission officials say a newly dug monitoring well at the Vernon reactor has turned up a reading of nearly 775,000 picocuries per liter. That's more than 37 times the Environmental Protection Agency's safety limit for tritium in drinking water.

Vermont Yankee spokesman Robert Williams says the finding is good news because it indicates plant technicians may be getting closer to the source of the leak of tritium, a radioactive substance that can cause cancer if ingested in large amounts.

Plant officials have been hunting for the source of the leak since it was found Jan. 7.

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