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ADMINISTRATOR JACKSON
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July 15, 2010

EPA Chief Calls for More Authority Over Dispersants (*New York Times*)

By ELANA SCHOR of Greenwire
U.S. EPA Administrator Lisa Jackson today urged Congress to take up legislation strengthening her agency's authority over oil dispersants in the wake of the Gulf of Mexico gusher, calling for more testing and disclosure of the chemical ingredients in the controversial spill-fighting products.

Jackson said EPA is evaluating a draft dispersant bill that Sen. Frank Lautenberg (D-N.J.) plans to introduce next week, a measure expected to focus on ingredient reporting and monitoring of the chemicals' long-term effects on human and marine health. While she stopped short of endorsing the Lautenberg proposal, Jackson said new dispersant legislation "would give us critical transparency and openness protections that right now EPA cannot provide by law."

BP PLC has deployed more than 1.8 million gallons of dispersant in the Gulf since its record-breaking oil leak began in April, sparking concerns among environmental and public-health advocates as well as some scientists and several members of the Senate Appropriations Committee's science panel, before which Jackson and National Oceanic and Atmospheric Administration senior official Larry Robinson testified today. Senators from both parties raised alarms about the limited test data currently on the books and the ability of manufacturers such as Nalco Co., which makes BP's Corexit dispersant, to file confidentiality claims that shield the ingredients in their products.

"Each day, questions are building about the use of dispersants to battle the oil spewing into the Gulf," Alabama Sen. Richard Shelby, the science subcommittee's senior Republican, said in a statement. "Even more alarmingly, it appears that decades-long intransigence by Nalco and other makers of these dispersants is the leading reason why we do not have the information we need to make informed decisions in a timely manner."

Jackson defended EPA's attempts to curtail dispersant spraying in the Gulf, asserting to senators that BP has limited its Corexit use in response to a federal directive -- an edict issued days after the oil company refused a government order to switch to a less toxic alternative dispersant (*Greenwire*, May 20). EPA's efforts to push BP and test dispersant toxicity, Jackson acknowledged, do not change "the fact that we need more information, information not only on what's in the chemicals but different and better testing so we ... don't have to run models to come up with judgment calls on the spot."

The Appropriations science panel is chaired by Sen. Barbara Mikulski (D-Md.), who publicly warned of the consequences of dispersant use after a trip to the Gulf last month. As her subcommittee drafts its spending bill for the coming fiscal year, Mikulski

said she needs "a sense of urgency" from EPA, NOAA and other federal science agencies.

"We don't have time for a lot of in-house bureaucratic vetting or screwing around," she added, soon after rapping Jackson for being unable to state whether EPA has the authority to order BP to stop using dispersants. Mikulski also said she would consider signing on as an early co-sponsor of Lautenberg's bill.

The senator asked Jackson and Robinson, assistant secretary for oceans and atmosphere at NOAA, to give Senate appropriators a list of dispersant limits and rules in effect in other nations, with an eye to influencing future research funding. Robinson made an initial request for $2 million to pay for new testing of dispersants, admitting to senators that his agency has tested Gulf seafood only for chemical components of oil -- not dispersants.

"If we've displaced the oil but replaced it with another substance that has toxicity levels that impact that seafood, that's something we all need to be concerned about," Sen. Lisa Murkowski (R-Alaska) said.

Nalco has stepped up its public relations campaign on Capitol Hill, disseminating comments and data aimed at tamping down concern over the long-term health effects of dispersants. Most recently, the company hailed EPA tests that found Corexit to be no more acutely toxic to marine organisms or hazardous to human cells than alternative dispersants (*E&ENews PM*, June 30).

But EPA's testing has yet to examine the toxicity of dispersants when mixed with crude oil, and Jackson told senators that she is "unaware of any research" on the effects of applying the chemicals in the massive volume that has entered the Gulf region. "It's not the body of testing you would want," given the historic nature of the ongoing oil leak, she said.

In addition, existing rules under the 1976 Toxic Substances Control Act empower manufacturers to resist the public release of chemical ingredients in their products by filing confidentiality claims. Nalco waived its claim after a weeks-long controversy over the ingredients in Corexit, but EPA has vowed to continue pushing dispersant makers to support broader release of ingredients (*Greenwire*, June 10).

Legislation approved by the House Transportation and Infrastructure Committee earlier this month would require EPA to conduct more dispersant studies and mandate the disclosure of ingredients as well as formulas for the chemical products, which are used to break up oil into smaller droplets that more easily biodegrade (*E&E Daily*, July 2).

A Nalco spokesman declined to comment on whether the company would support stronger dispersant rules, stating via e-mail that "we are reviewing" pending congressional oil-spill proposals while focusing on response to the Gulf leak.

EPA Administrator Jackson Keynote Address To The National Tribal Operations Committee (*Cypress Times*)

Published 07/15/2010 - 5:12 p.m. CST
WASHINGTON -- In a speech yesterday at the National Tribal Operations Committee, U.S. EPA Administrator Lisa P. Jackson discussed the importance of creating stronger partnerships between the Agency and tribal nations and highlighted accomplishments to date under the new administration.

More than 10 years ago, EPA established the National Tribal Operations Committee (NTOC), comprised of 19 Tribal leaders (Tribal Caucus) and EPA's senior leadership team to meet and discuss the best ways to implement the environmental protection programs for which EPA and the tribes share responsibility as co-regulators.

Excerpts from Administrator Jackson's remarks at the National Tribal Operations Committee:

Partnership

Last year at this gathering I had the privilege of reaffirming EPA's Indian Policy. It was the beginning of a discussion about how EPA and tribes could make 2009 a year of renewed partnership. And I believe we succeeded.

White House Tribal Nations Conference and Executive Order

In November President Obama hosted a Tribal Nations Conference at the White House. There, he announced that all Federal agencies must develop a plan of action to implement an Executive Order on "Consultation and Coordination with Indian Tribal Governments." Starting in January of this year, EPA began soliciting input from tribes in the process of developing a new and improved consultation policy, and we will continue to seek comments through the summer.

The Recovery Act

Last year we took steps through the Recovery Act to begin work on some of the longstanding environmental and economic challenges facing tribal communities. The tribes have done an extraordinary job putting Recovery Act funding into motion. Fully 100 percent of the money has been obligated to job-creating projects that will also improve the environment.

The President's 2011 Budget Proposal

…the President's proposed 2011 budget includes the most significant increase in 10 years to the Indian General Assistance Program. I suspect a few of my colleagues

might have mentioned that already. Well, it bears repeating. At a time of deep economic challenges, that increase demonstrates the commitment we have to this partnership. Of course, we are very happy about that. But I want to make clear that our success is about much more than just funding. It's about building a partnership that makes the most of those resources.

The Deepwater BP Oil Spill

[This partnership is] about the tribes near where I come from in Louisiana, where almost 40 miles of wetlands along the coast disappear every year. Even before the BP oil spill, those families were finding it harder to catch the fish, shrimp and shellfish that fortify their economy. The young people of the tribes are moving away and the entire community is talking about relocating from the place they've called home for centuries.

These and other tribal communities along the Gulf Coast are now facing the worst environmental disaster in our country's history. This partnership is about helping them as well. We want to work together not just through the Recovery Act and the budgeting process, but in the times like these, when we are needed the most. We are going to need strong ties for the ongoing response effort that is happening right now, and for the long-term rebuilding process that we will be a part of for years to come.

Click here for a copy of Administrator Jackson's remarks as prepared for delivery, or visit: http://blog.epa.gov/administrator/ and click the "Speeches & Statements" tab.

07/16/2010

Industry, Activists Question EPA Suspension Of Coal Ash Reuse Program (*Inside EPA*)

EPA Administrator Lisa Jackson is facing competing concerns from industry proponents and environmentalist critics of coal ash recycling after the agency decided to suspend and then reevaluate its voluntary partnership with industry designed to promote the reuse of coal ash in products.
In May, EPA suspended its partnership in the Coal Combustion Products Partnership (C2P2) -- which also includes other federal agencies and industry groups -- while considering its proposal to issue first time Resource Conservation & Recovery Act (RCRA) rule to regulate the waste. Weeks later and facing challenges over the data behind C2P2, EPA subsequently took down the entire C2P2 website "while the program is being re-evaluated."

The American Coal Ash Association (ACCA), one of the program partners, send a July 9 letter to Jackson expressing its "concern" over EPA's decision to suspend C2P2 "without informing" ACCA.

"While the EPA has its reasons for taking this action, it would seem to be a matter of professional courtesy to inform the other primary sponsors as well as the partners have signed on in support for C2P2 prior to taking this action. This hardly seems to be the kind of action that speaks well of a future for this partnership," ACCA's letter to Jackson says. *The letter is available on InsideEPA.com.*

The whistleblower group Public Employees for Environmental Responsibility (PEER) has long criticized C2P2, claiming it overstates the greenhouse gas reductions and other environmental benefits of reusing coal waste. PEER filed a July 1 Data Quality Act petition challenging EPA's claims on the C2P2 website about coal ash's benefits.

PEER also filed a July 2 Freedom of Information Act request for communications between C2P2 officials and industry, and a July 7 letter to Jackson asking for more information about the re-evaluation. A PEER source says Jackson's office is preparing a response to the group.

PEER is also asking EPA to preserve material from the now-defunct C2P2 website that is referenced in the agency's RCRA proposal.

But industry sources say while the proposal is designed to encourage beneficial reuse, EPA's actions on C2P2 suggests the agency is "backing away from the very program" developed to support beneficial use. "They are saying one thing and doing another," one industry source says.

An agency spokeswoman says EPA is "reviewing the information that was previously on the C2P2 website to ensure that it is consistent with the information in the preamble of the proposed rule and the areas subject to comment."

07/16/2010

'Unlikely' To Meet Deadline, EPA Urges Narrow SAB Review Of Dioxin Study (*Inside EPA)*

EPA is urging a Science Advisory Board (SAB) panel reviewing the agency's re-assessment of dioxin to focus on the core risk assessment document, not related risk and regulatory documents, saying the agency has been working on the measure for decades and is "really unlikely" to meet EPA Administrator Lisa Jackson's December 2010 deadline for completing the measure.
Peter Preuss, director of EPA's National Center for Environmental Assessment, urged the panel in July 13 comments to help agency staff quickly complete the long-delayed assessment, by focusing on recommendations the agency could complete in a reasonable amount of time.

"Our goal is simple. We'd like to finish this document," Preuss said. "Twenty-one years ought to be enough gestation time to finish just about anything."

But a speedy panel review may be unlikely as the agency's draft document is already drawing significant concerns from industry and others (*see related story*).

The SAB panel is meeting July 13-15 to review EPA's response to the National Academy of Sciences (NAS) review of its 2003 draft assessment of 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) -- the most toxic form of the ubiquitous class of chemicals and the basis for estimating risks of mixtures of dioxins and related compounds at contaminated sites. The NAS in 2006 suggested several changes EPA needed to make to its 2003 assessment.

The SAB panel meeting is the first of two meetings the panel will hold as it conducts its review of the document, which includes newly calculated cancer and non-cancer risk estimates for TCDD, released in May.

Jackson in a May 2009 letter to community activists said the agency's "goal is to issue a final dioxin assessment by the end of 2010." But Preuss, who oversees the center that crafts assessments for the agency's key Integrated Risk Information System (IRIS) database, told the SAB panel that the agency "is really unlikely" to meet Jackson's goal "unless SAB sends a one-page letter" saying that the dioxin document does not require any changes.

Dioxin is a ubiquitous contaminant produced from combustion and other industrial processes. It is persistant and exists in fatty foods, such as meat and dairy products. The agency published its current IRIS assessment of dioxin in 1985, and began reassessing the risks of TCDD in 1990. But the reassessment has faced numerous delays and reviews.

In his remarks, Preuss urged the panel to separate any long-term recommendations from those short-term suggestions needed to finalize the document, noting that that "many things" are awaiting the outcome of the assessment, including regulations and site cleanup decisions.

Jackson's broader dioxin plan includes two other related documents: a set of cleanup targets, known as preliminary remediation goals (PRGs), which were to be published before the agency finalizes the TCDD assessment, and used until that time. The agency has yet to finalize those preliminary numbers, with industry complaining bitterly about the confusion that interim numbers could present.

EPA also released last fall a document adopting a set of World Health Organization factors, known as toxicity equivalency factors, or TEFs, which are used to estimate the potency of mixtures of dioxins and dioxin-like compounds relative to TCDD.

But Preuss urged the panel to focus its energy on the TCDD assessment itself, and not get bogged down in discussions of the related documents. "You're likely to hear about TEFs and PRGs [in the public comments]," Preuss said, "but they are not part of our document."

Industry toxicologists and consultants, disagreed, however, arguing that many of the studies on which EPA based its assessment include exposures to mixtures of dioxins -- not TCDD alone. As a result, the board needs to consider the effects of these confounding exposures on the data, they argued.

07/16/2010

EPA Designates Los Angeles River As 'Traditionally Navigable' Water (*Inside EPA*)

EPA has designated the Los Angeles River as a traditionally navigable water (TNW) -- a designation that industry officials have long feared could set a precedent for the agency's ability to overcome legal uncertainty and assert Clean Water Act (CWA) jurisdiction over marginal waters.
The agency July 7 announced that it is designating the entire 51 miles of the river, as well as small streams and wetlands throughout the basin, as a TNW. The Army Corps of Engineers had previously proposed only a small portion of the river as a TNW, but under pressure from Rep. Henry Waxman (D-CA), EPA in 2008 took the unprecedented step of taking over the decision, as well as a similar proposed designation for the Santa Cruz River in Arizona, which only flows intermittently.

Under the Rivers & Harbors Act, the Corps has the ability to make TNW determinations, and, generally speaking, any water that is deemed a TNW is considered a water of the United States subject to the CWA for permitting requirements. Conversely, declaring that waters are not TNWs can make it more difficult for EPA and the Corps to show that a waterbody is subject to CWA requirements, though not impossible.

But homebuilders and other industry groups are concerned that such designations -- especially for waters that are not used for traditional navigation -- can be used to skirt limits on CWA jurisdiction set by the Supreme Court. In pending litigation over the Santa Cruz River, for example, the industry groups are arguing that EPA's proposed designation is at odds with the high court's plurality decision in *Rapanos, et ux., et al. v. United States*, where the court provided two competing tests for determining jurisdiction. The industry group charges that a plurality of the high court held that the basis for determining jurisdiction is a "significant nexus" to navigable waters, and that the portions of the Santa Cruz at issue are not.

The pending litigation over the Santa Cruz River has stalled EPA's decision, though the litigation could detail what factors that regulators must consider when they designate marginal waters, such as intermittent streams, as TNWs.

In its July 7 announcement, EPA says its designation of the L.A. River is based on "a myriad of factors including the river's current and historical navigation by water craft, current commercial and recreation uses, and established local plans for restoration of the river."

EPA says in the July 7 statement that the "decision enhances the ability of the EPA, in coordination with the Army Corps of Engineers, the State, and the City" to deal with water pollution, in particular by stopping destruction of streams and wetlands in the basin "that are important for water quality, wildlife, recreation, and public health, and to reduce harm to the watershed from polluted stormwater runoff." EPA sources since taking over the decisions have held that recreation supported by commercial activity -- for instance kayak rentals -- could support the statutory requirements for being considered a TNW.

"We want the L.A. River to demonstrate how urban waterways across the country can serve as assets in building stronger neighborhoods, attracting new businesses and creating new jobs," EPA Administrator Lisa Jackson said.

EDITORIAL / OP-ED / COMMENTARY / LETTERS
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D.C. Council didn't use a discredited CDC study of lead in water (*Washington Post*)

Friday, July 16, 2010; A18
Regarding the July 4 Local Opinions commentary "CDC must do more to respond to the D.C. lead cover-up":
Authors Dana Best and Marc Edwards asserted that a flawed study by the Centers for Disease Control and Prevention was "used by the D.C. Council to justify the elimination of all water-related language from the bill it passed to prevent lead poisoning." This is simply wrong.

Neither Dr. Best nor Mr. Edwards was involved in the deliberations, in which I took part, that led to passage of that landmark law. Under the leadership of council member Jim Graham (D-Ward 1), a group of building owners, scientists, advocates, policymakers and others worked to achieve consensus on the 2008 lead-poisoning prevention law. The CDC findings about lead in D.C. drinking water were never discussed in our deliberations because the 2008 lead-poisoning prevention law targeted building owners' responsibilities, not because anyone believed that lead in water was unimportant.

The District's law aimed at preventing lead poisoning is well-reasoned and practical and is proving effective. Dr. Best and Mr. Edwards do a disservice to D.C. residents by looking backward instead of forward. The critical step to protecting children in the District and across the country from lead in drinking water is tightening the Environmental Protection Agency's regulations and safety thresholds.

David Jacobs, Washington

The writer is the chairman of the Childhood Lead Poisoning Prevention Advisory Committee to the D.C. Department of the Environment.

A real river can run through it (*Los Angeles Times*)

Re "L.A.'s River clears hurdle," July 8

Our nearly lost "diamond in the rough," the L.A. River, had a huge win when the **EPA** declared it "traditionally navigable waters." Now **Clean Water Act** protections apply throughout the river's watershed, which means our city.

L.A.'s rivers and creeks can all become wonderfully healthy and alive again, to the point of welcoming steelhead trout (canoe commuting, anyone?). However, this can happen only if all our neighborhoods -- including yards, streets, schools, parks and parking lots -- become functioning watersheds. This means capturing, cleaning and using our rainwater by making hard surfaces permeable, growing climate-appropriate plants and trees, and through the generous use of mulch to hold the runoff in the soil.

Retrofitting urban landscapes is the best and quickest route to ensuring a healthy river and a water-sufficient, climate-safe, economically viable and livable L.A. that can be a shining model for other cities.

Andy Lipkis
Beverly Hills
The writer is the founder and president of Tree- People.

Obama's next act (*Washington Post)*

By Charles Krauthammer
Friday, July 16, 2010; A19

In the political marketplace, there's now a run on Obama shares. The left is disappointed with the president. Independents are abandoning him in droves. And the right is already dancing on his political grave, salivating about November when, his own press secretary admitted Sunday, Democrats might lose the House.

I have a warning for Republicans: Don't underestimate Barack Obama.

Consider what he has already achieved. Obamacare alone makes his presidency historic. It has irrevocably changed one-sixth of the economy, put the country inexorably on the road to national health care and, as acknowledged by Senate Finance

Committee Chairman Max Baucus but few others, begun one of the most massive wealth redistributions in U.S. history.

Second, there is major financial reform, which passed Congress on Thursday. Economists argue whether it will prevent meltdowns and bailouts as promised. But there is no argument that it will give the government unprecedented power in the financial marketplace. Its 2,300 pages will create at least 243 new regulations that will affect not only, as many assume, the big banks but just about everyone, including, as noted in one summary (the Wall Street Journal), "storefront check cashiers, city governments, small manufacturers, home buyers and credit bureaus."

Third is the near $1 trillion stimulus, the largest spending bill in U.S. history. And that's not even counting nationalizing the student loan program, regulating carbon emissions by Environmental Protection Agency fiat, and still-fitful attempts to pass cap-and-trade through Congress.

But Obama's most far-reaching accomplishment is his structural alteration of the U.S. budget. The stimulus, the vast expansion of domestic spending, the creation of ruinous deficits as far as the eye can see are not easily reversed.

These are not mere temporary countercyclical measures. They are structural deficits because, as everyone from Obama on down admits, the real money is in entitlements, most specifically Medicare and Medicaid. But Obamacare freezes these out as a source of debt reduction. Obamacare's $500 billion in Medicare cuts and $600 billion in tax increases are siphoned away for a new entitlement -- and no longer available for deficit reduction.

The result? There just isn't enough to cut elsewhere to prevent national insolvency. That will require massive tax increases -- most likely a European-style value-added tax. Just as President Ronald Reagan cut taxes to starve the federal government and prevent massive growth in spending, Obama's wild spending -- and quarantining health-care costs from providing possible relief -- will necessitate huge tax increases.

The net effect of 18 months of Obamaism will be to undo much of Reaganism. Both presidencies were highly ideological, grandly ambitious and often underappreciated by their own side. In his early years, Reagan was bitterly attacked from his right. (Typical Washington Post headline: "For Reagan and the New Right, the Honeymoon Is Over" -- and that was six months into his presidency!) Obama is attacked from his left for insufficient zeal on gay rights, immigration reform, closing Guantanamo -- the list is long. The critics don't understand the big picture. Obama's transformational agenda is a play in two acts.

Act One is over. The stimulus, Obamacare, financial reform have exhausted his first-term mandate. It will bear no more heavy lifting. And the Democrats will pay the price for ideological overreaching by losing one or both houses, whether de facto or de jure. The

rest of the first term will be spent consolidating these gains (writing the regulations, for example) and preparing for Act Two.

The next burst of ideological energy -- massive regulation of the energy economy, federalizing higher education and "comprehensive" immigration reform (i.e., amnesty) -- will require a second mandate, meaning reelection in 2012.

That's why there's so much tension between Obama and congressional Democrats. For Obama, 2010 matters little. If Democrats lose control of one or both houses, Obama will probably have an easier time in 2012, just as Bill Clinton used Newt Gingrich and the Republicans as the foil for his 1996 reelection campaign.

Obama is down, but it's very early in the play. Like Reagan, he came here to do things. And he's done much in his first 500 days. What he has left to do he knows must await his next 500 days -- those that come *after* reelection.

The real prize is 2012. Obama sees far, farther than even his own partisans. Republicans underestimate him at their peril.

letters@charleskrauthammer.com

Who elected EPA? (*Howell County News*)

By Rep. Jo Ann Emerson, U.S. House of Representatives, District 8

Here's a question for any young civics students in our Southern Missouri congressional district: Who elects the EPA?

The answer, of course, is no one. The Environmental Protection Agency is an agency of the executive branch of our federal government with 18,000 full-time employees and an extraordinary amount of power over the day-to-day lives of American citizens and businesses.

Their measure of power is growing, too. Through rules and regulations, the EPA has set about implementing an agenda which the elected officials in Congress do not have the support to pass.

Unlike the EPA, Congress answers to voters. Therefore, the EPA has no qualms about its efforts to place surtaxes on energy use, limit production and use of electricity and gas, and to place rural counties in violation of arbitrary air quality standards. In the rest of the country, those measures are controversial because they are deeply expensive, they cost us jobs, and they don't reflect the priorities most of us have for our country: competitiveness, fairness, and economic stability.

All of those issues hit home in the Eighth Congressional District. Cap-and-Trade hasn't been considered in the U.S. Senate, but at the same time the Senate has refused to pass a motion to stop the EPA from moving forward with the implementation of Cap-and-Trade as a policy of the executive branch. Essentially, this attitude allows the EPA to tax, to regulate, and to affect the prices of every good offered in our economy, since every good requires energy to produce or provide it.

In the U.S. House of Representatives, I have a bipartisan bill which would stop that authority and curb the new powers of the EPA to take unprecedented role in our economy.

European countries have gone down the dangerous road of Cap-and-Trade, to devastating economic effect. In fact, the largest cement operation in North America is now located in Missouri, owned by a company in Switzerland, and employing hundreds of workers in our state. We can attribute the expansion of the Swiss company in Missouri to many things, but chief among them should be the fact that America has not yet adopted the onerous policies to discourage energy consumption which have stifled the manufacturing economies of Europe.

I don't know anyone in Missouri who thinks their electricity bills are too low. In fact, the high cost of electricity in the summer, when we're running our air conditioners, often leads us to make contributions to emergency funds that help our neighbors pay for their energy during tough economic times.

But electricity means more than escape from the heat. It also means jobs for our region, where manufacturing and agriculture employ thousands of people directly and even more indirectly. Those operations cannot turn off the power to produce the same number of products, and farmers cannot put less diesel in their equipment and cover the same number of acres.

All this adds up to a plain truth for Americans wondering where the EPA's authority comes from – increasingly, it comes from within. This is something Congress must address, and, ultimately, the people must change."

A Clean Energy Start (*Washington Post*)

July 16, 2010 Friday
Regional Edition
EDITORIAL COPY; Pg. A18
Maryland
A clean-energy start;
Majority Leader Harry Reid's modest bill lays some useful groundwork.
SENATE MAJORITY Leader Harry M. Reid (D-Nev.) intends to bring an energy bill to the Senate floor the week of July 26. It will feature four key elements -- a response to

the Gulf of Mexico oil spill, promotion of energy efficiency, a boost for clean-energy production and a cap on carbon emissions from power plants. This is not ideal, but it would be a useful start.

The carbon dioxide released into the atmosphere by burning fossil fuels adds to the greenhouse effect that threatens to bring destructive changes to the planet. Decreasing those emissions demands innovation -- the development of greener and cheaper sources of energy such as wind, solar and nuclear power -- and the use of economic incentives to wean industries off cheap coal and oil. To provide such an incentive, we have has long favored putting a price on carbon, either (most simply) with a gradually rising tax or with a cap-and-trade system. By gradually increasing the cost to companies of the carbon dioxide they produce, the United States can generate revenue and marshal market forces to encourage businesses to invest in greener technology. To this end, even a limited cap -- like the one on utilities emissions proposed in the Senate bill -- is better than none. Once a structure is in place, a cap can be expanded to encompass more industries and adjusted to drive innovation in the right direction.

Moreover, power generation is the right industry to target: Power plants account for 40 percent of all U.S. carbon dioxide emissions, and many utilities already have gotten on board with the concept of a cap. Rather than simply opposing the cap out of hand, as many have in the past, Republicans should help make sure that it works sensibly. Much will hinge on how the carbon allowances are allocated. The best model would auction the allowances and use the funds generated to provide rebates to consumers and encourage research and development of improved green technologies. Such a model would make the measure more palatable to taxpayers and drive more responsible energy use. Some utilities already are lobbying Congress, in exchange for accepting the carbon cap, to delay or loosen **Clean Air Act** restrictions on other forms of pollution, including smog and mercury poisoning. That's a bad deal. Fixing the long-term problem of carbon emissions should not come at the cost of worsening short-term environmental problems.

The Reid proposal is less ambitious than the stillborn bipartisan attempt of Sens. John F. Kerry (D-Mass.), Joseph I. Lieberman (I-Conn.) and Lindsey O. Graham (R-S.C.), and far less ambitious than the Waxman-Markey bill passed by the House. But in the current economic and political climate, it offers a reasonable compromise that could lay the groundwork for a sensible carbon policy.

Americans want clean energy (*Washington Post*)

July 16, 2010 Friday
Regional Edition
EDITORIAL COPY; Pg. A18
Maryland

The July 12 front-page article "Climate debate unmoved by spill" needs clarification.

While The Post's poll numbers show a slight decline in public support for clean-energy policy since June 2009, this support has consistently remained above 50 percent in the past year -- a remarkable number given the hundreds of millions of advertising dollars the energy industry and big oil have spent in their relentless effort to keep America addicted to their dirty fuels.

The momentum is growing to create more clean energy and to end offshore drilling. The writers listed three Sierra Club events showing this trend, in which more than 100,000 people participated.

These unified citizens merely reflect the vastly greater number of Americans who want action now to stop **climate change.**

It's time for Congress and the administration to listen to the American people. We want a clean-energy economy that boosts growth, creates good jobs and fights the causes of climate disruption.

Michael Brune, San Francisco

The writer is executive director of the Sierra Club.

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The Senate has not acted on **global warming** for several reasons, but not because of scant public approval. Contrary to the July 12 front-page story, public support for action on **climate change** remains strong. The Post's own June poll found that 71 percent favor action to "regulate the release of greenhouse gases" -- an increase since your poll in December. Americans clearly want investments in clean-energy jobs and to slash climate pollution. Whether 60 senators listen, or 41 follow big oil, is the real question.

Daniel J. Weiss, Washington

The author is a senior fellow and director of climate strategy at the Center for American Progress.

Let's tax the government for wasteful spending (*Washington Times*)

July 16, 2010 Friday
B, COMMENTARY; Pg. 4
America needs an iVAT, not a VAT;
By: By Philip D. Grant SPECIAL TO THE WASHINGTON TIMES
It is likely that President Obama's National Commission on Fiscal Responsibility and

Reform will include a value-added tax (VAT) as part of a deficit-reduction package to be delivered after the November elections. The problem is that there is a fundamental flaw in the VAT that more than offsets its revenue-raising appeal: Increasing taxes on a particular activity produces less of that activity, and as a general rule, economies are less prosperous when value-added efforts decrease (or are hidden or disguised in order to evade taxes). Democrats certainly understand the nature of the relationship between taxes and behavior, as they push various sin taxes - on cigarettes, alcohol, sugary beverages, junk food, wealth accumulation, etc. It is far more logical, then, to assess an inverse value-added tax, or iVAT, on activities that subtract value. In that regard, the obvious place to start is federal, state and local governments.

Despite its inherent illogic, a VAT is a seductively appealing trifecta for progressive deficit hawks: It is relatively hidden in product prices; it can raise an enormous amount of revenue quickly; and it puts a great deal of additional power into the hands of VAT-crats, federal officials who decide VAT winners and losers. A VAT puts the fear of government into those business owners who aren't already true believers in the hegemony of the public sector. Unfortunately, the unblemished record of VATs is that they don't close budget deficits when they're grafted onto an existing income-tax system. As economies strengthen, extra VAT revenues disappear in more entitlement spending and more vote-buying. So, experience suggests that VAT rates increase over time, as do deficits. Higher taxes and deficits crowd out and depress private-sector activity. In general, it appears that economic growth slips about 1 percent per year on average (at least that's been true in Europe relative to the U.S.), unemployment stays high and the net result is a significant drag on living standards over time. No matter how a VAT is sold to the public, actual experience shows time and again that it has been an enabler of public-sector expansion, not a prudent path to deficit reduction.

The beauty of an iVAT aimed directly at the government is that it would be exactly the same as a government spending cut, but, at the same time, completely different. That may sound a bit illogical on the surface, but it's modus operandi in government, where a "cap-and-trade" bill can be resubmitted as the Clean Energy Jobs and American Power Act and no one is supposed to notice. If we've learned anything in the past 18 months, it's the power of labels. Cuts in government spending arouse passionate push-back by special interests that are on the receiving end of government "investments" (i.e., income transfers). An iVAT is, by contrast, a revenue-raising, fiscally responsible tax.

The federal budget for fiscal 2011 includes $3.8 trillion in spending (versus $2.6 trillion of revenue). Why not ask every single department of the federal government to issue a one-page summary of how it adds value and show the metric used to calculate its value added? Then, an iVAT Commission on Federal Government Fiscal Responsibility (composed exclusively of American taxpayers) would evaluate the processes and render a verdict as to what activities truly add value. Those departments that can't demonstrate clear value added would be assessed an iVAT of 20 percent, to start. So, for example, if the Agriculture Department ($146 billion budget) is deemed to be a net economic negative, an iVAT of approximately $30 billion would be subtracted from its budget; that sum would be rebated to taxpayers or put in a deficit-reduction lockbox.

Other possible iVAT targets would be Housing and Urban Development ($53 billion), Health and Human Services ($934 billion), Labor ($117 billion), Education ($94 billion), Treasury ($593 billion), the Environmental Protection Agency ($11 billion) and the Office of Personnel Management ($73 billion). Add those numbers to the Agriculture budget, and there's a potential $400 billion of iVAT revenue. Again, this wouldn't be a heartless cut in valuable government programs, it would be a tax that would redeploy revenue to value-added generators that are better for the common good (more growth, more jobs, more income, etc.).

Progressives seem pretty smug in their belief that Washington's European-style spending (now 25 percent of gross domestic product and rising) has boxed limited-government deficit hawks into a corner. For the good of our children and our grandchildren, we all must sacrifice now, and a VAT will be advertised as fair and relatively painless way to restore fiscal sanity. But do Democrats really want less value added in the economy? For our future generations, shouldn't we tax things that add no value or actually may subtract value? An iVAT makes much more sense, directed first at federal and state government activities and perhaps political campaign spending ($5.3 billion in the 2008 election cycle). With regard to the latter, imagine a political campaign iVAT of $1 billion rebated to taxpayers; that would almost make it pleasurable to watch ads showing one candidate hates children and the other wants to kill grandma. Surely Washington's fairness advocates would support an iVAT on bloated bureaucracies that add no value; it's basically the same as beverage and junk-food taxes to discourage obesity, another sin tax, if you will.

Philip Grant is an adviser to institutional money management firms and a consultant to corporate pension fund sponsors.

AIR

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July 15, 2010

Enviro Groups to Sue Coal Plant Touted by Texas as Permitting Success (*New York Times*)

By GABRIEL NELSON of Greenwire

In the wake of U.S. EPA's rejection of a Texas program that permits the state's largest air pollution sources, environmental groups have challenged a coal-fired power plant that Gov. Rick Perry (R) had hailed as a symbol of the value of the state's "flexible" permitting program.

When federal regulators rejected the Texas permitting program on June 30, it raised the pitch of an already unusually noisy fight between state and federal regulators. Texas Attorney General Greg Abbott (R) sued EPA last month over the agency's rejection of

one air permitting program, and with the publication of the agency's final **decision** (pdf) on the "flexible" permitting program in today's *Federal Register*, the door is open for another legal challenge from the Lone Star State.

Environmentalists are trying to drive home their point, as well. Three advocacy groups -- the Environmental Integrity Project, the Texas Campaign for the Environment, and Environment Texas -- warned one of Texas' largest power plants today that they intend to file suit over about 10,000 alleged violations of federal air regulations.

The **notice** (pdf) was sent to the Lower Colorado River Authority, a publicly owned utility that runs the 1,641-megawatt Fayette Power Project near La Grange, Texas.

"In Texas, air pollution permits are flexible alright -- flexible enough to allow coal-fired power plants like the Fayette plant to avoid tougher federal emission limits, violate the weaker substitute standards offered by the Texas regulators, and short-change Texas taxpayers by failing to pay fees that are supposed to be used to improve air quality," said Ilan Levin, a senior attorney for the Environmental Integrity Project, in a statement today.

Clara Tuma, a spokeswoman for the LCRA, said the utility was reviewing the potential lawsuit but could not comment by deadline.

The power plant had been held up as a model for the 16-year-old flexible permitting program, which sets a single facilitywide cap on air pollution rather than limit emissions from each individual source. The Texas Commission on Environmental Quality (TCEQ) honored the facility's air quality efforts last year, making it the most decorated coal-fired plant in the Clean Texas program.

Upon the rejection of the flexible permitting program last month, Gov. Perry said EPA's actions would "undermine environmental gains" at facilities such as the Fayette plant, which is about 60 miles east of Austin.

"Blinded by its activist agenda, the EPA is even threatening a renewable-energy power plant and a manufacturer of energy efficient air conditioners," Perry said in a statement. "Texas will continue to fight this federal takeover of a successful state program, enacted under Gov. Ann Richards (D) and operated in full under President Clinton, which has cleaned Texas' air at the same time it contributed to the nation's strongest economy."

Environmentalists claim that flexible permitting violates the Clean Air Act and allows Texas plants to produce more emissions than are allowed in other states. Because the flexible program has not been approved by EPA, the plant lacks a federally approved air permit as required by the Clean Air Act, Levin said in an interview.

EPA recently unveiled a proposed program that would allow facilities with flexible permits to sidestep the dispute between state and federal regulators. The plants would undergo a third-party audit and agree to make any necessary emissions upgrades, in

exchange for receiving a federal permit and a promise from EPA not to seek any civil penalties for prior violations (*E&ENews PM*, June 30).

"Companies that have relied on flexible permits have been operating in legal limbo at their own risk for many years, and they continue to do so," Levin said today.

The groups also intend to argue that the LCRA made a major modification to the Fayette plant without upgrading controls for emissions of particulate matter, that the plant exceeded pollution limits in its Texas-issued permit thousands of times and that the utility avoided paying $500,000 in air quality fees by underreporting its emissions in annual reports to the Texas Commission on Environmental Quality.

Industry groups have argued that Texas' program has freed them from meeting source-by-source emission limits, Levin said, "but as a matter of federal law, you can't just make those limits disappear."

Gregg would face penalties under proposed air rules (*News Journal*)

Posted: Thursday, July 15, 2010 11:35 pm | Updated: 3:08 am, Fri Jul 16, 2010.
By Glenn Evans gevans@news-journal.com | 0 comments
Twenty-nine of the 31 ozone level-monitoring Texas counties would not meet Clean Air Act standards being mulled by the federal government, state air regulators said Thursday in Longview.

Gregg, Harrison and Smith counties are among the 29 that would be "out of attainment" with the standards under consideration.

If the standards are enacted, residents would face tougher and more expensive requirements on annual auto inspections, and federal highway funding would be restricted.

Officials with the Texas Commission on Environmental Quality were in Longview for the ninth of 10 sessions being conducted statewide to learn about each region's pollution challenges. State regulators are poised to draw new ozone boundaries the governor will propose to the U.S. Environmental Protection Agency by January.

The boundaries will designate the communities that sink or swim together after the EPA finalizes stricter ozone standards.

Five counties — Gregg, Harrison, Upshur, Rusk and Smith — have teamed up in anti-air pollution efforts under the moniker Northeast Texas Air Care. The EPA adds Cherokee County in a 2008 description of the Northeast Texas region.

The EPA's ozone standard is 75 parts of ozone per billion parts air, a benchmark the five-county Northeast Texas Air Care has achieved. But it's also well beyond the high end of the EPA's new standard.

The EPA is expected to announce a new standard between 60 parts per billion and 70 parts per billion by Aug. 31. The state environmental agency is expected to send its recommended geographic boundaries to the governor a few weeks later.

"Two of 31 counties that have (ozone) monitors would be in attainment" under the 60 parts per billion standard, David Brymer, director of the state agency's air quality division, told about 60 people gathered in Maude Cobb Convention and Activity Center.

Nine counties, he added, would be in attainment with a new, secondary ozone standard the EPA also is imposing. The so-called Secondary Ozone Standard is a part of the Clean Air Act written to protect wildlife, crops, water and other non-human elements.

Speaking on behalf of the five-county Northeast Texas Air Care group, Harrison County Judge Richard Anderson told the state regulators his region should not have to pay for the environmental sins of other areas.

"Please differentiate between the actions of this region versus the actions — or inaction — of the areas in the rest of the state," Anderson told the panel.

The judge produced a study for the Northeast Texas group indicating twice as much ozone recorded at its Karnack monitor originated in Louisiana as came from local sources.

Erik Hendrickson, with the state's air permit section, said the EPA also ponders a rule that would make states more responsible for pollution that migrates to neighbors. The so-called Clean Air Interstate Rule could force Louisiana to clean emissions from refineries that are suspected at the Karnack monitor, he said.

Anderson also made hay with a graph in the state agency's presentation showing ozone levels dropping in Northeast Texas from 2000 to 2009 while holding relatively steady in the Dallas area.

"You can't treat Northeast Texas like Dallas," he said. "The rest of the state may not have participated (in ozone reduction efforts). The results here, as shown by this slide, show substantially, conclusively how effective what Northeast Texas has been doing is. We're different. We didn't sit back. We took action. It's shown results."

The judge was preaching to the choir as far as the state regulators were concerned. Their earlier presentation indeed showed voluntary efforts under the five-county Northeast Texas banner reduced ozone levels by 26 percent.

That beat the statewide ozone reduction average, often trumpeted by Gov. Rick Perry, of 22 percent.

Tammy Cromer-Campbell, the lone environmentalist on the Northeast Texas group's board, praised the EPA for proposing stricter standards.

"I'm happy to see the EPA tighten its ozone standard," she said. "I will admit, we have made some progress, but there is a whole lot more they can do."

Cromer-Campbell also submitted written comments that included a statement noting a one-size-fits-all ozone standard could ease ozone migration state-to-state.

"When the new ozone standard is enacted, all states will have to comply," she wrote. "So, logic would have it the transport numbers would go down."

07/16/2010

Kerry, Lieberman Seek 2013 Start For Utility GHG Cap, While Preempting EPA (*Inside EPA*)

A new "discussion draft" of climate legislation from Sens. John Kerry (D-MA) and Joseph Lieberman (I-CT) calls for a 2013 start for a utility-centric cap-and-trade system for greenhouse gas (GHG) emissions while retaining earlier language from their sector-based plan that preempts EPA's current Clean Air Act (CAA) authority.
The draft plan -- one of several bouncing around Washington D.C. as alternatives to the senators' earlier proposal -- -- comes as Senate Majority Leader Harry Reid (D-NV) is vowing to bring an energy and climate proposal to the Senate floor the week of July 26. *The draft is available on InsideEPA.com.*

Several Senate and other sources say it remains unclear which elements of the Kerry-Lieberman draft, as well as a utility-only plan from Senate energy committee Chairman Jeff Bingaman (D-NM), will be included in a Senate floor package. Reid told reporters July 13 that "we haven't completed [the floor bill], but we're looking at a way of making sure that when we talk about pollution, that we're focused just on the utility section."

But the new utility focus may face opposition from Midwest power generators who are concerned that the narrower trading system would limit emission allowances and unfairly target them (*see related story*).

The Kerry-Lieberman proposal calls for an emissions program starting in 2013, focused largely on GHG emissions from utilities, as well as certain industrial gases like sulfur hexaflouride and GHG emissions from geologic sequestration sites. The plan retains many of the architectural elements of the senators' earlier plan, including a call for a 17 percent reduction in emission from the sector by 2020 and a general call for economy-wide reductions. The draft also contains a "cost containment reserve" of emissions allowances to blunt possible price increases.

While the draft allows use of emissions offsets as a cost control mechanism, it also includes a 500,000 ton per year limit on the ability of covered entities to use emissions offsets toward meeting compliance goals. The new Kerry- Lieberman draft text includes several placeholders for how many emissions credits would go to various purposes, including the number of credits that would be auctioned for the benefit of electricity consumers.

In an appeal to coal-state lawmakers, the draft also includes several incentives to boost deployment of carbon capture and sequestration technologies, such as providing bonus allowances for deployment of the technology, with some elements that appear similar to the senators' earlier climate plan.

The draft bill also retains earlier language preempting EPA's air act authorities to address GHGs, which is often cited by industry as a prerequisite for their support of a climate measure. The language would bar EPA's ability to regulate GHGs under several titles, including new source review (NSR), air toxics and the air act's international provisions.

The draft also retains language, as part of a program to transition away from inefficient coal plants, that calls for a task force to study the potential barriers that current state and federal laws pose to retrofitting of existing facilities.

Part of that provision calls for the task force to weigh exempting certain facilities where eventual retirement is planned from NSR, air toxics and new source performance standard requirements for conventional pollutants, and creates a process for implementing that. That transition program language is just one of several draft Senate provisions that have sparked concerns among environmentalists, who wrote to senators July 14 urging them to oppose such waivers.

"In 1977, when Congress passed strengthening amendments to the Clean Air Act, existing coal plants were expected to install modern pollution control equipment or retire. Yet more than three decades later, many of these facilities continue to operate with extremely high emissions and no modern pollution controls," according to the letter.

The Kerry-Lieberman draft, however, omits several elements of their previous sector-based discussion draft, including a transportation efficiency title and several sections designed to encourage nuclear power generation -- a priority of Sen. Lindsey Graham (R-SC), who has dropped out of discussions with the senators.

A Senate source says "decisions are continuing to be made and we're continuing to add to [the Kerry-Lieberman] draft."

The new draft proposal from Kerry and Lieberman comes at the same time as Bingaman's proposal for a utility-only plan has leaked. Drafted months ago, Bingaman's plan includes an opt-in for manufacturers and retains an allocation scheme for distributing emissions allowances that distributes 50 percent of free allowances under the program according to historical emissions and 50 percent according to electricity sales, in line with House passed language from 2009. The proposal includes a hard

price cap on the cost of allowances -- beginning at $25 in 2012 and rising five percent annually.

Lieberman told reporters July 13 that discussion on a utility-only provision are occurring among multiple Senate offices, including that of Sen. Olympia Snowe (R-ME), who issued a statement weeks ago expressing openness to a utility plan.

Publicly however, Snowe, whose support is seen as crucial to enacting even a proposal limited to the utility sector, is keeping some distance. Snowe told reporters July 13 that her first priority is jobs -- particularly a small business tax bill she supports. "I don't know why they keep deferring it," Snowe said. -- *Doug Obey*

New Jersey Attacks EPA Delay On Petition Over Pennsylvania Emissions (*Inside EPA*)

New Jersey's top environmental official is attacking as "unacceptable" EPA's recent decision to delay its response to the state's Clean Air Act petition urging the agency to mandate that a power plant in Pennsylvania cut its emissions to help improve air quality in the Garden State.
The New Jersey official's comments are the latest in a years-long struggle between EPA and the state over interstate air pollution, and are intended to keep pressure on EPA to eventually approve the request.

"We are disappointed in EPA's decision to grant itself an extension to further review an obvious problem that is affecting public health in New Jersey," said Bob Martin, commissioner of New Jersey's Department of Environmental Protection (DEP). "This pollution has been allowed to go on for years. The issue needs to be resolved more quickly."

EPA in the July 12 *Federal Register* published a notice saying it would delay by six months until Jan. 12, 2011, its response to New Jersey's petition under section 126 of the air act. The section allows states to ask EPA to step in to force pollution cuts in other states. It requires a response to petitions within 60 days, but allows EPA to extend that deadline.

New Jersey's May 13 petition asked EPA to directly regulate the Pennsylvania facility to abate its emissions that the state says are significantly contributing to its inability to meet federal air standards for sulfur dioxide and particulate matter. The coal-fired Portland plant, owned by RRI Energy, has been a point of conflict between the two neighboring states, because of the facility's location on their shared border and what New Jersey says are lax emissions controls.

Martin said emissions from the facility are "a longstanding air pollution issue affecting New Jersey residents that can be improved with strong federal action." He said EPA should be "moving expeditiously to reduce pollution coming from this plant. Anything else is unacceptable."

EPA justified the delay by saying the 60-day deadline under section 126 was insufficient to "complete the necessary technical review, develop an adequate proposal and allow time for notice and comment" on whether the Portland Generating Station in Northampton County, PA, "contributes significantly" to New Jersey's problems attaining EPA national ambient air quality standards.

07/16/2010

EPA Utility Rules Prompt Industry, FERC Forum On Grid Reliability Impacts (*Inside EPA*)

A slew of new and pending EPA rulemakings to curb power plant air, water and waste pollution is spurring the electric power industry and the Federal Energy Regulatory Commission (FERC) to launch a "leadership forum" to assess growing concerns about the rules' potential adverse impacts on the electric grid's reliability.
Strict EPA rules on utilities' emissions, cooling water intakes, coal waste and other regulations could pressure coal-fired power plant operators to choose between upgrading by installing expensive pollution controls or shut facilities down because of the increased costs in complying with the rules, industry and FERC officials say.

FERC Chairman Jon Wellinghoff told a July 6 industry technical conference in Washington, DC, on reliability that the possible closure of several dozen coal plants as a result of strict EPA rules, and the subsequent impact that could have on the electric grid's reliability, needs to be fully assessed by industry and FERC.

Wellinghoff's comments echo remarks by officials from the American Coalition for Clean Coal Electricity, who argued earlier this year that strict new EPA rules to cut nitrogen oxide (NOx), sulfur dioxide (SO2) and mercury emissions from power plants could be so expensive for older, less efficient coal-fired plants to meet that they might shutter those facilities on a quicker schedule than if they had to meet greenhouse gas controls.

Among the various EPA rules of concern to industry is the recently proposed Clean Air Transport Rule (CATR) that would establish a cap-and-trade system for reducing NOx and SO2 emissions in 31 states and the District of Columbia; tighter national ambient air quality standards for ozone and particulate matter; a rule to force mercury emission cuts; EPA's proposed coal waste disposal rules; and revisions to rules for cooling water intakes.

During the July 6 conference, which also included participation from the North American Electric Reliability Corporation (NERC), officials proposed a leadership forum to assess concerns about the likely shuttering of coal-fired power plants due to the rules' impacts and the potential adverse impacts that could have on the electric grid.

The leadership forum was proposed in remarks delivered by the Energy Department's Bonneville Power Administration and almost immediately gained wide support. The

forum would offer a venue to discuss the impacts of new EPA air regulations on reliability, according to Wellinghoff and industry sources.

Supporters see it as a way to achieve greater communication between the commission, industry and NERC on designing reliability standards, and as a vehicle for discussing problems with reliability caused by EPA rulemakings before they are addressed by FERC orders that require certain actions to address reliability concerns, according to industry sources. The technical conference was held in response to criticism from industry and NERC of FERC's March 18 orders that were seen as undermining the NERC standards-making process.

07/16/2010

After Backlash, EPA Seeks Input On Assessing Biomass GHGs In Permits (*Inside EPA*)

EPA is seeking comment on how to assess greenhouse gas (GHG) emissions from biomass energy in upcoming best available control technology reviews for first-time facility GHG permits, after industry and lawmakers criticized the agency's recent GHG permitting rule for ignoring the climate benefits of biomass energy.
In a *Federal Register* notice slated for publication July 15, EPA puts out a "call for information" on a wide range of issues for assessing biomass GHGs in the Clean Air Act permit process. Among the input the agency seeks are methods to assess bioenergy at the facility or unit scale rather than the national scale, and alternative approaches to assess the climate impact of bioenergy. *The notice is available on InsideEPA.com.*

The information could further shape EPA's final stance in an ongoing debate about the climate impact of burning biomass for energy. EPA also plans to issue later this year a final rule determining whether biofuel from pulpwood reduces GHGs sufficiently to win credits under the agency's renewable fuel standard, a rule that could show EPA's position on the issue (*Inside EPA*, July 2).

The notice comes after EPA has faced strong criticism from the biomass industry and some lawmakers over the agency's initial decision not to exempt biomass facilities from regulation in its GHG "tailoring" permit rule.

The June 3 final rule establishes thresholds for triggering first-time GHG limits for stationary source air permits starting in January next year. In the rule, EPA raised traditional thresholds for triggering permit requirements under the air act's prevention of significant deterioration from 100 or 250 tons per year (tpy), depending on the source type, to 75,000 tpy for GHGs. The rule argues the higher threshold is necessary to avoid triggering millions of GHG permit requirements for smaller sources.

EPA defended the approach using a legal claim of "absurd results," which the agency said would result if it kept the 100/250 tpy threshold for GHGs because 100/250 tpy is a

very low threshold for GHGs compared to conventional pollutants and, EPA argues, would capture millions of small stationary sources Congress never intended for regulation.

But biomass proponents criticized the tailoring rule because EPA said the legal doctrines used to justify raising the trigger for Clean Air Act permits do not justify exempting particular energy sources -- such as biomass -- from permitting at this time, though the agency noted it would take further comment on the issue.

For example, 62 members of the House and 37 members of the Senate signed letters arguing the tailoring rule discouraged the use of biomass and urging EPA to reconsider its position.

Backers of biomass say the fuel is carbon neutral because plants reabsorb the same amount of carbon dioxide (CO2) that is emitted when it is burned for energy, and they point to EPA's inventory of emissions and sinks, which they say excludes biomass emissions. EPA is yet to take a final position on the issue.

EPA acknowledges that the inventory, which the agency submits to the United Nations Framework Convention on Climate Change, does not include emissions from biomass combustion in its calculations for energy emissions, but says the biomass emissions are included in the inventory's calculations of land use change and forestry emissions. This approach avoids double counting of the emissions, but does not ignore the emissions altogether, the notice says.

As a result, the agency seeks comment on the extent to which -- given this information -- the inventory suggests biomass is carbon neutral. EPA also seeks comment on the extent to which a national-scale inventory can be applied in Clean Air Act permitting purposes, which are issued on a facility or unit level.

EPA also warns of the complexity of the issue and seeks comment on how to account for the amount of time it takes biological feedstocks to grow and the geographic scale that should be used for determining the impact of bioenergy. "Both a default assumption of carbon neutrality and a default assumption that the greenhouse gas impact of bioenergy is equivalent to that of fossil fuels may be insufficient because they oversimplify a complex issue," the notice says.

Regina McCarthy, EPA's air chief, argues that EPA never intended to make a determination on the climate impact of biomass in the tailoring rule and is open to considering the climate benefits of the fuel.

"The fact that in the tailoring rule EPA did not take final action one way or another concerning such an exclusion does not mean that EPA has decided that there is no basis for treating biomass CO2 emissions differently from fossil fuel CO2 emissions," according to a July 9 letter McCarthy sent to the 37 senators that previously wrote to the agency criticizing the tailoring rule for not exempting biomass from regulation.

07/16/2010

EPA To Seek Remand To Revise Livestock Emissions Reporting Exemption (*Inside EPA*)

EPA will ask a federal appeals court to remand its litigated rule exempting concentrated animal feeding operations (CAFOs) from reporting most hazardous air emissions under Superfund and right-to-know laws so it can revise the rule, but environmentalists say talks on the issue have failed and are urging the court to allow their suit to move forward.

EPA in a July 7 filing with the U.S. Court of Appeals for the District of Columbia Circuit says that the agency intends to seek a voluntary remand of its 2008 CAFO emissions reporting rule that created the exemptions from reporting requirements. The agency says it wants the remand so that it can reconsider the rule, including the various complaints raised by environmentalists and industry groups that filed suit over the CAFO reporting exemptions.

The DC Circuit in 2009 agreed to a request from all parties to hold the case in abeyance pending settlement talks. "If this matter is remanded to EPA for further administrative consideration, there will be nothing before this Court for briefing," EPA says. *Relevant documents are available on InsideEPA.com.*

EPA's filing is in response to a June 28 filing from environmentalists in the suit, *Waterkeeper Alliance, et al. v. EPA*, in which they say that the settlement talks have failed and the lawsuit should proceed.

The environmental groups argue that the agency has had plenty of time to retract the rule and urge the court to reopen the case, according to the filing. "Briefing should proceed because EPA cannot address the deficiencies of the final rule by voluntarily tinkering with the terms of the reporting exemptions."

EPA's rule exempted all CAFOs from reporting their hazardous air emissions under the Comprehensive Environmental Response, Compensation, and Liability Act, and exempted all but the largest CAFOs from reporting emissions under the Emergency Planning and Community Right-to-Know Act.

Environmentalists, including Waterkeeper Alliance, Sierra Club, the Humane Society of the United States, and the Environmental Integrity Project, filed suit over the rule arguing any exemption from reporting under the laws is illegal.

The groups argue that the exemptions violate the plain language of the laws and that EPA lacks the authority to carve out the exemptions for the livestock industry. Even though EPA is finalizing data from a study of CAFO emissions, the groups say there is no reason to delay revising the rule until the study is final because the groups say EPA acknowledged the rule was based on the likelihood of emergency personnel responding to reports, not the amount of emissions or health risks.

The industry group National Pork Producers Council sued arguing CAFOs should be exempt from all reporting under both laws.

The National Chicken Council, National Turkey Federation, and the U.S. Poultry & Egg Association intervened on behalf of EPA.

07/16/2010

Agency Defends Emissions Trading Rule's Impact On Pollution Credit Prices (*Inside EPA*)

EPA is strongly defending its proposed sulfur dioxide (SO2) and nitrogen oxide (NOx) trading rule from criticism that it will decimate market prices for SO2 and NOx emission credits and prolong legal uncertainty over trading, with EPA saying the rule is legally robust, provides certainty, and will create new credits with high values.
In a July 13 interview with *Inside EPA*, EPA rejected industry concerns that legal uncertainty over trading and low prices for emission allowances would undermine the pollution cuts the agency is trying to achieve through its proposed Clean Air Transport Rule (CATR) cap-and-trade program. Traders in pollution credits and power plant industry officials have recently warned that the rule would do little to address the low value of existing pollution credits.

EPA is slated to hold a July 16 teleconference with emissions credit traders to discuss the various issues surrounding CATR, which would replace the Bush-era Clean Air Interstate Rule (CAIR) cap-and-trade program for SO2 and NOx. A federal court remanded that rule to EPA in part because of legal flaws in the rule's trading markets.

In advance of the conference call with traders, EPA says that its proposed rule could be a boon for pollution credit trading, boosting the value of some SO2 credits to $1,000 and NOx credits to $500 by 2012.

EPA believes the projected high value of emission credits under the new rule will create an incentive for companies to install pollution control technologies to help meet the SO2 and NOx caps EPA is proposing. Companies that emit less than the capped level can earn credits that they can sell to facilities with higher emissions. Those more-polluting facilities can buy credits in order to comply with the rule, rather than installing pollution controls.

Under EPA's preferred approach in CATR the agency would set a state-specific pollution cap for the 31 states subject to the rule, and power plants would be able to buy allowances to enable them to pollute in excess of their state's emissions limit for SO2 and NOx up to a maximum of 10 percent excess emissions per state. It would also allow limited emissions trading within states beneath the state-specific limits established by the rule.

Industry officials are concerned that CATR will do little to salvage the market in SO2 credits, which tanked after the federal appellate court in 2008 said that CAIR's trading system was unlawful. "It really feels like prices are going to zero quickly," Peter Zaborowsky, a managing director of Evolution Markets, a White Plains, N.Y.-based provider of environmental brokerage services for utilities and investors, told the *Wall Street Journal* July 12.

According to the Environmental Markets Association (EMA), a group that represents utilities, traders and others, EPA's proposal significantly limits trading -- and the agency's plan for another rulemaking in 2011 creates significant uncertainty. EPA has said it is likely to issue a proposed revision to CATR sometime next year to take into account pending strict ozone and other air rules that states say will require stricter caps than proposed under CATR.

The rule seems to be "overly complicated," Paul Tesoriero, director of emissions markets at Evolution Market, told *Greenwire* recently. And an Edison Electric Institute spokesman told *Greenwire* that EPA's plan for a second rule "leaves the power sector exposed to a great deal of regulatory uncertainty."

EPA however tells *Inside EPA* that the new proposed rule will not nullify existing SO2 allowances traded under the agency's long-running acid rain program in the lower 48 states, but that CATR would create a "a brand-new SO2 currency, that is going to be traded in its own right, at very reasonable prices."

The new SO2 allowances would apply in 26 of the 31 states covered by the proposed rule, which would technically create four new trading programs: one for annual ozone season NOx, one for ozone season NOx, and two for annual SO2. The SO2 programs are split between the so-called Group 1, comprised of more-polluting power plants as defined by EPA, and Group 2, which is made up of plants that the agency deems lower-emitting.

Unlike CAIR, which allowed unrestricted interstate trading of allowances, the proposed CATR allows unrestricted trading below state-specific emissions caps, and only very limited interstate trading of allowances in a 10 percent annual band, or "variability limit," above the NOx and SO2 caps in the rule.

According to a written statement by EPA July 13, EPA anticipates allowance 2012 prices for Group 1 SO2 of $1000, and $800 for Group 2, falling to $800 and $300 dollars, respectively, in 2014. For annual NOx and ozone-season NOx, the anticipated price is $500 in both 2012 and 2014.

This compares with a price for existing SO2 allowances -- issued for EPA's acid rain trading program under Title IV of the Clean Air Act -- of only around $5, down from $15 before EPA proposed CATR and as much as $1600 at the peak price after the Bush EPA introduced CAIR in 2005.

The market for SO2 allowances collapsed, observers say, after the U.S. Court of Appeals for the District of Columbia Circuit vacated the rule in 2008, then remanded it

later that year to EPA on the grounds that it did not properly account for the relative contribution of upwind states to downwind states' nonattainment of federal air standards.

EPA said in the interview that the agency's projected allowance prices should give industry sufficient incentive to install new scrubbers to reduce emissions from power plants, and for coal-burning plants to switch to cleaner types of coal. The agency said it anticipates another 14 gigawatts worth of electrical-generating capacity covered by the transport rule will install scrubbers as a result of the new trading system under CATR.

The new transport rule would effectively make the existing SO2 allowances redundant in the Eastern half of the country where the rule will apply, leaving a large surplus of very cheap SO2 allowances on the market for Western states that are relatively low-emitting and do not need them, trading industry sources complain.

Also, the new rule would formally discontinue the NOx allowances traded under CAIR, which have also fallen in value since their peak. "For NOx, we are creating a brand-new currency for this thing," EPA said.

An EMA source calls EPA's projected allowance prices "a good first-order approximation," but notes that the prices do not reflect the risk inherent in holding the allowances, which would tend to depress the market's valuation of them. But EPA has probably been optimistic about the cost of emissions controls required under the rule, which will likely be higher than expected, pushing allowance prices up and counteracting the absence of risk pricing, the source says.

The failure of EPA to roll-over existing SO2 and NOx allowances in circulation has upset traders and industry who value stability and continuity in policy, says the EMA source. "The membership wanted as much continuity between the old program and the new one as possible," the source says.

Traders still active in the market for Title IV allowances are disgruntled at the drop in the credits' value and the potential that CATR will do nothing to revive their value. The source notes a strong rationale for EPA to avoid giving credit for existing Title IV allowances, namely an accumulated glut of 12 million very cheap allowances that power plants could buy rather than make real emissions cuts. This excess of allowances "posed a huge threat to EPA" because if companies buy them rather than install pollution controls it could undermine CATR, the source says.

Traders are also irritated that EPA proposes to end the CAIR NOx allowances, which effectively ends trading in existing NOx credits without any chance of compensation for investments already made. But under the air act, allowances do not count as "property," and so do not carry with them common law property rights that could be asserted in court in the face of an attempted "taking" by the government, the source adds.

EPA cannot roll over the CAIR NOx allowances because the court vigorously objected to the use of so-called "fuel factors" under CAIR to determine how they were allocated, EPA says.

Fuel factors were used to weight allocations in favor of higher-emitting power plants burning coal, and to disadvantage cleaner-burning plants burning natural gas, industry detractors complain. "There were guys who felt that this fuel factors thing [cheated] them," EPA said. (*Inside EPA*, Feb. 19).

EPA also says its proposed rule will comply with the D.C. Circuit's requirement for a legally adequate trading program for NOx and SO2. "Our primary interest is to have markets to protect the environment," EPA said. However, the new limited trading system includes safeguard mechanisms to explicitly ensure that the system remains linked to the "significant contribution" of each state to other states' air pollution problems, as required by the D.C. Circuit.

In addition to the 10 percent annual variability limit above each state's emissions cap, EPA would impose a lower three-year limit on states. Compliance with these limits would be evaluated by the agency annually.

"If either limit were exceeded, then EPA would apply additional criteria to determine which source owners in the state would be subject to an allowance surrender requirement based on their sources' emissions," the EPA statement says. This allowance surrender would be in addition to the regular requirements imposed by the trading system.

Such "assurance provisions" should make certain that necessary emission reductions actually happen, EPA says, which the agency believes will satisfy the D.C. Circuit's demand that the rule reduce emissions. Because of these provisions, and the extensive modeling of state's contributions to other states' air standard attainment problems that preceded the rule's proposal, the new rule should be legally defensible, EPA says.

Industry observers however reject EPA's claims that CATR provides regulatory certainty, pointing to the 2011 CATR rulemaking as adding more uncertainty to unsettle the markets, industry sources say.

To provide certainty to the trading market, EMA is lobbying Congress to pass broad multi-pollutant legislation authored by Sen. Thomas Carper (D-DE) that would codify an SO2 and NOx emissions-trading program. Carper said after EPA released the transport bill that passage of his bill, S. 2995, is still necessary as it would enact steeper pollution cuts and provide greater insurance against legal challenges to the trading regime. -- *Stuart Parker*

07/16/2010

Industry Cites GHG Limits As Basis To Revise EPA's Years-Old PSD Rules (*Inside EPA*)

Industry groups are asking EPA to amend its underlying rules governing permitting for new or modified stationary sources to ensure that they do not apply to greenhouse

gases (GHG), arguing that the agency is improperly extending the scope of the so-called prevention of significant deterioration (PSD) rules to pollutants like carbon dioxide for which there are no national ambient air quality standards (NAAQS).
The groups filed administrative petitions earlier this month with EPA as well as petitions for review with a federal appeals court. *Relevant documents are available on InsideEPA.com.*

While the immediate catalyst for the requests is EPA's effort to begin regulating GHGs at the largest stationary plants early next year, sources say the process also bears close watching as a possible new front in long-running industry battles against the decades-old PSD rules, which lay out the process for limiting numerous pollutants emitted by both new sources and retrofitted facilities.

PSD rules apply to areas that meet a NAAQS, a federally enforceable air quality limit for pollution levels in a given local area. EPA has long maintained that PSD requirements come into play for pollutants that are regulated under other portions of the Clean Air Act, with industry now clashing over the the scope of that policy.

Environmentalists are already downplaying the legal prospects for the effort, with one source saying arguments that PSD cannot be applied to pollutants without a NAAQS are suspect in part because industry has waited so long to mount a challenge.

At issue are efforts by a host of industry groups now citing recent EPA decisions to apply GHG rules to motor vehicles as an opening to challenge both the application of PSD to the gases, and perhaps the underlying PSD rules themselves.

Petitions include a July 6 submission to EPA in which the National Association of Manufacturers, the American Petroleum Institute and a barrage of other industry groups call on the agency to "rescind, and/or revise its regulations" for the PSD program on the grounds that they are inconsistent with the Clean Air Act. The groups also ask EPA to stay implementation of the PSD program for GHGs while it considers the petition.

The petition says EPA's mobile source GHG rule, finalized earlier this year, creates changed regulatory circumstances that justify a new look at the PSD rules. They are seeking an explicit policy restricting PSD to pollutants for which there is a NAAQS -- which they term a "no automatic PSD trigger" policy, or NAPT. In addition, the groups ask EPA to revisit its current approach that allows GHGs covered under the agency's mobile source rules to serve as the trigger for making GHGs "subject to regulation" under PSD.

The groups direct much of their fire against PSD rule interpretations set forth in EPA's recently finalized GHG "tailoring" rule and the agency's reconsideration of the Bush-era "Johnson memo," which clarified the statutory definition of "subject to regulation," arguing that EPA should reverse interpretations that GHGs can be regulated at all without a NAAQS.

However, the groups are also asking EPA to scrap -- or revise -- decades-old PSD rules, to the extent the agency believes they subject GHGs to PSD.

In tandem with the petition, the coalition -- as well other industry groups, including the Clean Air Implementation Project and American Chemistry Council (ACC) -- have also filed several separate petitions for review, without detailed arguments, in the U.S. Court of Appeals for the District of Columbia Circuit challenging PSD rules from 1978, 1980 and 2002. In a related development, many of these groups have filed separate petitions challenging EPA's greenhouse gas vehicle regulations.

A separate July 6 petition to EPA from ACC voices similar concerns regarding NAAQS, asking upfront for EPA to revise or rescind specific long-standing PSD regulations.

ACC also argues that the underlying PSD rules at issue are not subject to statute-of-limitations requirements because the agency's recent moves to extend GHG limits to PSD are significantly changed circumstances that warrant their reopening. "Until now, this gap between the Clean Air Act and EPA's approaches has been of little consequence. However, as EPA approaches its GHG regulatory regime in early 2011, this issue becomes critically important," ACC's petition says.

The group also seeks to justify a re-examination of the issues in part by citing the public comment and judicial review language in Clean Air Act section 307 as a basis for reopening issues that have arisen well after issuance of the rules. ACC said in a press statement that it "intends to focus its efforts on addressing the petition for rulemaking with EPA."

Several sources note that the industry arguments to EPA raising the NAAQS issue are not new, echoing comments by multiple industry groups to the agency during consideration of its GHG tailoring rule. Several environmentalists cast the arguments, however, as of relatively recent vintage -- a product of the GHG fight over the last several years.

However, while the current arguments target EPA's GHG regulatory push, one environmentalist says it is possible that they could have the "spillover consequence" of opening a broader front against regulation of other PSD pollutants, should a court embrace them.

The source says the odds of industry success are unlikely, characterizing the position that the PSD program does not apply to pollutants without a NAAQS as a long after-the-fact argument. The source says the industry claims are inconsistent with its prior failures to challenge PSD rules extending to several pollutants without a NAAQS, going back decades, including those pertaining to ground-level ozone precursors and pollutants that destroy the stratospheric ozone layer.

The industry requests to EPA for a new look at PSD also come in the wake of a recent court case that industry sources say expanded a a "constructive reopening" doctrine allowing challenges to old rules, though one source familiar with the effort says the current claims do not rely on that doctrine. The D.C. Circuit in the 2008 case *Sierra Club v. EPA* vacated a 1994 Clean Air Act regulation after EPA made a series of tweaks that prompted environmentalist objections.

In the PSD case, the petitioners are pursuing the course recommended in a dissent in that case penned by Judge Raymond Randolph, who said the court should not have weighed in on the matter and that the proper solution would have been for Sierra Club to petition EPA to modify the old regulation in light of changed circumstances. The industry groups are now arguing to EPA that the GHG motor vehicle rule represents the changed circumstances that merit renewed consideration of changes to old PSD rules. -- *Doug Obey*

07/16/2010

EPA GHG Vehicle Rule Faces Slew Of Last-Minute State, Industry Lawsuits (*Inside EPA*)

Several states and a slew of industry groups representing a broad range of sectors have filed last-minute lawsuits challenging EPA's first-time greenhouse gas (GHG) vehicle regulation, underscoring the plaintiffs' concerns about the vehicle rules acting as a trigger for pending agency rules to cut GHGs from stationary sources.
The new lawsuits -- which bring the total challenges to more than 20 -- are expected to serve somewhat as a proxy fight over EPA's upcoming rule requiring some large industrial facilities to meet Clean Air Act limits for GHGs. At least one of the industry groups challenging the vehicle rule warns that EPA could have violated the act by not taking comment in its proposed version of the vehicle rule on whether EPA should regulate GHGs from stationary sources.

According to a Department of Justice (DOJ) chart provided to *Inside EPA*, there are 23 pending petitions for review in the U.S. Court of Appeals for the District of Columbia Circuit that either directly challenge EPA's vehicle rule or challenge other agency rulemakings by citing the vehicle rule as a reason to take a fresh look at the other regulations. *The chart is available on InsideEPA.com.*

The chart shows that 17 petitions for review directly challenge the agency's light-duty GHG vehicle rule, mostly from industry groups including the American Iron & Steel Institute (AISI), Portland Cement Association, Utility Air Regulatory Group, National Mining Association, several farm groups and other entities. According to the DOJ chart, as of July 8 only three of those cases have currently been consolidated.

Several House lawmakers joined with the Southeastern Legal Foundation and other groups to also file a petition for review of the vehicle rule. A coalition of eight states -- Texas, Alabama, South Carolina, South Dakota, Nebraska, North Dakota, Virginia and Mississippi -- also filed a separate petition for review.

AISI's statement of issues underscores the industry's concerns about the issuance of the vehicle rules triggering a Clean Air Act duty for EPA to issue GHG rules for stationary sources. EPA's final GHG "tailoring" regulation will require some large facilities to meet air permit limits for GHG emissions starting in 2011.

AISI wants the court to determine whether EPA's stationary source permit programs are affected by the mobile source rules; whether EPA's issuance of the vehicle rules complied with the Regulatory Flexibility Act, Unfunded Mandates Reform Act and the Paperwork Reduction Act; and whether EPA's vehicle rule is contrary to the air act because it failed to seek public comment on when the agency should regulate stationary sources for GHGs.

Many of the petitioners challenging the rule, such as AISI, represent industries that face stationary source GHG regulations after the Supreme Court affirmed EPA's ability to regulate the gases from motor vehicles -- and by extension stationary sources -- in its 2007 ruling in *Massachusetts v. EPA.*

Several of the petitions for review were submitted just days before a July 7 deadline for filing with the court, while other petitions from groups such as the Coalition for Responsible Regulation and several industry groups were filed in the D.C. Circuit May 7, the day that EPA issued its final vehicle GHG rule.

The remaining six petitions for review do not directly challenge the vehicle GHG rule, but generally cite the rule as a new basis to challenge other agency Clean Air Act regulations. They primarily challenge old EPA rules for new and modified stationary pollution sources, with a wide variety of industries concerned that the recently finalized vehicle rules will trigger new permitting rules for stationary sources under the Clean Air Act. One of the petitions -- from Peabody Energy Corporation -- also challenges EPA's denial of a request to reconsider its final GHG endangerment finding.

Some of the groups filing suit over the vehicle rule are also arguing in separate but related petitions to EPA that its mobile source GHG rule constitutes new grounds to re-examine prior EPA interpretations of prevention of significant deterioration rules, or even the decades old-rules themselves (*see related story*).

The new challenges to EPA's vehicle rule also come as some of the same groups are contesting EPA's decision to allow California and other states to regulate motor vehicle GHGs at the state level. For example, industry filed its opening brief June 25 in the case *Chamber of Commerce of the United States America, et al., v. U.S. Environmental Protection Agency, et al.* in its challenge of the waiver approval.

ASBESTOS
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State rock in middle of dustup over mineral (*San Francisco Chronicle*)

(California)
July 16, 2010 Friday
FINAL Edition
Main News; Pg. A1

State rock in middle of dustup over mineral;
LEGISLATION;
Senator, scientists argue over asbestos in serpentine
By Peter Fimrite, Chronicle Staff Writer
It takes real effort to impugn the reputation of an inanimate object, but there is a movement gaining traction in Sacramento to strip the California state rock of its lofty title for what geologists say is a trifling offense: It contains asbestos.

The stone in question, serpentine, has been the state rock since 1965, but a group led by Sen. Gloria Romero, D-East Los Angeles, wants it removed from the symbols list because it often contains the carcinogen linked to 2,500 deaths a year in the United States.

Romero has introduced SB624, which would strip the olive green stone of its title, but she is now running up against a gaggle of geologists and natural history buffs who have removed their spectacles, thrown down their lab coats and are rallying to the rock's defense.

Serpentine, they say, is intricately linked to California's tumultuous geologic history, was closely associated with gold deposits during the Gold Rush, provides habitat for rare plants and insects and, last but not least, is beautiful.

"It's a wonderful state rock because it has got this great natural, social and scientific history in California," said Jon Christensen, an environmental historian who is the executive director of the Bill Lane Center for the American West at Stanford University. "It is found all over the world, but it is especially associated with continental margins where tectonic forces and subduction have been strongest, like California."

The spat over the stone turned surly this past week as accusations of shady partisan backroom dealing were tossed around the state Capitol. The rock flinging even overshadowed budget mudslinging.

Campaign formation

The "drop the rock" campaign was actually started two years ago by Linda Reinstein, the co-founder of the Asbestos Disease Awareness Organization. Her husband, Alan, died in 2006 of mesothelioma, an incurable cancer caused by asbestos.

"My husband is dead," Reinstein said. "I just want to do something positive with the loss of his life for California."

Romero sponsored the bill - which would eliminate not only serpentine, but the entire state rock category - because, she said, California has the highest rate of mesothelioma deaths in the nation and it is inappropriate to celebrate the source of that disease.

"This isn't against serpentine. It's about asbestos," Romero said. "Why in a health-

conscious state like California do we have a state rock that is related to asbestos? This is a teachable moment. It's time to be sensitive to the fact that people suffer and die from this substance. It's time to drop the rock as a symbol."

Serpentine is a metamorphic rock that forms underneath the ocean, where it is squeezed by colliding continental plates and forced upward. It can be found in the Sierra Nevada foothills and in 42 of California's 58 counties. It was often found by miners near gold deposits.

Rare habitat

It was named from the Latin serpentinus, meaning serpent rock, because of its jade color and often smooth surface. As such, it is sometimes associated with magic and the occult. Its chemical composition is such that only uniquely adapted native plants grow in serpentine soil and, thus, rare insects like the threatened checkerspot butterfly are associated with those outcroppings.

Fire-resistant chrysotile asbestos is one of 20 minerals that can often be found within the rock. Considered a wonder substance in the 1960s, asbestos was mined extensively for use in building construction, household appliances and for insulation. In 1965, lobbyists for the makers of asbestos products were among those who urged state legislators to recognize serpentine as the state rock.

Health authorities have since found that asbestos can cause cancer and other diseases when the fibers are inhaled. It is no longer mined in the United States.

Twitter gets involved

The proposed bill, approved by the state Senate, is now working its way through the Assembly. But it went pretty much unnoticed until June when it was mentioned on Twitter, then in blogs. Pretty soon a lively discussion had erupted between geologists and environmental scientists, many of whom are now crusading against the bill.

They claim Romero's bill wrongly states that all serpentine contains cancer-causing chrysotile asbestos. In fact, naturally occurring asbestos that remains undisturbed in the ground presents no risk, according to the Environmental Protection Agency.

"I start my California geology class talking about the state symbols and, out of all of those, serpentine is the most emblematic of what California is," said Garry Hayes, a Modesto Community College geology teacher who was among the first to protest the bill online. "It has educational value, and if it remains our state rock, people are going to learn about it, including its connection with asbestos."

Politics being what they are, other agendas have somehow slipped their way into the debate. John Sullivan, the president of the Civil Justice Association of California, has accused trial lawyers of hatching a fiendish plot to file more asbestos lawsuits by ruining

the reputation of the state's stone.

Absurd allegations

"Lawyers are suing everybody they can find, listing every possible culprit sometimes from decades past, when they have a client who is sick from asbestos," Sullivan said. "With this bill, it is conceivable that if someone went to elementary school and played soccer in Placerville where there is serpentine in the hills, that the school district could be sued, so I don't think our concern that this would foment more litigation is misplaced at all."

The Consumer Attorneys of California, whose political action committee has donated nearly $15,000 to Romero's political campaigns over the past decade, recently expressed support for the bill. Nevertheless, J.G. Preston, the press secretary for the consumer attorneys, said the allegations are absurd.

"They have created this out of whole cloth," said Preston, pointing out that asbestos litigation invariably relates to problems associated with building materials and construction, not naturally occurring elements. "There is no nefarious lawsuit craze behind this. In fact, there is nothing in SB624 that would have any implications for litigation at all."

Ultimately, the effort by politicians to oust the state rock may be the best thing that could have happened to science, said Christensen, whose research at Stanford focuses on serpentine grasslands.

"Now there is a wonderful, vigorous conversation going on online about a rock," Christensen said. "It's been fun to see it erupt, particularly among geologists and mineral collectors and fans of natural history."

California state symbols
Bird: California quail
Freshwater fish: Golden trout
Saltwater fish: Garibaldi
Flower: Golden poppy
Gemstone: Benitoite
Grass: Purple needlegrass
Insect: California dogface butterfly
Mammal: Grizzly bear
Marine mammal: Gray whale
Mineral: Gold
Reptile: Desert tortoise
Tree: Sequoia

EPA responds to topsoil mistake (*Western News)*

Posted: Thursday, July 15, 2010 3:53 pm
By Canda Harbaugh, The Western News | 0 comments
Seven Libby-area properties that underwent an asbestos cleanup last week will be sampled to determine if they were backfilled with contaminated soil, Environmental Protection Agency officials said.

Contractors used topsoil – a mixture of local soil with sand and organic material from regional areas – to backfill properties before test results came back revealing that the stockpile the material came from tested positive for trace asbestos.

“We got to doing so many properties, we weren’t able to keep up with topsoil and did use some before we had sample results,” said Mike Cirian, EPA’s Libby field leader. “… We’ve taken steps to make sure this does not happen again.”

The EPA halted backfilling activities last Friday when it learned that the topsoil was contaminated. The remaining unused topsoil in that batch will not be utilized.

“It happened, we’re going to own it and we’re going to fix it,” Cirian said.

The agency will sample the seven properties – giving them first priority – in the same way it tests properties before performing a removal, Cirian said. If results reveal that a yard contains asbestos, the soil will be removed and backfilled again. If samples reveal non-detect, the soil will stay in place.

“Trace on your property is not a removal trigger,” Cirian said, “but in this case where (we cleaned the property), trace is not acceptable and we’ll adjust accordingly.”

Contractors usually make a batch of topsoil about 3,000 cubic yards in size that is then tested for a number of contaminants. When results reveal the soil is clean, it is used to replace contaminated soil that was removed from properties.

The EPA has used soil taken from the same source south of Libby for over two years and has never had a sample test positive for any contaminant.

“The concern was that some of it was used before the test results came back,” said Victor Ketellapper, EPA’s Libby team leader. “I think it was partly because we had felt confident because we had so many samples in the past that were non-detect.”

EPA officials are investigating the source of the asbestos.

“We’re going back to sample each of the components of that soil mixture to see if one of the sources has asbestos in it,” Ketellapper said. “… We want to understand why suddenly after two years it’s showing up a low level.”

The composite sample of the topsoil contained trace Libby amphibole asbestos, a level defined as less than 0.2 percent. The testing entailed collecting and combining material from 30 different points of the stockpile to create one sample.

The rocky lay down material used temporary on properties during cleanup also came up positive for trace in an initial 30-point composite sample, Cirian said. Lay down material is eventually removed or covered at the completion of a cleanup. The results of a second quality assurance sample revealed non-detect, but the remaining material will still not be used on any more properties.

The conditions may have been just right to detect the low level of asbestos.

“We may never find out where it came from,” Cirian said. “Trace is less than 0.2 percent. Trace is hard to repeat.”

BP SPILL
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Some oil spill events on Thursday, July 15, 2010 (*Associated Press*)

Story also appeared: *Washington Post*

By The Associated Press
The Associated Press
Thursday, July 15, 2010; 6:53 PM

-- A summary of events Thursday, July 15, Day 86 of the Gulf of Mexico oil spill that began with the April 20 explosion and fire on the drilling rig Deepwater Horizon, owned by Transocean Ltd. and leased by BP PLC, which is in charge of cleanup and containment. The blast killed 11 workers. Since then, oil has been pouring into the Gulf from a blown-out undersea well, though BP said it finally choked off the flow Thursday afternoon.

OIL OFF

BP finally choked off the flow of oil into the Gulf of Mexico on Thursday, 85 days and up to 184 million gallons after the crisis unfolded. Then began a tense 48 hours of watching to see whether the capped-off well would hold or blow a new leak. The big, billowing brown cloud of crude at the bottom of the sea disappeared from the underwater video feed for the first time since the disaster began in April, as BP closed the last of three openings in the 75-ton cap lowered onto the well earlier this week.

NO VICTORY DECLARATION

The company stopped far short of declaring victory over the biggest offshore oil spill in U.S. history and one of the nation's worst environmental disasters, a catastrophe that has killed wildlife and threatened the livelihoods of fishermen, restaurateurs, and oil industry workers from Texas to Florida.

REACTIONS

The news elicited joy mixed with skepticism from wary Gulf Coast residents following months of false starts, setbacks and failed attempts. Alabama Gov. Bob Riley's face lit up when he heard the oil flow had stopped. "That's great. I think a lot of prayers were answered today," he said. President Barack Obama called it a positive sign, but cautioned: "We're still in the testing phase." Stephon LaFrance, an oysterman in Louisiana's oil-stained Plaquemines Parish who has been out of work for weeks, called it a lie. "I don't believe they stopped that leak. BP's trying to make their self look good," he said.

WAIT AND SEE

Then a waiting period began. Engineers will monitor pressure gauges and watch for signs of leaks elsewhere in the well. The biggest risk: Pressure from the oil gushing out of the ground could fracture the well and make the leak even worse. High pressure is good because it shows there's only a single leak. Lower pressure could mean more leaks farther down in the well. BP expects to keep the oil trapped in the cap for 48 hours before it decides if the approach is working.

BY THE NUMBERS

The stoppage came 85 days, 16 hours and 25 minutes after the first report of the Deepwater Horizon explosion. Somewhere between 94 million and 184 million gallons have spilled into the Gulf, according to government estimates. BP said the oil stopped flowing into the water at 2:25 p.m. CDT after engineers gradually dialed down the amount of crude escaping through the last of three valves in the cap.

CLAIMS

The $20 billion that BP has set aside to pay for losses caused by the spill will start making payments in early August. Ken Feinberg, who is in charge of paying individuals and businesses for lost income, told government officials in Louisiana on Thursday that he expected a seamless transition from BP management to his. BP has 35 offices in the Gulf Coast area accepting claims.

DISPERSANTS

BP's use of chemicals to disperse the oil has come under renewed scrutiny. The company has used at least 1.8 million gallons of dispersants on the Gulf's surface and 5,000 feet deep at the source of the leak. Earthjustice has filed a federal lawsuit in

Florida to force the Environmental Protection Agency to turn over safety studies on the chemicals. BP says the chemicals have kept much of the spill from reaching the Gulf coast.

MAJOR NESTING AREA

Biologists say oil has smeared at least 300 to 400 pelicans and hundreds of terns in the largest seabird nesting area along the Louisiana coast, a sharp escalation in wildlife harmed by BP's Gulf of Mexico oil spill. The finding underscores that official tallies of birds affected by the spill could be significantly underestimating the scope of damage. The government counts only oiled birds collected for rehabilitation or found dead. Oiled birds in the many nesting areas that dot the Gulf coast typically are left in place and not counted in official tallies.

INVESTIGATION

A government investigation of the deadly explosion on the Deepwater Horizon oil rig is to resume next week. The Coast Guard and Bureau of Ocean Energy Management, Regulation and Enforcement have scheduled five more days of hearings, from July 19-23, in a New Orleans suburb. A panel of officials from each agency heard six days of testimony in May from rig workers, company executives, government regulators and others. A witness list for next week's hearings wasn't immediately released.

OFFSHORE DRILLING AGENCY

A House panel approved legislation Thursday to overhaul the government agency responsible for regulating offshore drilling. The bill would divide the agency into three parts: one for leasing and permitting; another for inspections and investigations; and a third to collect revenue.

SAVING TURTLES

The first group of sea turtles that are part of a sweeping effort to save threatened and endangered hatchlings from death in the oily Gulf of Mexico have been released into the Atlantic Ocean. Fifty-six endangered Kemp's ridley turtles were released on a beach at Florida's Canaveral National Seashore this week, the Florida Fish and Wildlife Conservation Commission said Thursday.

Day 86: The Latest on the Oil Spill (*New York Times*)

July 16, 2010 Friday
Late Edition - Final
Section A; Column 0; National Desk; Pg. 18
Day 86: The Latest on the Oil Spill

Oil Flow Stops as Cap Is Tested

Oil stopped gushing into the Gulf of Mexico on Thursday, for the first time in nearly three months, as BP began testing the cap atop its stricken well, a critical step toward sealing the well permanently.

Panel Votes to Block New BP Offshore Leases

The House Natural Resources Committee approved a measure that would ban BP from new offshore leases to drill for oil or natural gas because of past safety violations, sending the measure to the floor. The measure would apply to companies with violations of federal or state safety standards more than five times the industry average going back seven years. It would also ban leases to companies that have received **Clean Water Act** fines of $10 million or more, as well as those that have had more than 10 deaths at their facilities over the period.

BP Fund to Begin Payments in August

The $20 billion fund that BP has set aside to pay for losses caused by the spill will start making payments in early August, said Kenneth R. Feinberg, who is in charge of paying individuals and private businesses for their lost income. The oil company will not be involved in any of the claims against the fund, except to supply more money if it is needed. Claims must be paid within 90 days of filing, Mr. Feinberg said.

An interactive map tracking the spill and where it has made landfall, live video of the leak, a guide to online spill resources and additional updates: nytimes.com/national.

Oil spill probe now includes abandoned wells (Associated Press)

Story also appeared: *Washington Post*

By JEFF DONN
The Associated Press
Thursday, July 15, 2010; 8:12 PM
-- A lead congressional committee investigating the Gulf of Mexico oil spill has broadened its inquiry, now checking if tens of thousands of abandoned oil and gas wells are leaking or even being monitored for leaks.

Committee members wrote in a letter Thursday to Interior Secretary Ken Salazar that they were responding to an Associated Press investigation released last week on the 27,000 abandoned wells in the Gulf. The AP reported that the wells are not routinely inspected when plugged or subsequently monitored for leaks.

"These wells could pose an additional danger to the Gulf Coast environment and economy," wrote U.S. Rep. Henry Waxman, D-Calif., chairman of the House Energy

and Commerce Committee, and Rep. Edward Markey, D-Mass., who heads the subcommittee on energy and environment. They asked for details on the number of wells as well as leaking and inspection requirements. They asked for an initial reply by Monday.

Some wells have been abandoned in the Gulf since drilling first began in federal waters in the 1940s. Oil companies leave them behind when they are done using them to explore or produce.

Of 50,000 wells ever drilled in the Gulf, 23,500 have been permanently abandoned, the AP reported. Another 3,500 are classified as "temporarily abandoned," but some have been left in that condition since the 1950s without the full safeguards of permanent abandonment.

Petroleum engineers say that even in properly sealed wells, cement plugs can fail over the decades and the metal casing that lines the wells can rust. Even depleted production wells can repressurize over time and spill oil if their seals fail.

BP PLC was temporarily abandoning the Deepwater Horizon well when it blew out on April 20, killing 11 workers.

In response to the AP investigation, leading environmental groups have called for the government to study the possible extent of leaking wells, to conduct work inspections and to monitor abandoned wells over the years.

Sen. Mark Udall, D-Colo., sent a separate letter last week asking Salazar whether regulators have authority to conduct inspections of abandoned wells. He said regulators may ultimately need to check industry paperwork more carefully or inspect the work themselves.

On Thursday, Kendra Barkoff, a spokeswoman for the Interior Department, said the agency was reviewing the latest congressional request. She added that "without question, we must raise the bar for all offshore oil and gas operations."

She gave few details but said the agency is evaluating "a series of options" to make sure that well operators can afford the costs of abandonment. Oil and gas companies eventually will have to spend at least $3 billion to perform permanent plugging on wells in federal waters, according to estimates of the newly named U.S. Bureau of Energy Management, Regulation and Enforcement, which regulates offshore drilling.

In its investigation, the AP found a series of past warnings about the risks at abandoned wells. The Government Accountability Office, which investigates for Congress, warned that leaks could cause an "environmental disaster." The U.S. Environmental Protection Agency has estimated that up to 17 percent of abandoned wells are improperly plugged on land.

The AP National Investigative Team can be reached at investigate(at)ap.org

UCD lab chosen to test gulf seafood for safety (*Sacramento Bee*)

California
July 16, 2010 Friday
B; Pg. 1
UCD lab chosen to test gulf seafood for safety

By Lulu Liu; lliu@sacbee.com
Nearly three months after the Deepwater Horizon rig exploded, there are signs that BP may contain the largest oil spill in U.S. history, and a UC Davis laboratory is preparing for the work to come.

One of eight state and federal labs tapped by the U.S. Food and Drug Administration to assess the safety of seafood from the Gulf of Mexico, the Animal Health and Food Safety Laboratory at UC Davis has received $140,000 worth of equipment from the FDA in preparation for the testing.

"We're planning on having the whole process in place by next week," Linda Aston, chief chemist, said Thursday during a news conference at the on-campus lab. Seafood samples from affected areas in the gulf will arrive shortly afterward. If the tests come back clean, various waters may be reopened to fishing.

This round of tests is a part of the biggest seafood safety effort ever undertaken, said Christine Patrick, a National Oceanic and Atmospheric Administration spokeswoman.

The oil rig exploded and collapsed April 20. NOAA, which has teamed up with the FDA and the federal Environmental Protection Agency for a multilevel consumer safety response, began closing gulf areas to fisheries May 2. As of Thursday, the fishing ban had grown to cover 84,000 square miles, or 35 percent of the federal waters in the Gulf of Mexico. The U.S. government has declared a commercial fisheries disaster for Louisiana, Mississippi and Alabama.

"The word to describe the boundary is 'precautionary,' " said Patrick. It is based on the oil's known and projected locations and includes a buffer for added caution.

"Fishing closure is the most important step to protecting seafood safety," she said.

Crude oil is composed of hundreds of chemicals, not all of which are harmful to our health. Tests target a particularly worrisome group of naturally occurring compounds called polyaromatic hydrocarbons. PAHs are present in cigarette smoke and charred meat, and many are known to cause cancer.

Finfish exposed to PAHs, such as tuna or cobia, can process the toxins in their livers, Patrick said. They can swim away from contaminated areas, and "with enough time and exposure to non-oiled water, clear the chemicals from their bodies," she said.

Shellfish are not as lucky, said FDA spokeswoman Meghan Scott. Stationary filter feeders such as oysters "will likely remain tainted for an extended period of time after exposure," she said. Shrimp and crabs to a lesser degree.

At the UC Davis lab, all species will get a good look.

"There will be six different types of samples," Aston said. "Crabs and shrimp, oysters, mussels, clams and finfish."

Some trace amounts of the crude oil compounds are allowed, Aston said. The threshold for concern varies according to a chemical's toxicity.

"We have to be worried about part-per-billion levels for some (compounds) and hundreds-of-parts-per-billion levels for others," she said. Whether a sample passes as safe depends on its cumulative content.

Laboratory testing is the second stage of a two-tiered test program for seafood safety. It is required only after a sample has passed a sensory evaluation by a panel of trained "organaleptic" experts. These experts smell and taste the sample for traces of oil or dispersant, and can "detect contamination down to 1 part per million," Patrick said.

Seafood contamination in the gulf has been exacerbated by dispersants used to clear oil from the water's surface. The dispersants "make the crude oil dissipate more fully," said Robert Poppenga, a veterinary toxicologist with the UC Davis lab, such that even bottom feeders may be exposed.

Dispersants are also a human health concern, but the UC Davis laboratory is not charged with their detection.

"There are groups within the FDA who are looking into that aspect," Aston said.

Impact of Oil Dispersants Still Unknown, EPA Says (*Courthouse News Service*)

By AVERY FELLOW

WASHINGTON (CN) - The impact on wildlife and seafood after more than 1.8 million gallons of chemical dispersants were applied to the BP oil spill in the Gulf of Mexico is "largely unknown," government officials said Thursday.

"We remain concerned about the volume of dispersants used to date," Environmental Protection Agency Administrator Lisa Jackson said at a Senate appropriations subcommittee hearing.

Since the BP drilling rig *Deepwater Horizon* exploded April 20, starting the worst oil spill in U.S. history, the oil giant has unloaded nearly 1.8 million gallons of dispersant on the spill: more than 1 million gallons on the ocean's surface and 735,000 gallons underwater.

Chemical dispersants had never been applied underwater before the Gulf spill, where they have been sprayed directly at the gushing wellhead.

The sheer volume of dispersants used in the Gulf is unprecedented. At one point, BP applied 700,000 gallons in a single day.

"That was an alarming number," Jackson said.

BP has regularly been applying dispersants to the Gulf spill at rates of 35,000 to 65,000 barrels per day. In contrast, 250,000 barrels of dispersants total were used in the aftermath of the *Exxon Valdez* disaster in Alaska in 1989.

Jackson said she did not know of any research focused on the heavy use of chemical dispersants or underwater application of the chemicals.

"You're suggesting to me that we haven't done that research anywhere?" Sen. Lisa Murkowski, R-Ala., asked.

"That's correct senator," Jackson said. When asked about how much study had been done of chemical dispersants since the Exxon Valdez disaster, Jackson said, "There has been significant research, but let me say at the outset, I don't think there has been enough."

Dispersants, which are made with a petroleum base and chemical additives, work to degrade oil before it impacts wildlife on the ocean's surface or before the oil hits the shore. The dispersants break up into small droplets, which sink in the water and are eaten by tiny microbes.

"Should we ban them?" subcommittee chair Sen. Barbara Mikulski, D-Md., asked. "I don't want dispersants to be the Agent Orange of this oil spill."

"Every single thing done at sea has some cost," Jackson said. "There is good news. We have not seen signs of environmental impact from the use of dispersants so far," she said, though she acknowledged that the long-term affects on aquatic life are "largely unknown."

So far, EPA testing of water and sediment close to the shore has yielded no evidence of dispersants on or near the shoreline.

"So why did you tell them to limit it?" Mikulski asked Jackson, referring to a May 26 order issued by the EPA for BP to scale back the use of dispersants.

"Because there were scientific unknowns," Jackson said. She said she had a choice between banning dispersants altogether or letting BP use them in moderation, and she let the company use them in moderation in hopes that the dispersants would help.

"[The dispersants] are much less toxic and the chemicals added to them are much less toxic than the oil itself," Jackson said.

"U.K. has banned dispersants," Mikulski said. "If the U.K. banned it, a nation surrounded by water, why weren't we banning it?"

Jackson said the U.K. banned Corexit not due to its toxicity or lethality, but because it caused to lose their ability to cling to rocky shores, a problem the United States doesn't have because it only allows dispersants to be applied at least 30 miles offshore.

Currently, federal agencies are not testing seafood coming out of the Gulf for traces of chemical dispersants, a fact that aroused concern in senators.

Jackson explained that by the time the dispersants break down the oil, the only thing left are the oil byproducts.
"They don't stick around," Jackson said of chemicals in the dispersants. "The thing that sticks around is the oil."

Under the current seafood testing protocol for the Gulf, the National Oceanic and Atmospheric Administration tests seafood collected from the contaminated area more than 3 miles offshore, and states monitor seafood collected less than 3 miles offshore with the help of the Food and Drug Administration.

Murkowski complained that seafood sales in her state of Alaska have been affected by the Gulf spill because consumers, especially in the Midwest, may not know where their seafood is coming from, and out of fear that it is polluted, do not buy any.

"Those shrimp might be absolutely perfectly safe," Murkowski said, "but as long as market perceives that they are not, then no one is going to buy them.

"NOAA and FDA need to come out and unequivocally state, 'Things are safe,'" Murkowski said. "We need to get that word out."

EPA in hot seat over oil dispersants (*FOX 10*)

Updated: Thursday, 15 Jul 2010, 10:44 PM CDT
Published : Thursday, 15 Jul 2010, 10:44 PM CDT
Cary Chow
MOBILE, Alabama (WALA) - At one point during Thursday's Hearings into the explosion aboard the Deepwater Horizon oil rig, the dispersants that are being used in the Gulf were referred to as the potential "Agent Orange of the Gulf."

BP has used millions of gallons of the chemical Corexit to break down the oil. The Environmental Protection Agency approved the chemical, but put limits on how much could be used. That's because the agent believes it does pose some risk.

"That's the scariest part of the whole deal," revealed Mobile native Casi Callaway "We have no idea what's gonna happen next."

The well is capped. Oil is no longer billowing into the Gulf. However, Callaway isn't remotely satisfied.

"The day we should be celebrating that they've capped the oil. We're just still looking at a plate full of questions," said Callaway.

The executive director of Mobile Baykeeper is questioning BP's use of dispersant to battle oil without extensive studies on its effects.

"We don't know whether or not the dispersant is going to affect small crabs, but not fish," explained Callaway. "The problem is, if we wipe out the crab population, we wipe out everything that feeds on the crabs."

Since the Deepwater Horizon rig exploded, BP has used nearly 1.8 million gallons of dispersant. In May, the EPA ordered BP to limit the use of dispersant, but Callaway said that's misleading.

"EPA also claims that the company has reduced their use, but they've reduced it by the one highest peak number they ever did; 70,000 gallons in one day. In reality, they've reduced it by seven to nine percent and that's it," explained Callaway.

Callaway is worried that much of the dispersed oil is heading towards our coast below the surface.

"Boom only works on the surface. So it makes our protection measures completely useless. That's our biggest concern on top of the long-lasting effects and the health and the toxic implications," Callaway added.

So far, the EPA's testing of water close to the shore has not shown any evidence of dispersant. But there is still a plate full of questions.

Thursday on Capitol Hill, the head of the EPA was asked about the risk of the dispersants being used in the Gulf.

"Were you that concerned about the unknown factors of dispersant? Why did you tell them to limit the use?" Sen. Barbara Mikulski (D-Maryland) asked Lisa Jackson, the head of the EPA Thursday.

"Absolutely, because there are scientific unknowns. We had to make decisions that are a series of tradeoffs. Basically, in common language, it was either do nothing, or in moderation. And in my best judgment, it should be in moderation," Jackson replied.

Currently, federal agencies are not testing seafood coming out of the Gulf for traces of chemical dispersants.

CLIMATE CHANGE
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Can regulation beget innovation? (*Washington Post*)

July 16, 2010 Friday
Suburban Edition
FINANCIAL; Pg. A12
Maryland
Steven Pearlstein
The big complaint from the business lobby these days concerns a "lack of clarity" about

federal regulation that prevents companies from using all that cash piling up on balance sheets to hire workers and make major investments.

Then, without missing a beat, those very same business groups declare themselves unalterably opposed to any climate-change legislation that sets plant-specific targets for carbon reductions, puts a floor and a ceiling on the price of carbon, tells utilities exactly how much of their power should come from low-carbon sources or sets specific standards for the energy efficiency of cars and appliances.

Apparently the Chamber of Commerce types think Americans are so gullible that we won't notice their blatant and self-serving hypocrisy. In reality, it's only a certain kind of regulatory clarity they seek -- the clarity of knowing that old regulations won't be enforced and new ones will be dictated by industry lobbyists.

And here I was thinking how much progress had been made in getting past the stale political bromides.

When the business community demanded that regulations be subject to a cost-benefit analysis, that's just what happened, over the vehement objection of labor unions and environmental groups. The latest report from the staff at the Office of Management and Budget shows that the benefits outweighed the costs last year by record levels.

Then the business community demanded that regulators give up their command-and-control mentality and take a market-based approach that leaves it to each company to figure out how to meet goals. That's exactly what the cap-and-trade bill on carbon emissions is all about -- but now, apparently, that's not good enough.

It's been 20 years since Harvard Business School professor Michael Porter provided scholarly support for the notion that, rather than hamper economic growth and competitiveness, well-crafted regulation could actually promote it. Porter's first observation was that some of the world's most prosperous and economically vibrant countries were also those with some of the most stringent business regulations, such as Germany and Japan. His studies of specific industries also turned up numerous examples of new products and more efficient ways of doing business that came about only because companies and industries were forced to comply with rules.

Porter's musings, introduced in an article in Scientific American, have since spawned a cottage industry of researchers intent on proving or disproving his hypothesis. Its most controversial aspect was to suggest that profit-maximizing companies were ignoring opportunities to produce profitable new products or adopt more-efficient production techniques. Such a notion not only runs counter to the most basic principles of economics and efficient markets, but it also offends the sensibility of corporate managers, who find it preposterous that such opportunities could be revealed only when the EPA or an OSHA inspector knocks on their company's door.

But subsequent research confirmed what some of us have long since discovered --

namely that corporate executives can be stuck in their ways, averse to risk and unwilling to sacrifice short-term profitability for long-term gain. And as a result of these market "imperfections," sometimes a new regulation comes along that spurs innovation by forcing companies to look at things in new ways. That doesn't mean that regulation is costless, but it does suggest that, on an economy-wide basis, those costs can be offset by subsequent investment and innovation.

That, in fact, is the message I got Thursday from the chief executives of two of the country's electric utilities, who were only too eager to tell me about the billions of dollars they are ready to spend if only Congress would adopt one of several reasonable proposals on the table to limit carbon emissions. At this point they are so eager for regulatory "clarity" that they would accept a bill that, at least initially, applies only to their sector.

At Public Service Enterprise Group, the giant New Jersey utility, chief executive Ralph Izzo says his greatest fear is that Congress will do nothing about carbon emissions, the EPA will step in with regulation, and the next decade will be spent in endless litigation until global warming becomes a crisis. Better, he says, to bite the bullet and set a long-term price for carbon now, phase it in slowly and give businesses time and flexibility to adjust. At PSEG, that would mean immediately investing an extra $2 billion upgrading old plants, building solar and wind farms and helping customers with energy efficiency, with $10 billion more after that to build a nuclear power plant.

"We all know something will have to be done, but we don't know what and we don't know when -- and that's putting us in limbo," said Lew Hay, chief executive of NextEra Energy, the latest incarnation of the old Florida Power and Light. While Hay has lots of ideas of what he'd like to see in an energy and climate-change bill, he's at the point where even an imperfect bill is better than no bill at all.

Once the rules are set, Hay says he'll spend $3.5 billion on new wind and solar production, in addition to what NextEra is already spending, that he estimates will generate 50,000 jobs over five years. That would be followed by a $14 billion-plus investment in two additional nuclear power plants.

The problem in Washington is not that President Obama and the Democratic Congress have created a hostile regulatory environment for investment and job creation. Rather, the problem is the hyperbole and poisonous rhetoric from the business lobby that have created a hostile environment for political compromise. Over the years, Americans have shown that they can respond creatively, even profitably, to reasonable regulation. Apparently our business leaders have lost faith that we can do it again.

As Glacier National Park turns 100, its glorious icefields are melting away (*USA TODAY*)

July 16, 2010 Friday
FIRST EDITION
SECTION: LIFE; Pg. 6D
Going, going...gone?;
As Glacier National Park turns 100, its glorious icefields are melting away
By Laura Bly
GLACIER NATIONAL PARK, Mont. -- Standing under a cloudless midsummer sky at the Many Glacier Hotel, ranger Bob Schuster gestures toward the saw-toothed southern horizon and holds up evidence of a changing climate in a place indigenous Blackfeet Indians dubbed the "backbone of the world." His repeat photographs show the rapid retreat of the 100-year-old park's iconic geological features, which have declined from about 150 at the end of the Little Ice Age in the mid-19th century to about two dozen today.

It's all but impossible for Schuster's charges to distinguish whether those white patches glinting in the distance represent snowpacks or glaciers (the latter, he explains, are defined as moving icefields at least 100 feet thick and 25 acres in size). What's more, the vast majority of the park's 2.2 million annual visitors will never make the grueling six-hour trek that's required for an up-close glimpse of Grinnell, the most accessible of the 1,600-square-mile preserve's remaining glaciers.

No matter.

Though the views from this northwestern Montana vantage point probably will be just as spectacular a century from now as they were when the USA's 10th national park was founded in 1910, Schuster's before-and-after photos illustrate what park experts say could mean dramatic changes to its ecosystem.

"How much of (the glacier loss) is a natural cycle and how much is human-caused is a complex issue," says Schuster, who notes recent estimates that the park's last glacier could vanish within 10 to 20 years.

"But the majority of scientific evidence points very strongly to the fact that humans are involved, because there's been such an unprecedented rise in temperatures and CO{-2} levels."

And that, according to a new report by the Rocky Mountain Climate Organization and the Natural Resources Defense Council, could affect everything from the turquoise hue of the park's glacially fed lakes and the waterfalls that drape its U-shaped valleys to the frequency and severity of seasonal wildfires.

'The Switzerland of America'

But for its throngs of summer admirers, those potentially dire scenarios are overshadowed by still-extravagant scenery and wild-life in what early Great Northern Railway promoters advertised as "The Switzerland of America."

Thanks in part to a series of late-spring storms, the upper reaches of the park's precipitous, perennially under-construction Going-to-the-Sun Road remain flanked by deep snowbanks. Shorts-clad youngsters fling snowballs from the boardwalk at 6,646-foot-high Logan Pass, where delicate yellow glacier lilies peek through the soggy ground and snowboarders nearly outnumber pedestrians on a recent afternoon. A few miles away at the aptly named Weeping Wall, traffic slows as passing motorists stretch out their arms to catch the spray from a parade of waterfalls.

Despite the gee-whiz grandeur of Going-to-the-Sun -- completed in 1932, the two-lane road is the only U.S. highway to be named on the National Register of Historic Places, a National Historic Landmark and a Historic Civil Engineering Landmark -- Glacier veterans insist the park is best appreciated by lacing up a pair of boots and sampling its more than 700 miles of hiking trails.

Trails range from arduous (an all-day, more than 2,300-foot elevation gain trek from the Swiftcurrent Inn to the hike-in-only Granite Park Chalet) to "practically couch potato" (a gentle, 2.8-mile round-trip walk from a parking area off Going-to-the-Sun Road to St. Mary's Falls, where visitors can hear the thunderous cascade long before they see it).

But close encounters with Glacier's fauna are all but guaranteed, even for those who venture no farther than rental cars or the park's fabled Red Buses, gas- and propane-fueled versions of the open-air touring vehicles that have been chugging through Glacier since the 1930s.

Last weekend, a lineup of cars snaking through the West Glacier entrance ground to a halt. Necks were craned and cameras were frantically hoisted as a ranger patrolled the roadside. The source of the hubbub: a grizzly, its furry brown backside barely visible as it ambled through a tangle of underbrush a few hundred yards away.

Up at Logan Pass, a pair of bighorn sheep staged a Mutual of Omaha-worthy moment as they pranced across a crowded parking lot, and a chubby marmot (a member of the squirrel family) preened for photographers atop a nearby granite ledge.

Perils of a changing climate

As West Glacier temperatures climb into the high 80s, college student Ricky Lux grips his paddle and leans into a wave on the chilly middle fork of the federally designated "wild and scenic" Flathead River, which forms the park's southern boundary and gained notoriety as one of the settings for Meryl Streep's The River Wild.

The outfitter who arranged Lux's trip, Bob Jordan of Wild River Adventures, says global warming does have a short-term upside: "From a selfish point of view," Jordan says, "for

every degree the thermometer goes above 70, our call volume goes up, too."

But Jordan worries that a changing climate also could translate to scantier flows during the peak visitor times of late July and August and to more fires like the 2003 Roberts blaze, whose charred calling cards line the banks of the Flathead and nearby Lake McDonald.

It worries Lux, too.

"People think of a glacier as just a chunk of ice," says Lux, a senior at Bozeman's Montana State University. "But that ice has been a big part of what makes this park so beautiful."

07/16/2010

Senate Utility-Only Climate Bill May Face Opposition From Midwest Utilities (*Inside EPA*)

Midwest utilities could oppose emerging Senate plans to develop a utility-only cap on carbon emissions as a way to win support for climate and energy legislation, because the narrower trading system would limit emission allowances and drive up their costs, an industry lobbyist warns.
The source says a utility-only emissions trading system based on EPA's acid rain program, which distributes emission allowances to direct emitters, could be preferable to coal-dependent Midwesterners than a pared back version of pending climate change proposals, where emission allowances are provided to both generators and electricity sellers.

As the Senate resumes high-level discussions on a climate and energy bill for possible debate this summer, the issue of carbon control provisions -- a top priority for the Obama administration, some Democrats and environmentalists -- has recently centered on a utility-only program as a possible way to win the 60 votes necessary to pass a bill, scaling back from highly contentious proposals for an economy-wide cap-and-trade scheme.

But the energy industry lobbyist says a utility-only cap-and-trade bill "almost loses votes" because no formula for allocating allowances satisfies all utilities. Midwest utilities know that either of the leading allocation proposals will hurt them, the source says.

And there are at least 10 moderate Democrats whose votes will be needed to move a Senate bill, the source says, adding that a greater likelihood is that Energy & Natural Resources Committee Chairman Sen. Jeff Bingaman's (D-NM) energy-only bill, with modified offshore drilling language and a few other changes, stands the best chance of passage.

The push for a utility-only approach exacerbates longstanding concerns Midwest utilities have had under various cap-and-trade proposals. The House-passed bill provided for allocations based 50 percent on emissions and 50 percent on electricity sales, a formula that drew sharp opposition from Midwestern utilities that argued their customers would face dramatically higher electricity costs while other utilities -- especially major nuclear-powered generators -- would reap windfall profits from allowances they wouldn't need for compliance.

A draft bill Sens. John Kerry (D-MA) and Joseph Lieberman (I-CT) introduced offers an allocation scheme based 75 percent on historical emissions and 25 percent on sales.

If the Senate wants a utility-only carbon policy they could also "go with the acid rain program" established under the Clean Air Act and run by EPA, the source says. The sulfur dioxide cap-and-trade program allocates emission allowances based actual emissions, rather than electricity output, and avoids providing a windfall to nuclear facilities and other lower-emitting generators that can sell their unused allowances to coal-fired power plants that need them, the source says.

"A lot depends on what 'utility-only' means," the source says, noting that a fundamental question still unresolved is whether the Senate will pursue a carbon cap-and-trade approach or a technology-based emissions reduction program.

The source also notes that the Edison Electric Institute (EEI), which represents investor-owned utilities, has stated as one of its principles for carbon control legislation that its member utilities -- representing some 70 percent of U.S. generating power -- support an economy-wide cap-and-trade program.

An EEI source says the association has not taken a position on a utility-only bill because it is an adjustment to think of an entirely different approach than economy-wide and EEI is now waiting to see what emerges from the Senate deliberations. The source adds that there are "a great many moving parts."

Bingaman has drafted a utility-only bill. According to the draft bill and a summary circulating around Washington, it focuses on carbon emissions only from utilities and provides for an allowance allocation scheme that is closer to the House 50/50 approach than the Kerry-Lieberman 75/25 formula. *The draft bill is available on InsideEPA.com.*

Senate energy committee spokesman Bill Wicker verified that the document is a committee work product, but says it is several months old -- a "mid-generation" draft -- and declined to say how it might have changed since then. "I don't think we have been working on it lately," Wicker told reporters July 13.

07/16/2010

Rockefeller Promised Pre-Election Vote On Bill To Delay EPA Climate Rules (*Inside EPA*)

Sen. Jay Rockefeller (D-WV) says he has been promised a vote before the midterm elections on his bill to delay for two years EPA's pending Clean Air Act stationary source greenhouse gas (GHG) rules, a move that could force Democrats to take a tough pre-election vote on EPA's contested bid to limit GHGs in air permits.
Some environmentalists worry that if the bill becomes law, it could lead to a scenario in which Congress simply renews the delay every two years. However, these sources also say the issue could be moot if Congress is able to agree on legislation that would cap GHGs in exchange for permanent preemption of EPA climate rules.

Rockefeller told reporters July 13 that he has been assured of floor time for his measure, S. 3072, before the November election but that a vote would be unlikely before Congress adjourns for its August recess. "I have guaranteed time" to bring up the bill, he said. His bill was prompted by concern over EPA's GHG "tailoring" rule that will require some large facilities to meet first-time GHG limits in Clean Air Act permits starting in 2011.

Rockefeller's bill would bar EPA for two years from implementing any first-time GHG permitting requirements for stationary sources or from implementing GHG rules under section 111 of the air act, which gives EPA authority to set new source performance standards designed to cut industry emissions of criteria pollutants. The bill would explicitly allow EPA to continue implementing its vehicle GHG rules and its GHG reporting registry program.

Rockefeller's bill is seen as an alternative to a stricter measure from Sen. Lisa Murkowski (R-AK) that would have overturned EPA's final finding that GHGs endanger public health and welfare, which triggered an air act duty to regulate GHGs. The Senate rejected Murkowski's resolution June 10 on a 47-53 procedural vote.

Proponents have pitched Rockefeller's bill as a way to give lawmakers more time to write climate legislation without the threat of EPA pushing ahead with broad GHG regulations for several industry sectors.

But environmentalists note that efforts to pass climate cap-and-trade bills have failed in the last three Congresses, and fear that Rockefeller's bill -- if it becomes law -- could become a de facto permanent moratorium on EPA regulating GHGs, because lawmakers may be inclined to renew the delay every two years.

"That's the fear," one environmentalist notes. "If there is no legislation that institutes new policies, then what we're left with -- what could actually be sufficient -- and that's EPA. . . . If EPA is trying to institute progressive regulations then there will be attacks." Still, some environmentalists note that the debate over a temporary delay could become moot if Congress passes a broad climate bill that permanently bars EPA from regulating GHGs.

Senate Majority Leader Harry Reid (D-NV) has committed to bringing an energy bill to the floor as soon as the week of July 26, and he indicated during his weekly press conference July 13 that it would include a title dealing with "pollution" from the utility sector, although he would not clarify whether that meant a cap on GHGs.

Sens. John Kerry (D-MA) and Joseph Lieberman (I-CT) are also circulating a new draft of their climate legislation that would place a cap on GHGs from the utility sector, and Senate Energy & Natural Resources Committee Chairman Jeff Bingaman (D-NM) has drafted separate language for a utility-only cap that leaked earlier this week. Both of those measures would preempt EPA from regulating utilities under the air act (*see related story*).

ENFORCEMENT
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Alabama pipemaker McWane in $13M pact with EPA (*Associated Press*)

Story also appeared: *Washington Post*

BIRMINGHAM, Ala. — Cast iron pipe manufacturer McWane Inc. has agreed to pay $4 million in civil penalties and spend $9.1 million to protect communities near its plants in 14 states in a settlement with federal environmental regulators.

The settlement with McWane resolves more than 400 violations of air and water quality standards at 28 plants dating back a decade, the Justice Department and Environmental Protection Agency said in a statement. It said McWane, based in Birmingham, already has spent more than $7.6 million on corrective measures.

Cynthia Giles, an assistant EPA administrator for enforcement, said the company "will go beyond compliance and take action to protect communities that are at the greatest risk for air and water pollution." She said children and pregnant women were among those who will benefit most from an end to harmful pollution at plant sites.

The proposed settlement, subject to a 30-day period of public comment, was filed Wednesday in federal court in Birmingham.

The family owned company previously paid more than $25 million in criminal fines and penalties for environmental violations.

McWane President Ruffner Page Jr. said the settlement is "the beginning of the final chapter" in McWane's effort to be in full compliance at all times. The company, which is privately held, already has spent more than $300 million on environmental and safety projects over the past several years, Page said.

The settlement involves plants in Alabama, California, Illinois, Indiana, Iowa, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, and Virginia.

The $4 million civil penalty will be divided among Alabama, Iowa and the federal government. The environmental projects are to reduce mercury emissions in Provo,

Utah, and Tyler, Texas, and to address air quality at plants in Bedford, Ind., Anniston, Ala., and Coshocton, Ohio. The projects also deal with storm water contamination at numerous locations.

FUEL
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Ethanol industry scrambles to keep incentives (Associated Press)

Story also appeared: *Washington Post*

By MARY CLARE JALONICK
The Associated Press
Friday, July 16, 2010; 6:34 AM
WASHINGTON -- The once-popular ethanol industry is scrambling to hold onto billions of dollars in government subsidies, fighting an increasing public skepticism of the corn-based fuel and wariness from lawmakers who may divert the money to other priorities.

The industry itself can't agree on how to persuade Congress to keep the subsidies, which now come in the form of tax credits worth about $6 billion annually.

One industry group, Growth Energy, made the bold move Thursday of calling for the tax credits to be phased out completely in favor of spending the money on more flex-fuel cars and gasoline pumps that support ethanol. A rival group, the Renewable Fuels Association, said it's too late in the year to make such proposals - the tax credits expire at the end of the year, and legislative days are numbered.

As the industry bickers over what to do, Congress is signaling it's growing tired of paying for ethanol. The House Ways and Means Committee is considering slashing the tax credit by 9 cents a gallon, from 45 cents to 36 cents, when it looks at a wide range of energy tax credits as early as next week. That would be the second cut in the credit in as many years.

A key senator also expressed skepticism this week. Sen. Jeff Bingaman of New Mexico, Democratic chairman of the Senate Energy and Natural Resources Committee and a longtime supporter of renewable fuels, said Congress should "weigh all factors, including the credit's very high cost to taxpayers," when looking to extend the credit. Bingaman noted that the ethanol industry is protected by congressional mandates for its use.

Some supporters say they see the writing on the wall.

"The longer we have this support structure in place for ethanol, the more people begin to question it," said Roger Johnson, president of the National Farmers Union, which

supports Growth Energy's plan. He says a new approach is needed as the public becomes more skeptical.

Rep. Earl Pomeroy, D-N.D., a member of the Ways and Means Committee, is leading the fight in the House to keep the tax credits. He says that the 9-cent cut is a good starting point and that he feels optimistic after discussing the issue with fellow committee members and members of the ethanol industry this week.

Pomeroy acknowledges that the legislative environment is challenging and says that a simple extension of the credit makes the most sense in the House. "Late in the legislative session, simpler is easier," he said.

Ethanol producers say expiration of the tax credits, which are paid to oil companies as an incentive to blend gasoline with ethanol, could mean the loss of almost 40 percent of its plants and tougher times for a domestic fuel that is good for national security.

Critics say the industry should stand on its own after receiving subsidies for 30 years and argue the tax credits are a waste of taxpayer dollars. A diverse coalition of groups has argued over the past few years that the increase in production of corn and its diversion for ethanol is making animal feed more expensive, raising prices at the grocery store and tearing up the land.

Craig Cox of the Environmental Working Group, one of the organizations opposing the fuel, says he thinks the industry "hit a wall" in Congress as concern over budget deficits have increased.

"Status quo support for ethanol is definitely not going to continue," he said.

Growth Energy, a group formed in 2008 as some ethanol companies grew worried that their political clout was waning, said it is proposing the phase-out as a way to think more creatively about boosting the industry and the fuel. The group says ethanol helps reduce the nation's dependence on foreign oil, pointing to the Gulf oil spill as a reason to turn to the corn-based alternative.

"We are confident that in a fair and open market, ethanol can and will compete successfully against oil," said Tom Buis, the group's CEO.

The industry was also frustrated last month by a delay by the Environmental Protection Agency in deciding whether U.S. car engines can handle higher concentrations of ethanol in gasoline. But the increase in the maximum blend is expected to be approved later this year.

As critics pile on, industry leaders are on the defensive. Bob Dineen, president of the Renewable Fuels Association, said it would be hard to find an energy source around the world that isn't getting some sort of government incentives.

"We're now 10 percent of the nation's motor fuel - that's a great story," he said. "Does it come at a cost? Yes."

07/16/2010

EPA Seeks To Boost New Biofuels Even As Cellulosic Production Falters (*Inside EPA*)

Provisions in EPA's proposed renewable fuels standard (RFS) volumetric requirements for 2011 could boost new renewable fuels such as pulpwood biofuel, grain sorghum ethanol and canola oil biodiesel, but sources say the faltering cellulosic industry shows that RFS mandates on their own may not be enough to boost emerging fuels.
Some industry officials argue that the cellulosic shortfall -- which is tens of billions of gallons below what Congress mandated for cellulosic production in its 2007 energy law boosting the RFS -- is due to a cap limiting the amount of ethanol in gasoline to 10 percent (E10). They argue that the cap, which EPA is considering raising to E15, limits demand and dampens investment in advanced biofuels such as cellulosic ethanol.

However, one environmentalist argues the economic crisis, rather than E10, is to blame for the shortfall and says EPA could consider boosting the cellulosic sector by giving it priority over other fuels in securing a share of the 10 percent of ethanol blended into gasoline.

EPA June 13 announced a proposal to set the levels of biofuels required in 2011 under the RFS. The energy law requires the agency to finalize the volumetric requirements each November for the following year based on Energy Information Administration projections and industry assessments of cellulosic biofuel production capability.

The agency projected industry can produce enough biofuels to meet several statutory levels under the standard in 2011, including 0.80 billion gallons of biomass-based diesel, 1.35 billion gallons of advanced biofuel and 13.95 billion gallons of renewable fuel. *Relevant documents are available on InsideEPA.com.*

However, EPA is projecting a wide range for the amount of cellulosic biofuel that could be produced in 2011. At the high end, EPA says 17.1 million gallons of cellulosic could be produced, far less than the 250 million gallons Congress mandated. At the low end, EPA predicts just 5 million gallons of cellulosic, the same quantity EPA required in 2010.

In addition to the 2011 levels, EPA proposes measures that could help boost emerging biofuels. EPA plans to decide in a rule later this year whether fuel from canola oil, grain sorghum, pulpwood and palm oil reduces greenhouse gases enough compared to gasoline to win credit under the standard. EPA suggests that producers of these fuels could get so-called "delayed" credit in 2011 for fuel produced in 2010 if the agency finds the fuels meet the threshold.

The move could help boost production of the new fuels, but the struggling cellulosic industry may show that the RFS mandate alone is not enough to boost production of new biofuels.

EPA argues that the shortfalls in cellulosic production are caused by a slew of complications the industry is facing, including delays in securing funding, permitting and construction delays, difficulties in scaling up first-of-their kind technologies and uncertainty about whether some feedstocks will qualify for RFS credits, among others.

However, some in industry blame the problems in the cellulosic industry on EPA's delay in approving their request to allow E15. A source with Growth Energy, the group that made the request, says, "More than 300 million gallons of planned cellulosic ethanol production capacity is waiting to come online, but is stalled because of the lack of an available market. This new proposal proves that the failure to create space in the market for cellulosic is restraining its development and therefore limiting our nation's ability to meet the [RFS]."

But one environmentalist says industry's argument about the so-called blend wall is "nonsense," since the total amount of biofuels mandated by the RFS in 2011 is less than 8 percent of the fuel supply, far short of the limit imposed by the E10 cap. The source argues that the cellulosic industry's troubles instead stem from the ongoing economic crisis and weak incentives.

"The total pool for next year is going to be 7.9 percent of our transportation fuel, of which a big chunk is going into the diesel market, and there is clearly enough room in there for all of the cellulosic ethanol and more. So these things at this point are still unrelated."

However, the source notes the blend wall could become an issue for the cellulosic industry in future years as the mandate nears the 10 percent ceiling. EPA could resolve this concern by clarifying that mandated cellulosic fuels have first priority in securing a share of the 10 percent, which would leave other kinds of biofuels to fight for the remaining volume, the source says.

In addition to the proposed 2011 volumes and possible delayed credits for new biofuels, the proposal also outlines a process to petition EPA for approval of specific renewable fuel feedstocks in all or part of a foreign country. Generally, the agency proposes that the petition provide information to show that "specified renewable fuel feedstocks from a given geographical area meet the definition of renewable biomass and will continue to meet the definition of renewable biomass, based on the submission of credible, reliable and verifiable data."

EPA will accept comment on the plan after it publishes it in the *Federal Register.*

GENERAL
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07/16/2010

Industry Eyes Appeal Court Ruling To Bolster EPA Data Quality Petitions (*Inside EPA*)

Industry groups with pending Data Quality Act (DQA) petitions challenging EPA data are looking to a recent federal appeals court decision to help them pressure the agency into responding to their challenges, sources say, because the ruling is seen by some observers as boosting the legal standing of DQA petitions.
Most recently, the Association of Battery Recyclers (ABR) sent EPA a July 7 letter citing the ruling in its request for a response to its 2008 DQA petition challenging science behind the agency's revisions to the lead air standard. EPA says the U.S. Court of Appeals for the District of Columbia Circuit's ruling in *Prime Time Int'l Co. v. Vilsack* recognizes a legal right to challenge an agency failure to respond to a DQA request (*Inside EPA*, April 30).

"EPA's continued delay in considering and responding to ABR's [request] is without justification, particularly in light of the court's decision in *Prime Time*, which recognized that agencies had an obligation to follow the procedures of the [DQA] guidelines," ABR argues. *The letter is available on InsideEPA.com.*

ABR says the D.C. Circuit's March 26 ruling "recognized the right to challenge an agency's failure to respond to a request for correction submitted under the DQA and agencies' guidelines for implementing the law.

EPA has said it would respond to the petition after the conclusion of litigation that another battery recycling group, the Coalition of Battery Recyclers Association (CBRA), filed over the lead national ambient air quality standard. The D.C. Circuit rejected CBRA's lawsuit in May. ABR says it was not involved in the suit and the ruling did not address DQA issues, so "the outcome of the case has no bearing on EPA's response to the RFC."

ABR's attempt to cite *Prime Time* in bolstering the legal status of a DQA petition comes after petitioners in a 9th Circuit case also referenced the ruling in trying to force a decision on a DQA challenge.

The plaintiffs in *Americans for Safe Access v. Department of Health & Human Services* (HHS) cited *Prime Time* and the court's decision to decline to clarify its position on the DQA after the Department of Justice asked for a clarification that the ruling did not address the issue (*Inside EPA*, June 4).

In *Americans for Safe Access*, medical marijuana advocates are arguing that HHS violated the DQA for failing to rely on sound science in determining that the drug has no medicinal value.

The *Prime Time* ruling could become more prominent as industry and other groups have filed a rash of DQA petitions in recent weeks challenging EPA's use of information in agency decisions (*see related story*).

One legal source says the ruling could be cited by those groups looking to get an agency response to their DQA requests, as well as providing "standing for the implicit proposition that there is judicial review" of DQA petitions, as many in industry have argued. Critics of the DQA says that petitions are not judicially reviewable.

Further, the legal source points to the fact that the *Prime Time* decision established that White House Office of Management & Budget (OMB) guidelines for implementing the DQA are "binding," which entitled petitioners to seek and obtain corrections under the DQA, further bolstering industry attempts to force a decision on petitions.

In addition, many sources have long argued that the D.C. Circuit can be influential in administrative law matters. "In administrative law matters, if the D.C. Circuit says something, generally other circuits will follow," says the legal source. Sources also say because of the number of agencies and industry groups based in Washington, there could be more cases filed in the D.C. Circuit challenging the data behind a slew of federal rulemakings.

In *Prime Time*, the D.C. Circuit dismissed an industry challenge of the U.S. Department of Agriculture's (USDA) failure to respond to a DQA petition, but for different reasons than a lower court. The lower court cited the earlier precedent-setting decision by the 4th Circuit in *Salt Institute & U.S. Chamber of Commerce v. Michael Leavitt* finding that plaintiffs lacked standing to sue under the DQA.

At the time, the Center for Regulatory Effectiveness (CRE) said the ruling shows "the D.C. Circuit ignored the district court opinion's reasoning and embraced a new government argument that the substantive USDA action at issue was an 'adjudication,' and therefore specifically exempt from the [DQA] under the [OMB] guidelines," meaning other agency actions that are not adjudications could potentially be challenged and invalidate the 4th Circuit precedent.

But opponents of burdensome regulatory review argue that the precedent was set in *Salt Institute* and will not be affected by the D.C Circuit ruling. And another legal source, who favors judicial review of the petitions, says the government's argument in *Salt Institute* -- that there were not rights created by the DQA and therefore could not be violated -- is "weakened but not completely vanquished" by the decision in *Prime Time*.

07/16/2010

EPA Petitioned To Defend Data Underlying Key Regulatory Decisions (*Inside EPA*)

EPA is facing a trio of petitions from industry and other private groups asking the agency to review and justify under the Data Quality Act (DQA) the science underpinning recent agency decisions on chemical and lead safety and the greenhouse gas impacts of coal ash reuse -- the first of what are expected to be a host of petitions EPA will face over data quality concerns.
Over the past few weeks, the paint industry has asked EPA and the Department of Housing & Urban Development (HUD) to amend a public service announcement (PSA) campaign about lead poisoning in housing built prior to 1978; the chemical industry is asking EPA to correct a number of "factual errors" in the agency's chemical action plan for phthalates; and a group representing government whistleblowers is requesting that EPA to correct information on alleged greenhouse gas emissions reductions resulting from beneficial reuse of coal combustion waste.

EPA has acknowledged receipt of the three petitions and has a goal of responding to all petitions within 90 days, according to the agency's website. *Relevant documents are available on InsideEPA.com.*

While the petitions are the first of what are expected to be a host of additional petitions the agency is likely to face, the petitioners may have limited opportunity to enforce any requests as questions remain about whether DQA requests are subject to judicial review, although supporters of the law say a recent court ruling could pave the way to court oversight.

The DQA generally requires EPA and other federal agencies to ensure that scientific and other data used to develop policy stances are objective, reproducible and peer-reviewed. The law requires agencies to accept and respond to petitions to correct allegedly flawed data used in rulemakings and other decisions.

But absent judicial review, the pace of DQA petitions has slowed. Prior to the most recent three, the last petition filed was one from the National Association of Manufacturers in 2009, which challenged the science behind EPA's nitrogen dioxide national ambient air quality standard.

Over the past few months, EPA has been facing growing calls from from industry, GOP lawmakers and the White House budget office to apply strict DQA requirements to agency science, a push that could make it difficult for the agency to use some scientific data to justify stringent new chemical safety, cleanup and climate policy decisions.

Among the agency actions expected to be targeted by industry are pending risk assessments for ubiquitous contaminants such as arsenic and trichloroethylene -- assessments that will drive cleanup and other regulatory standards. House Republicans are also calling for EPA to subject its pending assessment of climate change risks -- a key driver for EPA climate rules -- to DQA requirements.

But the U.S. Court of Appeals for the 4th Circuit ruled in 2006 in *Salt Institute v. Leavitt* that DQA petitions are not subject to judicial review -- and proponents of the statute have since struggled to reverse that precedent.

Proponents of the law say a recent ruling in the D.C. Circuit may have opened the door to judicial review. The D.C. Circuit May 10 denied a Justice Department petition in *Prime Time Int'l Co. v. Vilsack* asking the court to clarify that a ruling in the suit did not address whether the DQA creates judicially enforceable rights.

While critics say the D.C. Circuit ruling does not set any new precedent, supporters are already citing the ruling to press EPA and other agencies to respond to pending petitions.

The Association of Battery Recyclers (ABR) is citing the *Prime Time* decision in a July 7 letter to EPA requesting a response to a 2008 DQA petition that seeks to block EPA's use of a study on the effects of low-level exposures to lead in its air quality standard.

EPA has thus far declined to respond to the petition because of litigation, but that was resolved last May, the letter says. "Thus, EPA's continued delay in considering and responding to ABR's [petition] is without any justification, particularly in light of the court's decision in *Prime Time*, which recognized that agencies had an obligation to follow the procedures of the [DQA] guidelines," the letter says.

Industry says the order could also bolster a pending appeal in the 9th Circuit, *Americans for Safe Access v. Department of Health & Human Services* (HHS), where medical marijuana advocates are arguing that federal health agencies violated the DQA for failing to rely on sound science in determining that the drug has no medicinal value.

Despite the legal uncertainty, groups have begun filing new petitions. The American Chemistry Council (ACC) recently filed a petition asking EPA to correct a number of "factual errors" in the agency's chemical action plan for phthalates, which was issued last December. The plans outline actions the agency plans to take, including rulemakings, to deal with chemicals of concern.

In the request, the ACC questions EPA's discussion of "phthalate syndrome," or effects on the reproductive system; references to other adverse effects, such as shortened pregnancy and lower sperm quality; and the explanation of the six phthalate bans included in the Consumer Product Safety Commission Improvement Act. ACC says EPA did not distinguish between the three phthalates the law banned in children's products and three phthalates subject to a provisional ban pending a new risk assessment.

"The accuracy of the information presented in the plan is commensurate to the scientific integrity of EPA's potential subsequent actions and the regulatory message these actions convey to the market place and general public," according to the ACC petition.

But the Center for Progressive Reform, which supports stronger regulatory protections, says in a July 1 blog post that petitions like the ACC request "are just tools for slowing the regulatory process and creating disincentives for federal agencies to release information that might help the public make its own decisions about risks," rather than accuracy. "Someone at EPA . . . will have to spend a few days or weeks rebutting

ACC's arguments and dealing with the inevitable appeal when the [request] is rejected," the post says.

In addition to the industry requests, whistleblower group Public Employees for Environmental Responsibility (PEER) filed a July 1 DQA petition asking EPA to rescind and correct information about alleged greenhouse gas emissions reductions from beneficial reuse of coal combustion waste, which the agency had posted on its website promoting its voluntary industry partnership to promote coal waste reuse, known as the Coal Combustion Product Partnership (C2P2).

According to the request, PEER wants EPA to undertake a new peer-reviewed assessment on the lifecycle GHGs from coal waste byproducts and reuse, and publicly release the data underlying that assessment.

In the wake of the petition, EPA has suspended C2P2 as it re-evaluates the program. EPA July 2 took down the C2P2 website and replaced it with a note that says, "The Coal Combustion Products Partnerships (C2P2) program Web pages have been removed while the program is being re-evaluated." An EPA spokeswoman did not respond to questions about what the re-evaluation entails.

PEER has also sent EPA Administrator Lisa Jackson a July 7 letter questioning whether EPA should be promoting coal waste even as it considers first-time regulations for the waste. "At the very least, EPA should also undertake formal consideration of the conflict between its role as a regulatory agency and the role of a promotional partner with the coal ash industry for combustion waste products over which it has regulatory purview," the letter says.

Meanwhile, the American Coatings Association (ACA) last month filed a DQA request with EPA and HUD in an effort to stop the agencies from participating in an "ill-conceived and falsely depicted, prejudicial and counter-productive" PSA campaign about lead poisoning in housing built prior to 1978.

The ACA request says the PSA -- which depicts orange and white paint substituted for orange juice and milk in a child's food in an attempt to explain the dangers of home-based lead poisoning -- violate White House Office of Management & Budget data quality guidelines, which ask agencies to avoid using the Internet to increase "the potential harm that can result from the dissemination of information that that does not meet basic information quality guidelines," according to the guidelines cited in the letter.

Among other things, the group alleges the ads overstate the number of children potentially exposed to harmful levels of lead in paint and misstates the pathway by which lead poisoning occurs. "The lead PSA 'increases the potential harm' by transmitting a picture which connotes a gross misunderstanding and misperception of how lead poisoning actually occurs and how parents, guardians and pregnant women can take steps to avoid dangerous exposure on behalf of their children's health and safety," the letter says.

The group filed the petition after EPA rejected an earlier informal complaint about the ad. "We are confident that the general public understands that the campaign targets old lead paint. All of the statistics and claims made in the PSAs are factually accurate, and each of the advertisements attributes lead poisoning to homes built before 1978," EPA says.

ACA says this "curt" response does not allow for informal consultation to discuss the possibility of "revamping" the ad's concept with either ACA and other groups that have objected, including the Grocery Manufacturers Association and the dairy industry. -- *Aaron Lovell*

07/16/2010

Key EPA Risk Assessor Reassigned To Advance Sustainable Approaches (*Inside EPA*)

Peter Preuss, director of EPA's key risk assessment program, is leaving his long-time slot as head of the agency's National Center for Environmental Assessment to head a new team within the agency's research office that will develop "innovative, sustainable solutions to environmental problems," according to a July 14 memo from EPA research chief Paul Anastas. The memo is available on InsideEPA.com. Preuss informed science advisers of the move July 14, saying his new reassignment begins Aug. 1. In an interview, he said the new team is an "internal think tank" intended to follow up on the work of the "Delta Team," which is recommending ways to reform EPA's research office.

07/16/2010

Businesses Target EPA In Push To Cut Regulations' Economic Impacts (*Inside EPA*)

Business organizations are urging the Obama administration to reduce federal regulations that they say hinder economic growth, targeting several EPA air, waste and other rules they say significantly contribute to a negative economic climate by imposing burdensome costs on industry and creating regulatory uncertainty.
The Business Roundtable (BRT) and the Business Council (BC), coalitions of CEOs with close ties to the White House, have released a letter they recently sent to the White House Office of Management & Budget (OMB) outlining rules they say are contributing to the ongoing poor economy, citing more than a dozen EPA rules as having adverse economic impacts. OMB asked the two business groups to identify rules with a "dampening" effect on the economy.

Meanwhile the U.S. Chamber of Commerce -- which has taken a more antagonistic approach to the Obama administration, including filing lawsuits over several EPA rules -

- sponsored a daylong summit July 14 focusing on ways to remove what it says are government barriers to job growth, such as agency regulations.

Combined, the efforts could indicate an effort by industry to try and win OMB support for weakening or blocking some EPA rules by citing the potential economic benefits if the rules were not in place.

A source with the Center for Progressive Reform (CPR), which opposes burdensome regulatory reviews, says the efforts shows that industry continues to see OMB as a possible ally in softening agency rulemakings.

The source says the fact that OMB asked the business groups to identify rules that have a dampening effect on the economy "may mean old habits die hard" at OMB's Office of Information & Regulatory Affairs (OIRA), which reviews agency proposed and final rules before their publication in the *Federal Register*. CPR has attacked OIRA for taking steps to weaken EPA rules, including the agency's proposed rules for coal combustion waste disposal.

OIRA has "always been a part of the White House that's had a business constituency, and apparently that's still partially the case," according to the CPR source. However, the source cautions that, despite OMB's outreach to industry, "Obviously, there's a huge difference between reaching out [for input] and actually acting on it."

The BRT-BC joint 54-page letter, sent to OMB June 21, puts a substantial focus on EPA rules to limit air pollution; revise the agency's process for approving surface mining operation water permits; regulating coal combustion waste; and other rulemakings. *Relevant documents are available on InsideEPA.com.*

Notably, the business groups say their letter comes in response to OMB's "request . . . for examples of pending legislation and regulations that have a dampening effect on economic growth and job creation."

The groups detail more than a dozen EPA actions it says are creating additional burdens on industry and creating regulatory uncertainty. Numerous pending policies related to efforts to limit climate change are discussed throughout, including renewable fuel and energy requirements and EPA's pending greenhouse gas regulations.

The groups say pending EPA climate rules are creating uncertainty for industry, amid questions over whether Congress will act to establish a price on emissions and in the absence of how firms would comply with potential EPA limits on GHGs. Industry has raised concerns over what best available control technology (BACT) emission controls they will have to install under EPA's GHG permitting rule that takes effect next year.

In their letter to OMB, the business groups note that EPA has yet to issue guidance on what would constitute BACT, worrying that "those sources subject to BACT will undergo a particularly time-consuming and burdensome process with an unknown outcome, to the commercial detriment of those sources."

The groups also address concerns that EPA could mandate fuel switching from coal to natural gas as BACT, a strategy some environmentalists are pushing because natural gas emits less GHGs than coal. EPA says it has not mandated fuel switching in past BACT requirements but is keeping an "open mind" on the issue. The groups however warn that requiring fuel switching as BACT for GHGs "cannot be supported legally" and could lead to increased reliance on foreign imports of natural gas if domestic shale gas production experiences shortfalls.

On EPA's efforts to crack down on mountaintop mining, the letter notes that EPA's review of pending Clean Water Act permits issued by the Army Corps of Engineers and efforts to coordinate EPA and Corps actions "have not worked, as evidenced by the hundreds of permits held in limbo" and "could lead to eventual coal shortages."

The Chamber meanwhile sent an four-page open letter to the White House July 14 that is less detailed than the Roundtable's offering but also criticizes EPA, which it says is pursuing "an unprecedented level of regulatory action" by moving forward with 29 rules that would have an impact on the economy of at least $100 million, and claim EPA has 173 "major policy rules," but the Chamber does not define what it means by policy rules.

The CPR source says the industry groups tend to overstate the costs of regulation to the economy. For example, the source says, firms tend to look at costs they incurs installing pollution controls as an absolute loss, while other businesses that manufacture controls, such as power plant scrubbers, see economic benefits from regulation.

Other policies noted in the BRT-BC letter as having adverse economic impacts include EPA's proposal to tighten its ozone air standard, which the groups say could cost up to $90 billion and drive firms overseas; EPA's attempt to regulate coal ash, which the group worries would harm companies that beneficially reuse the waste in products; EPA's revised new source performance standards for refineries, which would impose costs up to $2 billion; and its air toxic rules for boilers, which "will establish limits that are technically infeasible for many" facilities.

The groups also target pending Democratic legislation to overhaul the Toxic Substances Control Act, saying its proposed safety standard "appears to be nearly impossible and will result in a flood of litigation" and that EPA would be unable to meet product-approval deadlines, "which will effectively bar new products from the market."

While environmental policies are prominent in the letter, the groups appear to have some higher priorities for changes it would like to see from the Obama administration. A subsequent July 8 letter from BRT Chairman Ivan G. Seidenberg to top White House adviser Valerie Jarrett says that the group wants to see reforms to corporate tax policy, deficit reduction, implementation of pending financial regulation reforms, continuation of the recently passed healthcare reforms and implementation of several free trade agreements.

Jarrett in a July 12 reply notes that the administration will continue to work with the Business Roundtable on the regulations it highlighted in its recent letter. "While we may disagree on some issues, we have an open door and are always willing to consider

input and ideas from everyone. . . . We can all agree that when lax or poorly crafted regulations contribute to problems such as the financial crisis, or the oil spill, ultimately America's businesses and economy suffer," she writes. -- *Nick Juliano*

GRANTS
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Group Gets Environmental Grant From EPA (*ABC 7 News – Denver*)

Environmental Learning For Kids (ELK) Receives $75,000
POSTED: 2:17 pm MDT July 15, 2010
UPDATED: 3:17 pm MDT July 15, 2010
DENVER -- Environmental Learning for Kids (ELK) received $75,000 in grants from the Environmental Protection Agency to educate Denver youth about science and natural resources.
“Environmental Learning for Kids is honored to have been awarded both Environmental Education and Environmental Justice grants this year. EPA is committed to reaching out to communities of color and educating and empowering our participants to become fully engaged in all issues related to the environment. Careers in the sciences have become a reality for our students," said Stacie Gilmore, executive director of Environmental Learning for Kids.
The Denver-based environmental nonprofit will teach youth through hands-on, outdoor activities using Colorado’s own natural resources.
ELK connects science education to future careers in natural resources that will contribute to Colorado’s economy and environmental protection.
To learn more about the programs ELK offers, go to their website ElkKids.org.

HAZARDOUS WASTE
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Spirit AeroSystems pays hazardous waste penalty (*Associated Press*)

Story also appeared: *Washington Post*

The Associated Press
Thursday, July 15, 2010; 8:09 AM

WICHITA, Kan. -- Aircraft parts maker Spirit AeroSystems has agreed to pay $132,500 in penalties to settle alleged violations of hazardous waste regulations at its Wichita plant.

The consent agreement with the Environmental Protection Agency was announced Wednesday.

The agency said a 2006 inspection found violations of federal rules on transporting hazardous waste. Inspectors also found the plant was operating as a waste treatment facility without an adequate containment system.

As part of the settlement, Spirit AeroSystems has certified its facility is now in compliance.

The company said in an e-mail that it disagrees with the EPA's allegations, but reached the settlement to resolve the claims.

Charlotte will be site of hearing on coal ash (*Charlotte Observer*)

(North Carolina)
July 16, 2010 Friday
SECTION: B
Charlotte will be site of hearing on coal ash
By: Bruce Henderson; bhenderson@charlotteobserver.com
Charlotte will be one of five sites for hearings late this summer on disposal of coal ash from power plants.

Last month the Environmental Protection Agency proposed new rules on coal ash, of which utilities generate millions of tons a year. Ash contains potentially toxic metals that can contaminate groundwater and lakes.

A massive spill from a Tennessee Valley Authority ash pond in 2008 riveted public and regulators' attention to the issue.

The EPA proposed two options: One would place coal ash under federal rules that regulate hazardous waste, a move Charlotte's Duke Energy opposes. The other option would regulate it under rules for nonhazardous waste such as garbage.

U.S. Rep. David Price, D-N.C., and 50 N.C. legislators asked the EPA to hold a hearing in North Carolina. They cited the 12 N.C. ash pond dams the EPA has listed as "high hazard" for potential damage if they failed.

Both Duke and Raleigh-based Progress Energy also have found groundwater contamination within their power plant boundaries.

The Charlotte hearing will be Sept. 14 at the Holiday Inn Charlotte (Airport), 2707 Little Rock Road. Sessions will begin at 10 a.m., 1 p.m. and 6:30 p.m. People who want to speak at the hearing should preregister by Sept. 9 at www.epa.gov/epawaste

/nonhaz/industrial/special/ fossil/ccr-rule/ccr-form.htm . Written statements will be accepted at the hearing.

Other hearings will be in Arlington, Va.; Denver; Dallas and Chicago.

EPA OKs more hazardous waste for Calif. toxic dump (*Associated Press*)

(AP)
KETTLEMAN CITY, Calif. — The Environmental Protection Agency says a central California landfill that local residents blame for birth defects can continue accepting hazardous waste.
The landfill next to Kettleman City is run by Waste Management. In a letter released by the company on Wednesday, the EPA says it decided to allow more hazardous waste after an area where cancer-causing PCBs were found was cleaned up.

But the letter says Waste Management must find the source of other PCBs, or polychlorinated biphenyls, found at the landfill and clean them up, too.

Kettleman City residents have blamed the toxic waste dump for at least 11 birth defects since 2007. State waste management officials say no evidence links the landfill to the deformities.

The state is investigating.

Information from: The Fresno Bee, http://www.fresnobee.com

Spirit disagrees with EPA allegations (*KSN News 3*)

Last Update: 7/15 3:49 pm
WICHITA, Kansas – Spirit AeroSystems has agreed to pay a fine to the Environmental Protection Agency for hazardous waste violations.

The $132,000 penalty was ordered after inspectors found problems with the way Spirit transported waste, the way the company stored and disposed of hazardous waste and failing to provide documented hazardous waste training for employees.

Spirit, however, disagrees with the EPA's findings and released the following statement:

"The consent agreement filed this week is a settlement of allegations stemming from inspections at the Wichita plant in July 2006. While Spirit was not in agreement with the allegations made by the EPA, we have reached this settlement as a way to resolve the EPA's administrative claims. Spirit remains committed to the environment and to the health and safety of our communities where our more than 14,000 employees live and

work. Spirit has received ISO 14001 certification, which is the international industry standard for environmental management. The materials we use are necessary to make commercial airplanes safer and are in compliance with all environmental, health and safety regulations."

07/16/2010

CPR Attacks OMB For 'Errors' Weakening EPA Bid For Strict Coal Ash Rule (*Inside EPA*)

The Center for Progressive Reform (CPR) is accusing the White House of inserting "errors" into EPA's cost-benefit analysis for its proposed coal waste disposal rule, saying the insertion makes it near-impossible for the agency to issue a final rule regulating the waste as hazardous.
CPR, opposed to burdensome regulatory reviews, claims the White House Office of Management & Budget's (OMB's) editing of the analysis "systematically underestimates the benefits and overestimates the costs" of strict waste rules, likely preventing EPA from finalizing its proposal to classify the waste as hazardous under subtitle C of the Resource Conservation & Recovery Act. EPA has also proposed an alternative subtitle D rule classifying the waste as non-hazardous, subject to less stringent controls -- an approach industry prefers.

For example, CPR says that OMB's Office of Information & Regulatory Affairs (OIRA) required OMB to monetize the potential economic loss that a subtitle C classification would cause for companies that recycle coal waste. Industries that reuse coal waste in products have warned that classifying the material as hazardous would decimate their businesses because of a "stigma" effect. As a result of the OIRA request, EPA lowered the estimated range of benefits for its proposed rule from $87 billion to $102 billion down to negative $230 billion to $102 billion, solely due to the adverse economic impacts expected for the beneficial reuse industry from a subtitle C rulemaking.

In an upcoming blog post that CPR shared with *Inside EPA* and intends to publish on its website this week, the group harshly criticizes OIRA for forcing changes to EPA's cost-benefit analysis.

CPR in the blog says the new economic analysis includes "a cost that dwarfs any expected benefits of regulation by several orders of magnitude," driving a "sense of futility" about the final rule because even if it "were to prevent thousands more cancer cases than estimated, the benefits would still not be enough to outweigh the insurmountable 'stigma' cost."

But authors Rena Steinzor and research assistant Michael Patoka say a "close examination of the benefits analysis reveals an assortment of technical errors that substantially understate the risks posted by coal ash," and that the errors "point to the roughness and unreliability of an analysis that transforms real-world threats into a tangled maze of abstract number-crunching."

For example, the analysis to predict future coal ash spills -- which averages spills over the past 15 years rather than the 10 the underlying data were actually based on -- was based on a simple typographical error that went uncorrected, but results in dramatically skewed numbers.

"Using a 10-year period instead, the number of Kingston-like catastrophes predicted over the next 50 years would rise from three to five, and the number of significant releases predicted would rise from 17 to 25. The monetized benefits of avoiding spills under subtitle C regulation would increase by $881 million," according to CPR's Steinzor and Patoka.

CPR also takes issue with the use of cost-benefit analysis in the rulemaking. The group has long criticized cost-benefit analysis' role in regulations, claiming that industry and other critics of strict rules use it to argue against stringent rulemakings by arguing that the costs to business of such rules dramatically outweigh the economic and other benefits.

"The fact that correcting these errors barely makes a dent in the final balance is a reflection of the inherently distorted values of [cost-benefit analysis] that seeks to measure all things in terms of dollars and cents. Here we have a regulation intended to prevent the obliteration of lives, homes, communities and the environment by massive spills of toxic sludge. . . . And yet, out of concern for the industry's interest in maintaining a multi-billion dollar market for recycled coal ash [the analysis] completely overrides the imminent environmental objective. It does however, cast the problem in stark relief: this is simply a case of industry profit pitted against communities and lives," CPR says.

MINING
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07/16/2010

Deadline For EPA Mine Permit Review Could Spur Suit On 'Interim' Policies (*Inside EPA*)

EPA is vowing to make a final decision on whether to reject several Kentucky water permits for surface mining projects, clearing the way for industry and state critics to launch a first-time challenge to the agency's strict new policies for the sector, which until now have been difficult to target because they have only been issued in "interim" form. Kentucky recently said it would push ahead with a dozen pending Clean Water Act (CWA) permits for surface mining in the state, even though EPA had issued an "interim" objection to the permits for not meeting the water quality requirements of its guidance. EPA July 14 accepted Kentucky's position and said it would issue by late September a final decision on whether to approve or deny the permits, a final EPA action that would be judicially reviewable.

If EPA denies one or more of the permits -- which it is indicating is likely if it does not receive additional information from the state -- that decision would be expected to draw legal challenges from the affected companies. That could open the door for broader arguments in court over the extent to which EPA can make permit decisions based on interim guidance, something critics of the guidance have currently been unable to bring to court because the agency has not issued any final decisions relying on the guide.

EPA April 1 issued interim mining guidance that sets strict new benchmarks for CWA permits, including the use of conductivity -- a measure of water salinity -- as a benchmark for issuing surface mining water permits. The agency said it would immediately implement the guidance in permitting decisions even though it is taking comment on the document through Dec. 1. EPA predicts that it will issue final permitting guidance by April 1, 2011.

The agency has already applied the stringent new criteria to issue interim objections to disputed permits in Appalachia, including the recent interim objections to the dozen Kentucky permits; EPA's proposed veto of an already issued permit for a West Virginia mine; and its approval of at least two disputed CWA permits on the condition that the mining companies seeking the permits met the standards of the agency's interim guidance.

Kentucky is already using the interim status of the surface mining policies to try and push ahead with issuing CWA permits for surface coal mines in the state. EPA May 13 issued interim objections to a dozen permits developed by the state for failing to include sufficient information to determine whether they violate water quality standards. However, Kentucky's Department of Water (KDOW) rejected EPA's interim objections in a series of June 29-30 letters because it said the information EPA accepted was outside the scope of existing permit requirements and was unavailable; KDOW said it would issue the permit within 15 to 30 days.

An EPA Region IV official in the July 14 letter says the agency is lifting its interim objection but will take the full 90 days it is allotted to review permits from when the state told EPA the information it requested was not available, setting a deadline of Sept. 29 for initial permit decisions. EPA said permits issued before that deadline would be invalid.

The information EPA requested was based on criteria it said in the April 1 mining guidance document should be considered, such as documentation that conductivity would remain below 300 microsiements per centimeter (uS/cm). EPA does not directly cite its interim guidance, which includes the conductivity benchmark. However, the agency does cite several scientific studies that were used to justify the guidance, including two draft reports that EPA's Science Advisory Board is slated to peer review this month (*see related story*).

EPA warns in its July 14 letter that it would likely deny the National Pollutant Discharge Elimination System (NPDES) permits in September, if the state does not provide it with the information it wants. "[T]he information provided by KDOW was inadequate to

support a determination that the draft permits meet the guidelines and requirements of the CWA," EPA says. *Relevant documents are available on InsideEPA.com.*

State and industry sources had previously worried that EPA would attempt to further delay the process by reiterating its interim objection, which stops the clock on the 90-day review period. "They could keep interim objecting indefinitely in theory; that doesn't seem to be very forthcoming," the state source said prior to EPA's most recent letter being sent.

The source described the back-and-forth between EPA and Kentucky over the agency's interim objections to the permits as amounting to "a lot of legal maneuvering" in which EPA is stretching out the amount of time in which it can review permits, through the interim objection, while avoiding a final action.

The situation highlights the confusion among industry and state regulators over the scope and impact of EPA's guidance, and whether the guidance can be litigated or can be used to block permits.

EPA has said that the guidance is interpreting its authority under existing law and not creating new standards. An agency spokesperson did not respond to a request for comment by press time.

Industry argues that EPA is using the interim guidance to create new standards for CWA permit reviews without a formal notice-and-comment rulemaking process required under the Administrative Procedure Act.

"EPA's premature implementation of the guidance constitutes both poor public policy and an arbitrary and capricious abuse of the agency's discretion," says a lawyer for Hazard Coal Corporation in recent comments filed with EPA, mirroring arguments from several other Appalachia mining companies.

Industry sources say that an eventual lawsuit challenging the guidance likely will argue that EPA is acting in an "arbitrary and capricious" manner and that the restrictions laid out in the guidance represent a "regulatory taking" because of economic harms companies would face because of the strict new standards.

Mingo Logan Coal Company has already sued EPA in U.S. District Court for the District of Columbia, challenging EPA's proposed decision to veto an already issued CWA section 404 permit for the company's Spruce No. 1 mine in Logan County, WV. Mingo says EPA cannot veto the permit after it has been issued by the Army Corps of Engineers. EPA counters that the challenge is not ripe for judicial review because the agency has yet to make a final decision on the veto, a contention it reiterated in a July 6 brief filed with the district court. The judge in the case has yet to rule on EPA's motion to dismiss the case or Mingo Logan's request for oral argument.

In a July 12 *Federal Register* notice EPA also delays a final decision on the Spruce veto until Sept. 24 to "allow full consideration of the extensive record, including over 4,000

public comments we received." Federal rules require EPA to decide on veto proposals within 30 days of a public hearing, which EPA held May 18 for the Spruce veto.

Industry sources hoped that EPA would either allow the pending Kentucky NPDES permits to proceed or alternatively lodge a final, formal objection that would be open to a lawsuit.

In the July 14 letter, EPA promises to "provide any written comments on, recommendations with respect to, or objections to issuance of the draft permits within 90 days of the date that EPA's review period recommenced," signaling that a final action is on the horizon.

EPA Region IV May 13 sent interim objection letters to the state Department of Water for 12 Kentucky NPDES (KPDES) permits. In the letters, which all raised virtually identical concerns, EPA noted that the information provided in the permits "is not adequate to determine whether the proposed discharge has reasonable potential to cause or contribute to violations" of the state's numeric water quality standards (WQS) for metals and its narrative standards for conductivity, total dissolved solids (TDS) or the protection of aquatic life.

EPA requested additional data it says it needs to fully evaluate the permits, including effluent data on metals, conductivity and TDS levels from coal mine discharges; data on those same levels in receiving streams and downstream waterbodies; and a full-scale mining and reclamation plan map maintained by the state Department of Natural Resources.

EPA also says the state needs to conduct a reasonable potential analysis for the proposed discharge to take into account potential water quality violations, based on conductivity parameters it outlined in the guidance, which said water quality likely would be protected at conductivity levels below 300 uS/cm and violated if levels exceeded 500 uS/cm. If the mine would exceed 500 uS/cm conductivity, EPA says the state should provide "a basis for concluding that higher levels of [conductivity] do not cause violations of WQS."

Kentucky responded to EPA's interim objections in a series of June 29 letters that argued the information EPA requested was outside the scope of regulatory requirements for what constitutes the "administrative record" for a permit and hence EPA's concerns "do not appear to constitute an interim objection," according to one such letter.

The state says it has determined that EPA sent "a comment letter rather than an interim objection letter," and it "will provide a response to EPA . . . when the final KPDES permit determination is prepared within the next 15 to 30 days."

EPA in the July 14 letter says the state is not authorized to interpret its interim objection as a comment letter and that a permit issued prior to the expiration of the 90-day review period would be invalid. The state source indicates that the state will give EPA the full time to review its permits and is evaluating how to accommodate its requests for

additional information; the source says the state may not be able to provide anything. "In some respects, that data doesn't even exist, so, 'We don't know,' is the short answer how to respond to that," the source says. -- *Nick Juliano*

PESTICIDES
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07/16/2010

Activist Group Seeks Stricter EPA Regulation Of Antimicrobial Pesticides (*Inside EPA*)

A key whistleblower group is pushing for stricter EPA regulation of antimicrobial pesticides by claiming that EPA has failed to adequately consider whether the pesticides benefit consumers and arguing that EPA is not fully considering potential risks of the substances, while EPA crafts non-binding testing guidelines for the efficacy of the pesticides.
The group, Public Employees for Environmental Responsibility (PEER), outlined its concerns with the pesticides and their push for stricter regulation of the substances in June 28 comments filed with EPA on the draft testing guidelines. EPA in January released the draft efficacy test guidelines for health-related antimicrobial pesticides and took comment on them until June 28. *Relevant documents are available on InsideEPA.com.*

PEER's comments echo calls from Rep. Edward Markey (D-MA) earlier this year for a ban on many uses of triclosan -- a widely used but controversial antimicrobial agent -- and greater agency regulation of the substances because of their potential health effects, among other moves (*Inside EPA*, April 16).

PEER says that because EPA's pending guidelines will not be binding they will not protect consumers from ineffective products and will not cut down on deceptive efficacy claims on antimicrobial pesticides.

"It seems profoundly counter-intuitive for the EPA to require efficacy pre-registration data for antimicrobials under the auspices of protecting public health, and yet to permit departures from the testing procedures it has deemed most credible for efficacy testing," PEER argues. The group asks, "if these testing procedures are not standardized according to the scientific methods that [EPA's chemicals office] has deemed most effective, how can EPA ensure that antimicrobial products are actually fulfilling their designated commercial purposes?"

PEER also argues that EPA should "broaden its focus" by implementing "an improved set of data requirements that better assess the environmental and human health impacts of all antimicrobial agents," including their potential risks, the comments say. By requiring antimicrobial pesticides makers to provide data on the fate of their products, the agency would be better equipped to "preempt and mitigate" potentially harmful

exposures to the products by restricting their use, PEER says, citing Markey's calls for a triclosan ban due to concerns about exposure.

Further, PEER questions the consumer benefits derived from the products, pointing again to the proposed ban on triclosan, which they say highlights EPA's failing to properly consider the benefits.

The group asks EPA to "restrict use of currently registered public health-related antimicrobial pesticides to clinical settings and refrain from approving any pending or future registrations for use in general consumer products" until submission of more data is mandatory and "the data itself supports additional uses."

Industry group Consumer Specialty Products Association (CSPA) also filed June 28 technical comments that focus on ensuring EPA's guidance is based on the most appropriate, modern testing methods. "It is very important to our members that the test methods are as accurate and up to date as possible," a CSPA source says.

FMC Corporation also filed March 29 comments, expressing concern that the guidelines could have unintended consequences on "the continued availability of low-acid foods in aseptic packaging at affordable prices," which refers to a process of packaging food in a sterile way. FMC argues that the Food & Drug Administration provides adequate regulation of aseptic packaging and EPA's guidelines do not account for the "unique situation" of the aseptic packaging industry and "promise[s] unintended consequences" by making existing packaging lines obsolete.

SOLID WASTE
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City, EPA agree on $525,000 in penalties (*Inside EPA*)

CFC: Refrigerant sent into environment
ROB CARSON; Staff writer
Last updated: July 16th, 2010 12:24 AM (PDT)

The City of Tacoma has agreed to pay nearly $525,000 in environmental penalties and mitigation expenses for improperly disposing of refrigerated appliances between 2004 and 2007.

In a court-ordered agreement with U.S. Environmental Protection Agency announced Thursday, the city will pay $225,000 in penalties for the release of chlorofluorocarbons (CFCs) and nearly $300,000 for new pollution-reduction projects.

According to a consent decree issued by the U.S. Department of Justice, the city's Solid Waste Management Division processed more than 14,600 appliances to recover refrigerants between October 2004 and August 2007. Because of a flawed purging process, an estimated 4,600 pounds of refrigerant was released to the environment.

According to the EPA, the CFCs released were equivalent to 32 million pounds of carbon dioxide, or about 530,000 roundtrip commutes between Tacoma and Seattle.

The releases violated the federal Clean Air Act, which prohibits the release of CFCs to the environment.

CFC refrigerants are a leading cause of ozone depletion, which contributes to climate change and has negative human health effects, such as increasing the risk of skin cancer.

"Every pound of CFCs that enters the environment is a blow to the earth's protective ozone layer and a setback in controlling climate change," said Dennis McLerran, Regional Administrator for EPA Region 10. "We expect any facilities that handle refrigerants to have sound practices for recovery."

The city agreed to take corrective action and conduct additional monitoring beyond the regulations to ensure it recovers the maximum amount of refrigerant from the disposal process.

In addition to the penalty, the city agreed to fund several projects worth about $300,000 to reduce air pollution in the Tacoma area. The projects include:

• Replacing a diesel garbage truck with one powered by diesel hydraulic hybrid technology.

• Buying an electric hybrid "yard mule," a small tractor used to move trailers around at the landfill. This vehicle runs largely on electricity, saving fuel and reducing diesel emissions.

• Retrofitting 10 semitrailers with equipment that reduces diesel emissions.

SUPERFUND
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07/16/2010

Industry, GOP Preparing Opposition Strategy For Renewed Superfund Tax (*Inside EPA*)

Industry groups and Republicans are ramping up opposition to Democrats' push to reinstate the long-expired Superfund tax, with the National Association of Manufacturers (NAM) announcing the formation of a "task force" to battle the effort and other opponents looking to draw attention to what they claim is the inequity of the tax.
The activity signals an upcoming showdown in Congress over the issue, which has reemerged as a "polluter pays" priority for the White House and congressional Democrats in the wake of the BP oil spill.

In its June 30 announcement of the task force, NAM notes there "is growing interest in Congress and the administration to reinstate the Superfund tax," citing a June 21 letter EPA sent to congressional leaders urging them to approve legislation reinstating the tax and a June 22 Senate hearing, during which Sen. Frank Lautenberg (D-NJ) touted a Government Accountability Office finding that EPA's costs to remediate existing and future Superfund sites likely exceed its current funding levels as a reason to pass the legislation.

NAM convened a July 13 meeting with its members "for a legislative update, a review of NAM's policy on this issue and a discussion of NAM's lobbying strategy moving forward." NAM, along other major industry groups and key Republicans in Congress, has historically opposed reinstatement of the tax.

The American Chemistry Council (ACC) on June 28 prepared an updated issue brief outlining the reasons why the chemical industry believes reinstating the taxes would be a bad idea. "The chemistry industry is already facing slumping demand from the recession, continued high costs for energy, intense foreign competition, and razor-thin margins," the ACC backgrounder says.

ACC claims that costs "to the chemical industry would be substantial" with "an estimated $355 million in 2012, rising over time to $4.3 billion over the ten-year period." The group says that the "chemical feedstock excise tax will account for 82 percent ($3.53 billion) of the $4.3 billion in cost, with the chemical industry's share of the Corporate Environmental Income Tax (CEIT) accounting for the remaining 18 percent ($755 million)."

According to ACC, "Superfund is overwhelmingly a program in which responsible parties pay for waste site clean-up" and chemical "companies and others targeted by the Superfund tax have paid for Superfund site remediation several times over. As responsible parties, they've paid to study, cleanup, and reimburse federal and state government costs at sites they contaminated."

ACC also claims that the chemical excise portion of the Superfund tax would make it difficult for domestic chemical companies to compete globally. "Reinstating the tax on just two products -- chlorine and ammonia -- would essentially offset any economic return on sales to current producers, making those segments non-competitive in the global market," ACC says. "An excise tax on chlorine would increase the cost of disinfecting water; while the cost of fertilizer (which depends on ammonia) would also increase."

Reinstating "the corporate environmental income tax would add another tax burden on an industry already affected by significantly higher fuel and energy raw material ('feedstock') costs and increased global competition," ACC says. "The U.S. is losing production and jobs to other areas of the world where energy costs are lower."

Democrats and environmentalists in favor of reinstating the tax have long viewed it as a way of addressing the slowing pace of Superfund cleanups in recent years. But industry officials, who argue cleanups have slowed because the remaining sites are more complex than those EPA had dealt with in the past, will seek to make the argument that reinstating the tax will not speed cleanups in part because the Superfund budget will still be subject to annual appropriations by Congress regardless of the tax, an industry source says.

The ACC backgrounder reflects this theme. "Even when the Superfund Trust Fund ran a significant surplus, Congress determined how much EPA could spend in the Superfund program," ACC claims in the document. "In other words, Superfund taxes do not control EPA's annual budget. Congressional appropriations have remained fairly constant, between $1.2 and $1.4 billion."

TOXICS
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EPA finds more problems at California toxic dump (*Associated Press*)

Story also appeared: *Washington Post*

By GARANCE BURKE (AP)
FRESNO, Calif. — For the second time in four months, federal investigators have found problems at a central California landfill that local residents blame for birth defects, and ordered the West's largest toxic waste dump to clean up soil tainted with a cancer-causing chemical.

The U.S. Environmental Protection Agency sent a notice of violation on Thursday to the Chemical Waste Management landfill near rural Kettleman City, citing federal laws on the disposal of PCBs, or polychlorinated biphenyls, a now-banned transformer fluid.

The agency said the company needs to fix problems found outside a storage facility for large electrical equipment where the company's independent tests detected three samples that tested positive for PCBs last week.

"This is clearly a release of PCBs in an area where we shouldn't be finding them in the soil," said Michael Hingerty, deputy branch chief in the EPA's Office of Regional

Counsel in San Francisco. "PCB-bearing stuff is subject to pretty strict regulation, and when those things are taken out of service they need to be disposed of."

In April, the EPA told the landfill it could lose the ability to receive hazardous Superfund waste if it did not clean up the first area where PCBs were found. Last week, the agency allowed the landfill to keep accepting that waste. But Thursday's action means the facility is again on notice to clean up its problems in 60 days or lose the ability to dispose Superfund wastes.

Residents of Kettleman City, an impoverished Central Valley farming community, have blamed the toxic waste dump for at least 11 birth defects, including cleft palates and heart problems seen in newborns, since 2007. But state waste management officials have said there is no evidence linking the landfill to the deformities.

Company officials also have said there's no evidence linking the dump to the birth defects. They did not immediately return calls Thursday seeking comment.

State environmental authorities are taking samples of the air, water and soil and going door to door to talk with families to assess community exposure and determine the source of the birth abnormalities.

The 1,600-acre Kettleman Hills Facility is about three miles from the largely Spanish-speaking community of 1,500 along Interstate 5, the busy artery linking Northern and Southern California.

The town is crisscrossed by high-tension power lines; pesticides and chemical fertilizers are routinely sprayed on nearby fields, and some local drinking water sources are contaminated.

07/16/2010

House Lawmakers Slated To Introduce TSCA Reform Bill Later This Month (*Inside EPA*)

Key House lawmakers are set to introduce later this month a bill reforming the Toxic Substances Control Act (TSCA), which will be based on a widely circulated discussion draft but could incorporate suggestions brought up in recent stakeholder meetings. Sources say the bill is slated for introduction by House Democrats on July 22 and will be based on a discussion draft floated by Rep. Henry Waxman (D-CA), chairman of the House Energy & Commerce Committee, and commerce panel chairman Bobby Rush (D-IL) in April. The energy panel is planning a July 29 hearing, sources say.

The sources say the bill will also incorporate changes from an extensive series of stakeholder discussions held this spring and, on the eve of its introduction, some in industry say that it is important for suggestions from the talks to be reflected in the bill to justify further industry participation in the process.

The July 29 energy panel hearing on the bill is scheduled to include testimony from EPA Administrator Lisa Jackson and representatives from environmentalist groups and industry.

Despite new action on the bill, few expect Congress to pass a bill this year. EPA toxics chief Steve Owens has said that action on a bill is "unlikely" this Congress.

Moreover, since the release of the draft bill earlier this year, industry have raised many concerns with the broad reach of the draft bill. Many in industry have also suggested potential GOP gains in the House in November's mid-term elections as one way to influence the legislation and address their concerns with the draft. A Republican House takeover, or significant GOP gains, could make it harder for Democrats to pass TSCA reform without moderating it to win sufficient votes from the GOP, sources said earlier this summer.

Sen. Frank Lautenberg (D-NJ) introduced companion legislation in the Senate, but has yet to hold hearings on the topic. Activists have long been pushing for TSCA to be reformed to switch the burden of proof from EPA proving chemicals pose an "unreasonable risk" to industry proving that chemicals are safe.

07/16/2010

Advisers Urge EPA To Strengthen Lead Dust Limits For Homes, Offices (*Inside EPA*)

EPA science advisers are urging agency officials to strengthen their proposed approach for assessing risks and limiting exposure to lead paint dust in private residences, and suggesting the agency adopt this strengthened approach in new rules for residences and first-time workplace safety rules for commercial buildings, such as offices.
The agency is developing the new rules under a consent decree with environmentalists, but it is already sparking significant opposition from the Navy and some building industry groups who are urging EPA to clarify that some of their facilities or activities will be exempted from future regulatory requirements. Development of the new rules comes as the agency is still struggling to implement its amended 2008 rule governing residences and child care facilities.

At a Science Advisory Board (SAB) panel meeting July 6-7, panelists urged the agency to re-consider its plan to calculate two separate hazard standards to assess risks of lead-based paint dust to protect children and adults in commercial or public buildings.

The advisers said there is a wealth of data showing risks to children in residential buildings but insufficient data showing risks in commercial and public buildings.

Panelists raised concerns that not only is there insufficient data concerning lead dust exposures in commercial or public buildings to support a reliable standard, but EPA's planned approach relies on just one harmful endpoint -- increased blood pressure -- to assess health risks associated with lead paint dust, a move the panel says could seriously undercut risk.

As a result, the panel is suggesting that EPA strengthen its hazard standard to protect children under 6 in private residences by considering additional endpoints such as neurological and reproductive harms -- and then apply that standard to commercial buildings. *Relevant documents are available on InsideEPA.com.*

By ignoring other adverse health data endpoints, "by definition we are vastly underestimating risk," said panel member David Jacobs, a public health professor at the University of Illinois at Chicago.

Under the settlement with environmentalists, EPA agreed last October to review the hazard standard in its 2008 lead renovation, repair, and painting rule, revise the regulatory requirements in the RRP rule as necessary, and develop first-time work safety practices for renovating commercial and public buildings.

Under the settlement, the agency is required to consult with SAB by Sept. 30, 2011, on its approach for creating a safety standard to address the risks posed by interior renovations to commercial and public buildings that are not frequently occupied by children. As another condition of the settlement, EPA must then use the standard to propose a set of lead dust cleanup safety practices, consult with SAB again, and issue a proposed rulemaking within 18 months of the SAB's final report.

"When we develop the work practices, we need a goal of what is safe, and depending on where we end up, it'll be more prescriptive or less prescriptive [than the current residential standard]," Maria Doa, director of EPA's Office of Pollution Prevention & Toxics, told the SAB panel.

To implement the settlement, EPA May 6 issued an advance notice of proposed rulemaking that proposed its planned formulas for re-assessing the hazard standard in its RRP rule.

Concord to replace school's two fields (*Boston Globe*)

July 16, 2010 Friday
NEWS; Metro; Pg. 3
Concord to replace school's two fields;
New artificial ones to contain less lead

By Jennifer Fenn Lefferts, Globe Correspondent

Two artificial turf playing fields at Concord-Carlisle Regional High School will be ripped up and replaced this fall with a new material that contains less lead.

Town officials say the existing fields pose no danger to players because the lead amounts are so small. However, they asked the manufacturer, Sprinturf, to replace the surface at no charge because officials do not want any lingering doubts in the community about the safety of the fields.

The US Centers for Disease Control has recommended the elimination of all nonessential uses of lead.

``While it's perfectly fine and meets all guidelines, the other product has even less stuff,'' said Selectman Greg Howes. ``Perception is reality. It could create a public relations problem for us, and we don't want that nagging problem.''

Howes said the question over the amount of lead in the turf came to light in 2008, when the Globe tested several area fields, including those at Concord- Carlisle. The town's contract with Sprinturf states that the fields contain no heavy metals, he said.

Stanley Greene, Sprinturf's president, released a statement this week, saying that the company had agreed to replace the fields. They cost $3.8 million to install two years ago.

``At Sprinturf, customer satisfaction is truly our sole focus,'' the statement said. ``We've agreed to replace the fields and eliminate safety concerns or perceptions.''

Since the fields were installed, the formulation for the synthetic turf fibers was modified to eliminate consumer concern, the statement said.

The US **Environmental Protection Agency's** standard for bare soil in children's play areas is a maximum of 400 parts per million of lead. The Consumer Product Safety Commission has asked artificial turf manufacturers to voluntarily reduce lead in their product, and the leading manufacturers agreed to cut lead used to color synthetic turf to 300 parts per million by the year 2011 and to 100 parts per million or less by the year 2012.

The Globe independently tested turf samples from area schools after Guive Mirfendereski, a Newton activist, offered test results that showed lead levels at Concord-Carlisle's turf in excess of 13,000 parts per million.

Sprinturf's chief executive then conducted tests that showed 250 parts per million. The Globe subsequently sent turf samples to a local lead screener and laboratory for independent testing, which found lead levels of nearly 300 parts per million.

The town also conducted its own test, which showed a level of 416 parts per million.

Howes said even though officials were confident that the fields were safe, the town started discussions with Sprinturf about using the newer product that contained even less lead. ``We wanted something with the bare minimum,'' he said. ``The way we're looking at it is there's a free upgrade to this other product.''

Brent Reagor, the town's health director, said some residents raised questions about the fields after the Globe report came out but he has heard nothing since the independent testing was done. Reagor said several wipe tests have been conducted of lead dust on the field, and all have come back well within the acceptable range.

Mirfendereski, whose initial sample collection started the discussion two years ago, commended Concord for forcing the manufacturer to provide a product with less lead, though he said he wishes there was none. He said he is not aware of any other communities removing turf.

``I'm happy it's being reduced, but it's not being eliminated,'' Mirfendereski said. ``It's better than nothing, but not ideal.''

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07/16/2010

Industry, Texas Question Protective Assumptions In EPA Dioxin Analysis (*Inside EPA*)

Various industry representatives, as well as the Texas Commission on Environmental Quality, are questioning the conservative assumptions EPA used in its recently released draft re-assessment of the risks posed by the ubiquitous contaminant dioxin, with General Electric Co. arguing EPA's overall approach could overstate the cancer risks of dioxins and related compounds some 50-fold.
In EPA's reassessment, released in May, the agency declared the most toxic of the class of dioxins, 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD), as a known human carcinogen, and estimated a very stringent oral cancer slope factor, or estimate of potency by ingestion of $1x10^{-6}$ per milligrams per kilogram of body weight per day (mg/kg-day). A Science Advisory Board peer reviewed the draft assessment July 13-15.

Dioxins, produced by burning and many industrial processes, persist in the environment and in human and animal tissues. Other organizations, including the National Toxicology Program and the International Agency for Research on Cancer, have also declared TCDD a human carcinogen.

Industry is stridently opposed to the proposed cancer slope factor, which its representatives argued at a July 9 listening session would result in severe regulation of numerous activities, ranging from contaminated site cleanups to agricultural practices.

Industry representatives are also citing concerns from members of a previous National Academy of Sciences (NAS) peer review panel to argue EPA did not follow recommendations from the NAS when creating the latest draft.

Last fall, the agency proposed using a set of toxicity equivalency factors (TEFs) developed by a World Health Organization panel in 2005, to estimate the risks of mixtures of dioxins and dioxin-like compounds, including furans and polychlorinated biphenyls (PCBs) at waste sites. The TEF assessment approach sets a TEF for each of 170 congeners relative to TCDD, then uses these values to estimate the potency of the mixture.

Industry is again questioning the use of this approach -- and these particular TEFs -- arguing that they overestimate the risk that mixtures of dioxins present.

Jay Silkworth, a toxicologist with GE's Global Research Center, argued that the TEF approach could overstate risk by as much as 50 times. "It is questionable whether TEFs apply to furans and PCBs -- they're different than dioxins. We tested the most potent PCB, PCB126, in several human cells. The potency is about 50 times lower than the rodent-derived TEFs," Silkworth said during the July 9 listening session. He argued that the TEFs, which are based on toxicology studies of lab rats, aren't applicable to humans.

"Other data show the same 50-fold discrepancy. This is not an exception, it's a rule this major discrepancy exists between humans and rats," Silkworth said.

In written comments, the Dow Chemical Co. argues that EPA "has chosen to ignore" the NAS panel's recommendations regarding the use of TEFs. Dow argues that EPA adopted the new WHO TEFs "without weighing and responding in a thoughtful fashion to the recommendations of the NAS panel that EPA address thoroughly the limitations and uncertainties of the TEF methodology currently employed," according to Dow's July 7 comments. *Relevant documents are available on InsideEPA.com.*

But environmentalists argue that EPA needs to quickly finalize the TCDD assessment, which has been in the works since the 1980s. In written comments, the Environmental Working Group (EWG) argues that Americans, particularly children, are exposed to dioxins at levels close to or exceeding EPA's proposed reference dose. The draft reference dose (RfD) of $7x10^{-10}$ mg/kg-day is the amount of dioxin below which EPA estimates should not induce non-cancer health effects following daily ingestion over a lifetime.

"EWG analysis of data from the peer-reviewed literature finds that a 130-pound adult who eats a cheeseburger and drinks a glass of milk once a day can consume a third of EPA's proposed safe daily dose of dioxin and dioxin-like compounds, and over time would accumulate an incremental dose of the carcinogens 270 times greater than that which EPA considers acceptable for the general population," according to the group's July 7 comments.

07/16/2010

EPA Urged To Issue End-Of-Life Rules For Toxins In Recycled Coal Waste (*Inside EPA*)

EPA is facing calls from the whistleblower group Public Employees for Environmental Responsibility (PEER) to develop so-called end-of-life rules to curb the potential risk that toxins in coal waste used as components in products ranging from cement to wallboard could leach into the environment when the products are destroyed.
PEER will soon ask the agency to develop the rules as part of the group's comments on EPA's first-time proposed regulation for managing the disposal of coal combustion waste, a PEER source says. The group will first ask the agency to assess whether toxins in coal waste used in products remains sealed when the product reaches the end of its useful life. If the studies find the materials escape, then PEER will ask EPA to take steps to address that risk.

Industry officials, however, say PEER's push faces dim prospects, because it is impossible to tell which products contain coal combustion waste, frustrating any effort to regulate their ultimate disposal.

PEER plans to seek the end-of-life rules and will file early comments on the proposal, which will be submitted at the end of July in a pitch to garner debate on the issue, with the comment period not closing until Sept. 20.

PEER already filed a July 1 Data Quality Act challenge over EPA's claims on the environmental benefits of reuse on the agency's Coal Combustion Product Partnership (C2P2) website, a voluntary program with industry partners designed to promote reuse of coal waste (*see related story*).

EPA in its June 21 proposed Resource Conservation & Recovery Act (RCRA) coal waste rule intends to exempt from regulation most beneficial reuse of coal waste in products. EPA has proposed either hazardous waste or less stringent solid waste requirements for disposal of coal waste, but industry has long warned that a hazardous waste rule would create an insurmountable stigma against recycling coal waste.

EPA proposes to exempt most beneficial reuse from regulation under either solid or hazardous waste disposal rules so as not to harm the industry. But PEER will argue that the agency must address the risk of toxins leaching out of those products at the end of their life before granting any exemption in the final rule.

PEER says many of the toxins in coal waste -- including mercury, selenium and arsenic -- are transferred to the products that coal waste is reused in, such as concrete, counter-tops, carpet backing and wallboard. PEER fears that many of those toxins are then released when the various products are eventually destroyed.

For example, the PEER source notes that cement and concrete are often crumbled and placed in waterbodies, as levee material or artificial reefs, meaning it could directly

contaminate water. Additionally, carpet is often burned at its end of life, while wallboard and counter-top material can be placed in landfills.

Despite these risks, the source says there is an "absence of any kind of study by EPA of the environmental and public health effects of coal ash" when used in products.

"Often carpet is disposed of by burning, so will coal ash in a carpet be burned in an open air facility or an incinerator, and if so the result is that the most hazardous material that you've prevented from going up the smokestack of a coal-fired power plant through pollution controls would then be emitted elsewhere," the source says. Toxins from coal ash-containing concrete disposed of in a solid waste landfill could also leach into the water table, or the material may be broken up and placed directly in water to use as a levy, fill or artificial reef, the source notes.

PEER believes that the amount of toxins in coal waste is also set to increase under pending EPA air rules that will require installation of air emission controls for mercury and other air toxics at coal-fired facilities. While the controls prevent the toxins from entering the air, they instead become major components of waste produced from coal combustion, and those toxins remain when that ash is recycled in products.

"What happens when the mercury content of coal ash significantly increases?" as a result of stricter EPA air rules, the source asks. "That isn't the kind of thing you want to have in your kitchen counter."

Additionally, the source criticizes the fact that coal ash recyclers can receive "green building" credit for using coal waste in wallboard and counter-top material, even though the consequences are unknown. "People get green credit because they are using a recycled material, but they may be doing something that ultimately may be very brown."

The source notes that PEER is "arguing that beneficial use should be stigmatized," in contrast to other environmental groups that are trying to rebut industry's claims that hazardous coal waste rules would harm ash recycling. "[S]o for the most part we are acting by ourselves" by seeking reuse rules, the source adds.

Industry sources, meanwhile, downplay the prospects for PEER's request, saying it is unlikely that EPA will develop new end-of-life requirements for beneficially reused coal combustion waste.

One industry source says it is impossible to tell which discarded products contain coal ash. A second industry source says that EPA's coal waste proposal already requires the rules PEER seeks because it says that products containing coal waste will become a new waste subject to RCRA controls when they reach the end of their life. "This new waste would be subject to RCRA subtitle C if the waste exhibits a characteristic of hazardous waste (i.e. ignitability, corrosivity, reactivity or toxicity)," EPA says in the proposed coal waste rule.

But the first industry source says this requirement is nearly impossible to address because, "At the end of its life, you are not going to know whether concrete has fly ash

in it, or whether wallboard was made with synthetic gypsum out of a scrubber or with natural rock gypsum. . . . Unless you are going to look at all the concrete that is coming out of service, you are stuck with the problem of not knowing which has fly ash."

The second source adds that the PEER effort singling out recycled materials made with coal ash makes no sense. "My reaction is what about al the other products in use right now that didn't come from coal ash and have low levels of metals in them too? Why don't we do an end-of-life for everything?"

However, the PEER source counters that separate rules are necessary, particularly if EPA finalizes a rule allowing beneficially recycled coal ash to shed a planned designation as a "special waste." "Large volumes of an otherwise listed 'special waste' could be shifted to the same solid waste management system as household garbage. There would also be no tracking system in place to gather data on whether these uses caused problems. . . . Also, household wastes are exempt from RCRA requirements, so the consumer applications are particularly troubling," the source says.

Additionally, the source says that because EPA is going to great lengths to seek to appease industry's "stigma" concerns, "EPA is certainly not going out of its way to raise any advisory that people who handle this material should make a RCRA determination at the point of disposal."

While the proposal includes language that suggests these products could be subject to RCRA rules, PEER says that the upshot will be that any recycled ash material will "just disappear from the regulatory framework altogether."

In a related matter, the U.S. Army Corps of Engineers is considering a plan to use coal waste to shore up dozens of miles of Mississippi River levees along a 200-mile stretch of the river near St. Louis, calling it the "cheapest, longest-lasting fix" of the options it weighed. The *Chicago Tribune* reports that the plan is drawing criticism from many environmentalists, who plan to air their concerns at a July 15 public hearing. -- *Dawn Reeves*

07/16/2010

DHS Works To Resolve Uncertainty Over Definition For 'Safer' Technology (*Inside EPA*)

BALTIMORE -- The Department of Homeland Security (DHS) is working to develop a draft definition for the controversial term "inherently safer technology" (IST), which could help to resolve long-running disagreements between industry, environmentalists and others over how to formally define the vague concept of IST.
Dr. George Famini, director of DHS' Chemical Security Analysis Center, said during a July 7 presentation at a security event here that the department sees a need to craft a definition for IST given a wide debate among industry, environmentalists, and other

stakeholders about what IST entails. Famini also said a firm definition could help inform whether to include IST as part of DHS' security rules or pending chemical security legislation.

In order to have a meaningful debate over whether to mandate IST at certain chemical facilities, it would be beneficial to have a definition of IST all parties agree on, Famini said. "When I went out and asked five people who know about IST how to define IST, first of all I got five different answers," he said. "Secondly, every one of them started out with, 'Let me give you an example.' And we just couldn't use that, because examples are specific and we can't translate one example to another case," he told the Chemical Sector Security Summit.

DHS has contracted the Center for Chemical Process Safety -- an offshoot organization of the American Institute of Chemical Engineers -- to help the department develop a definition of IST.

In a draft, unattributed definition provided to attendees of the summit, IST is defined as being a "philosophy, applied to the design and operation life cycle" that is intended to be "an iterative process that considers options, including eliminating a hazard, reducing a hazard, substituting a less hazardous material, using less hazardous process conditions, and designing a process to reduce the potential for, or consequences of, human error, equipment failure, or intentional harm." *Relevant documents are available on InsideEPA.com.*

Defining IST has long been a source of disagreement among activists, industry, lawmakers and others since Congress first mandated the creation of interim DHS security rules. DHS's Chemical Facility Anti-Terrorism Standards (CFATS), set to expire this year, do not currently include any IST mandates. The battle over whether to include IST in broad reauthorization legislation is one reason that bill has stalled (*see related story*).

Famini added that DHS is also working to develop metrics for how to determine whether one of two or more chemical processes is safer than another, and that the department is close to awarding a contract to an outside firm to identify possible metrics. The problem with the existing metrics, Famini said, is that while there are many examples there are few solid principles that can be applied broadly to an entire life cycle and supply chain.

"Our main interest there is metrics for safety and security," Famini said. "There are a lot of metrics focused around IST and increasing safety, but the problem is they're generally very specific -- specific to a case, specific to a process -- and we need something that can really run the gamut, go from essentially from soup to nuts."

Environmentalists have long described IST as a requirement for transitioning industries to less hazardous processes when they will not do so voluntarily. The most common example they offer as IST is forcing a company to switch from using chlorine -- a potentially harmful gas if released from a facility during a terrorist attack -- to substances that would pose less of a risk to the public in the event of a release.

But industry and some Republican lawmakers have attacked IST as an attempt to give the government a mandate to determine how companies should operate. Critics of IST mandates have also said that some options, such as no longer using chlorine, are technically and financially impossible for some facilities.

07/16/2010

Prospects Fade For Broad Security Bill With 'Safer' Technology Mandate (*Inside EPA*)

BALTIMORE -- Prospects are fading for the 111th Congress to pass a broad bill to permanently authorize federal chemical facility rules with a mandate for companies to use "inherently safer" technology (IST), and lawmakers are more likely to pass a short-term reauthorization of the rules, industry officials and Capitol Hill staffers say. Another complication for efforts to mandate IST in a broad security bill is the lack of a definition of IST that industry, activists and others can agree on, though DHS is working on such a definition (*see related story*).

At a July 7-8 Chemical Sector Security Summit here, a key staffer for Sen. Joseph Lieberman (I-CT) said that while the senator continues to support a broad security bill he is tempering his desire to move such legislation this year, because the Department of Homeland Security's (DHS) fiscal year 2011 appropriations bill will include language to extend by one year interim DHS chemical security rules that are currently due to expire later in 2010.

Legislation to update DHS' Chemical Facility Anti-Terrorism Standards (CFATS) and make the program permanent, H.R. 2868, passed the House last year, but no senator has yet introduced comprehensive companion legislation. Sen. Susan Collins (R-ME), an opponent of IST mandates, has introduced a bill that would extend the authorization of CFATS through Oct. 14, 2015.

Despite the growing likelihood that Congress will not pass a reconciled, comprehensive bill this year, "We feel comfortable that the program is not going to evaporate," said Holly Idelson, Democratic counsel for the Senate Homeland Security & Governmental Affairs Committee, which Lieberman chairs. "It's not a disaster if we have to continue" the program through one-year extensions, she said. "We don't have to have a false sense of panic" about the consequences of not passing a broader bill to create permanent security rules, she added.

Bill Allmond, vice president of government relations at the Society of Chemical Manufacturers & Affiliates (SOCMA), said at the event that given the Senate's tight, busy calendar and other priorities, even a one-year extension might not pass. But Allmond said the program would continue even without that measure.

CFATS "will continue, even without funding," Allmond said. "The expectation will be that facilities covered under CFATS will still continue to be regulated by the department" with DHS using existing funding to pay for ongoing implementation of the standards, he said.

DHS' security program in its current form was created through a rider in the 2006 DHS appropriations law, authorizing the program for three years ending in October 2009. President Obama in FY10 requested another one-year extension, which Congress approved in the department's FY10 spending law. Obama's FY11 request to Congress asks for another one-year extension, which sources say Congress is likely to approve.

If Congress fails to pass a broad chemical security bill this year to make the CFATS program permanent -- with additional new requirements, such as IST mandates -- it could diminish future prospects for moving legislation to require companies covered by CFATS to use IST, according to SOCMA President Lawrence Sloan.

During a July 8 panel at the chemical security summit, Sterling Marchand, a GOP staffer for the House Homeland Security Committee, said that a key hurdle to moving a bill is the inability to agree on a definition for IST.

Because the issue of safer technologies is relatively subjective -- and the reduction of risk at one facility may require an increase of the same risk at another facility, a concept called risk transfer -- it is hard to come up with unequivocal examples of technologies that are inherently safer than others while remaining cost-effective, he said.

DHS' existing rules do not mandate IST, which is designed to reduce risk, for example, by a facility switching from chlorine to a substance that would pose less of a risk to humans if released during a terrorist attack on a facility. Some Democrats and environmentalists favor legislation that would make permanent DHS' security rules and also give DHS power to mandate that some facilities switch to IST to reduce potential risks to the public.

But industry and many Republicans strongly oppose IST mandates, saying it would impose costly and sometimes unworkable burdens on companies. Sloan said that if Congress fails to pass chemical security legislation before the midterm elections, the prospects for moving any mandate of IST is "greatly diminished."

Further diminishing the potential for IST mandates, Idelson told *Inside EPA* that while Lieberman has long seen IST as a "critical" component in any security legislation, it would not be a deciding factor in his efforts to pass a bill out of Congress by the end of the legislative calendar. "I don't think the urgency is on IST specifically," Idelson said, adding that CFATS would more broadly "benefit from a permanent authorization."

Environmentalists are likely to be disappointed with the Capitol Hill staffers' comments because the environmentalists advocate passing a bill with IST mandates.

WATER
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L.A. River gamble pays off (*Los Angeles Times*)

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Home Edition
SECTION: MAIN NEWS; Metro Desk; Part A; Pg. 2
L.A. River gamble pays off;
Kayak trip cost scientist her job but helped save the waterway.
By HECTOR TOBAR
Heather Wylie was a key instigator of what must be the biggest, most important boating expedition ever undertaken on the Los Angeles River.

With two dozen others in kayaks and canoes, she braved the river's shallow waters, paddling past garbage trucks at the water's edge, homeless bathers and other unexpected riparian obstacles.

"I've never had so much fun on a boating trip," Wylie told me. "It was a new kind of adventure."

That adventure cost Wylie, then a 29-year-old government biologist, her job -- and $60,000 salary -- with the U.S. Army Corps of Engineers. But it helped save the L.A. River.

Last week the U.S. Environmental Protection Agency ruled the Los Angeles River "traditional navigable waters," entitled to the protections of the Clean Water Act. It was a huge victory for the legions of activists who have worked for decades to protect the river from developers and polluters.

Without Wylie and that law-defying boat trip, it might not have happened.

As proof that the river is indeed navigable, the EPA cited in its official report the July 2008 Los Angeles River expedition organized by Wylie, George Wolfe and others.

"The federal government is saying this is a real river," said Joe Linton, a writer and activist who was also on the expedition. "I say that every day. But it's good to be backed up by officialdom. It gives the river a certain legitimacy."

The Los Angeles River has always been a real river. The city was founded on its banks and today -- in spite of its concrete walls -- it's still the natural object at the center of L.A.'s existence.

Unfortunately, for much of our history, we haven't treated our mother river with much respect. We've funneled most of its 51 miles into a big concrete channel and used it as

a sewer.

Thankfully, L.A. also has many stubborn people willing to fight for it -- from influential groups such as the Friends of the Los Angeles River to lone scientists like Heather Wylie.

Wylie arrived at the Corps of Engineers as a civilian employee in 2004. She was then a very young and idealistic environmental scientist.

Raised in Michigan, she had fallen in love with nature on visits to her grandmother Doris in Grosse Ile, south of Detroit. Doris helped rehabilitate wounded wildlife, including eagles and deer.

"I grew up in the creeks and wetlands," she told me. "I'd catch frogs and snakes. But I always had a three-day rule. After three days, I had to put them back."

At the Corps of Engineers' Ventura field office, Wylie was one of the many civilian employees charged with determining whether development projects would harm protected waterways.

Her first big clash with her bosses, she said, was over a planned 10-acre development in San Luis Obispo, part of which would have filled a vernal pool, a body of water that disappears in summer. After she recommended the developers alter their plans, her bosses took her off the project, she said.

"They would have eventually pushed me out of the corps," Wylie told me. "But I wanted to stay until I did something really good."

So when she learned the corps was preparing to adopt new regulations that would have stripped much of the L.A. River watershed of Clean Water Act protections, she leaked those plans to some of the nation's top environmental law firms.

When she figured out the importance of "navigability" to the L.A. River's future, she scoured the Internet until she found a video of George Wolfe and she tracked him down.

"Is that a real video?" she asked him. "Can you boat in the river?"

A big expedition down the river, she suggested, might help save it.

At first, Wolfe and his river-rafting friends were suspicious of Wylie. "We thought she was a spy," said Wolfe, who later founded Los Angeles River Expeditions. And since her last name sounds just like the Road Runner's famous nemesis, they nicknamed her "the Coyote."

After a while, the Coyote earned their trust.

As luck would have it, Wolfe and other activists had been talking about organizing a river regatta. But it was Wylie's call that spurred them into action, he said.

Wolfe, an experienced kayaker, led a three-day journey from the headwaters of the river all the way to Long Beach. Even though it was summer and drier, this wasn't so hard to do.

Only on a couple of stretches was it necessary to carry their kayaks. On some stretches, they zipped through the narrow, two-foot-deep low-flow channel, which felt a bit like a ride at Disneyland.

Linton carried a film permit that allowed the boaters to enter the river basin -- but not the water. Still, it was good enough to get them past the LAPD patrol that stopped them near Los Feliz.

Later, corps officials found two Internet images of Wylie on the river.

They threatened to suspend her for 30 days, saying the expedition "undermined the corps' authority."

"I got treated as some kind of disloyal traitor," she said.

At the same time, Wylie's leaked documents reached Rep. Henry Waxman (D-Beverly Hills) and other leaders. Eventually, the EPA invoked its authority to supplant the corps as the agency that would determine whether the L.A. River was protected under the Clean Water Act.

After several months of negotiations, Wylie and the corps reached a settlement and she left the agency. Neither side admitted doing anything wrong.

The EPA's finding last week also applies to all the streams and channels that flow into the L.A. River, helping preserve a vast watershed for future generations, though much work remains to be done.

"I lost my job," said Wylie, now a stay-at-home mom with a newborn. "But I was happy to sacrifice if it was going to save the river."

Sometimes, to change things, you have be willing to get your feet wet. And sometimes you have to break the rules.

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07/16/2010

EPA To Scrutinize Power Plant Water Permits Ahead Of New Effluent Limits (*Inside EPA*)

EPA is vowing to closely scrutinize state-issued Clean Water Act (CWA) discharge permits for power plants ahead of its planned technology-based discharge standard for the sector as an interim measure to address environmentalists' longstanding concerns that the permits need to be strengthened.
In a June 24 letter to environmental groups, EPA wastewater chief James Hanlon committed the agency to reviewing at least 35 National Pollutant Discharge Elimination System (NPDES) permits for power plants before the end of 2012 -- when EPA has vowed to propose new discharge limits, or effluent limitation guideline (ELG), for the sector.

In the letter to Earthjustice and the Environmental Integrity Project, Hanlon, director of EPA's Office of Wastewater Management, outlines the agency's intention to review the 35 permits to address the groups' concerns that they are not consistent with federal requirements. "I hope this information helps to clarify the importance EPA places on these permits," the letter says. *Relevant documents are available on InsideEPA.com.*

In addition to the permit reviews, EPA also issued a June 7 guidance outlining how to analyze discharges from flue gas desulfirization (FGD) and coal combustion residual (CCR) impoundments -- which are key sources of wastewater discharges -- ahead of the ELG.

The EPA permit review commitments and guidance are winning praise from environmentalists, who have long sought aggressive discharge limits on power plant releases as they struggle to win strict EPA hazardous waste rules for CCR (*Inside EPA*, July 31, 2009).

Environmentalists are already citing EPA's June 7 guidance to urge Washington state regulators to strengthen a proposed NPDES permit for the state's only coal-fired power plant, according to July 9 comments filed by Earthjustice. Activists have already notified EPA of their concerns with the proposed permit, and asked the agency to watch it and object if changes are not made, one activist adds.

But industry sources are questioning the need for the interim measures, given that EPA is taking steps to begin collecting data to support the upcoming ELG. One source says the June 7 guidance to states appears to seek to impose additional best available technology (BAT) review burdens on states, on top of already-required water-quality assessments, that the source says are questionable.

A second industry source says it is "uncommon" for EPA to issue such detailed interim guidance at the same time it is conducting an information collection request to prepare for the new ELG. The source says the guidance does not impose new legal requirements on its own, but clarifies how states should exercise their best professional judgment (BPJ) for determining BAT. "What type of commitment it might prescribe to a state, I can't speak to," the source says.

States, however, say they welcome the guidance though they also note they are generally ill-equipped to conduct the labor-intensive technology reviews on their own and want EPA to "get on with" the national rules, one source says.

At issue are EPA requirements governing wastewater discharges from power plants -- an issue that has gained prominence since a massive coal ash spill at a Tennessee Valley Authority (TVA) plant contaminated nearby waters. Activists have since challenged a suite of pending power plant permits and last year sued the agency in an effort to set strict deadlines for EPA to revise its 1982 ELG for power plant discharges.

While EPA and activists are still in settlement talks on the deadline, the agency announced last September that it would revise the rules, vowing to issue a proposal sometime in 2012. The agency said in a statement announcing its commitment that a 2009 study had found that rules finalized in 1982 "have not kept pace with changes that have occurred in the electric power industry over the last three decades."

A spokeswoman said later that EPA Administrator Lisa Jackson wanted a proposal issued before then, though EPA says in the guidance that it expects a final ELG in late 2013.

But even before the new policy is proposed, EPA has quietly floated guidance to the regions clarifying how they should review pending permits. "The establishment of appropriate NPDES permitting requirements for these discharges is an important effort to better protect the environment and human health," says the guidance to the regions. "You should work with authorized state programs to encourage them to utilize this guidance in their permit decisionmaking process. In cases where state permitting authorities do not consider the attached guidance in developing permitting conditions, you should work with states to make appropriate changes."

The guidance also encourages the regions to "consider using objection authorities in cases where permits do not address appropriate technology-based or water quality-based permit limits to address FGD or CCR discharges."

Environmentalists in their comments on the Washington state draft NPDES five-year renewal permit for a TransAlta power plant, saying the guidance "clearly demonstrate[s] . . . that settling ponds (even with some chemical treatment for some pollutants) are not BAT for steam generating electrical plants like TransAlta."

One environmentalist says activists are arguing that the "state has to go back and do a BAT analysis per the EPA guidance and probably apply additional treatment," such as biological treatment or evaporation distillation processes to turn the wastewater into sludge or solid that can then be sent to a hazardous waste landfill.

The draft renewal permit Washington issued last month does not impose any new technology requirements on the plant even though the state acknowledges that water quality limits could be exceeded. The state conducted a reasonable potential analysis on chlorine, chromium, arsenic and selenium to determine whether effluent limits were necessary, and found "a reasonable potential that the permittee would exceed the water

quality criteria for chlorine, chromium and selenium," according to a state-issued fact sheet.

But instead of setting limits, the state is requiring a compliance study that environmentalists say does not comply with basic water law requirements.

The source says EPA's new guidance is significant because it shows the direction the agency is moving and that its importance will be "played out on the ground in this permit. It is not just an academic exercise."

Environmentalists will also raise the guidance in their administrative challenge to a Tennessee-issued NPDES permit for TVA's Kingston plant -- the site of a massive coal ash impoundment failure.

A Tennessee source says the guidance could apply to that permit if the environmentalists' appeal is successful, and praises EPA for taking steps to help permitting authorities. "States are just ill-equipped to try to do a judgment to establish an effluent limit, generally we don't have the horsepower to do that . . . and so it's entirely appropriate for this to be dealt with at the national scale."

In that vein, the source says the guidance is helpful to outline steps for BPJ on effluent limits but that what's really needed are the new ELG rules because they will explicitly address discharges from new technology that has become available since the ELG was last updated nearly 30 years ago.

Still, the source says in the meantime, the guidance could require increased monitoring and controls, particularly at power plants located on small waterbodies that already have background contaminant levels.

Meanwhile, industry sources are concerned with what the guidance may require in permits. The second industry source says whether the guidance will prompt new control requirements is difficult to assess but that it certainly will "put another burden on permit writers" because it will require them to conduct a "separate water quality-based technology BPJ." The source also questions why EPA is moving toward technology requirements, which the source says are supposed to be uniform, in advance of the ELG, particularly when these discharges will be highly variable, depending on the type of coal and scrubber.

"This seems to ask a lot of permit writers, especially since they don't have, and EPA doesn't have, a really full picture among the different waste streams that might drive different performance and availability of treatment technology," the source says, calling it "an exercise in form over substance."

However, environmentalists say the guidance and EPA-promised permit reviews -- while not an expansion of any existing agency authority -- are significant.

One source says, "Across the board, states fail to set case-by-case limits on most types of power plant wastewater discharges," which the source says is a clear violation of law.

Another source says the EPA actions should go a long way to address activists' concerns that many power plants will be installing new scrubbers in the next three years that would otherwise be exempt from new discharge limits likely to be required by the ELG, at least for their first five years. "We had been stressing to states they have a Clean Water Act obligation . . . and the great thing about the guidance is that EPA has made that clear."

EPA could not be reached for comment. -- *Dawn Reeves*

07/16/2010

Industry Claims Flaws In EPA Conductivity Studies Ahead Of SAB Review (*Inside EPA*)

Industry is ramping its criticism of EPA's bid to establish strict conductivity limits in surface mining water permits ahead of a Science Advisory Board (SAB) review of two draft studies EPA uses to justify the limits, with industry claiming that the studies are rife with errors and that conductivity is an inappropriate water quality measure.
SAB is slated to meet July 22-23 to review the studies underlining EPA's effort to set limits on conductivity -- a measure of salinity in water -- in Clean Water Act (CWA) permits for mountaintop mines and other surface mining. EPA originally gave industry and others until July 13 to comment on the studies to inform the review, but the agency recently said that comments received up to Aug. 13 will be forward to the SAB for the panel's consideration.

Ahead of the SAB meeting, industry is raising "factual, methodological, and conceptual issues" with the studies, including claims that EPA researchers erred by relying on field data rather than laboratory tests; and claims that conductivity is an inappropriate benchmark because at least three states have rejected it as a benchmark. Critics say salinity does not account for the toxic properties of dissolved solids that are measured with the standard.

EPA says its "draft conductivity benchmark report builds upon existing peer-reviewed literature that has identified a clear link between conductivity and aquatic life in central Appalachian streams."

The draft EPA reports that SAB will peer review, "*The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields"* and "*A Field-based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams,"* are the scientific backbone of EPA's April 1 interim guidance on surface mining CWA permitting that establishes conductivity as a benchmark for permits.

EPA also relies on other previously peer-reviewed studies in crafting the guidance, including an award-winning but controversial Region III study that found impairments to aquatic life based on conductivity.

EPA is implementing the guidance immediately, despite its interim nature and reliance on the draft science reports, and has already begun applying conductivity as a benchmark in interim objections to National Pollutant Discharge Elimination System permits proposed by Kentucky (*see related story*).

EPA says the reports are not intended to "substitute for EPA's process of developing recommended water quality criteria, or for the formal State process of setting water quality standards. Potential use of conductivity as a formal regulatory standard will be addressed by EPA outside the SAB's process of scientific peer review."

EPA says in the guidance that mining operations will generally be in compliance with water quality standards if conductivity is below 300 microsiemens per centimeter (uS/cm) and would likely violate the CWA if they exceed 500 uS/cm. EPA said that it would likely curtail construction of most "valley fills" associated with mountaintop mining, although it has since given conditional approval to at least one mountaintop mine, if the mine operator follows practices outlined in the guidance, such as constructing fills sequentially (*Inside EPA*, July 2).

But the National Mining Association (NMA) has criticized the studies and pushed EPA to release the underlying data sets researchers used in compiling them, a battle it won in June. NMA is also circulating reports citing concerns with the studies. For example, NMA has released analyses it commissioned from two consulting firms that highlight problems in the EPA studies. *Relevant documents are available on InsideEPA.com.*

"We believe there are a number of factual, methodological, and conceptual issues with [EPA's] proposed benchmark," says a July 12 technical review from GEI Consultants, Inc., commissioned by NMA.

The GEI analysis says EPA relied on an inconsistent and incomplete data in conducting the study, ignored evidence where conductivity was not correlated with impacts to aquatic life, and did not properly account for confounding factors other than conductivity that could be responsible for the impacts observed in the study.

The report also notes that conductivity as a water quality standard does not account for differences in toxicity of chemical ions whose presence generates the conductivity measure. "In fact, criteria based on individual ions -- rather than those based on composite variables such as conductivity -- have already been considered in other states as a preferable regulatory approach that best fits the available scientific information," the report says, going on to cite Illinois, Indiana and Iowa as examples of states that have rejected conductivity as a CWA permit benchmark.

An EPA spokeswoman says, "The draft report acknowledges that different ionic mixtures of salts may result in different toxicity results. To reflect this, EPA removed samples with different ionic signatures from the analysis (e.g., those high in chloride) and ensured that the applicability of the benchmark is limited to the specific ecoregions in which the ionic composition is similar."

A second July 12 NMA-sponsored analysis, conducted by Norwest Corporation, reaches similar conclusions. It also faults the study for relying on field data, rather than laboratory studies as usually happens when using species sensitivity distribution (SSD) standards to set water quality criteria. The field-based benchmark study says it relied on an the fifth percentile of an SSD for its benchmark value, contending that conductivity limits it proposes would protect 95 percent of aquatic life in a waterbody. But industry contends the lack of lab testing fails to demonstrate a cause-effect relationship between conductivity and aquatic life impacts.

The EPA spokeswoman responds, "The draft report notes that a field-derived benchmark is more effective at capturing the full range of effects upon different species and different life stages that make up an aquatic community, but also acknowledges the strengths and weaknesses of field-derived and laboratory approaches."

The report points to citations in the EPA report that identify "much higher lowest observable effects concentrations for conductivity values (1,500 to 4,200 uS/cm) for mayflies and other aquatic genera."

The Norwest study highlights potential unintended consequences of relying on conductivity as a water quality benchmark, without adequate testing proving a cause-effect relationship between conductivity and impacts to aquatic life, meaning that mine operators would focus on reducing conductivity rather than focusing on other factors that could be causing impairment. It also notes that a conductivity benchmark would "result in a substantial increase in the number of streams classified as impaired," compared to reliance on biomonitoring data.

For example, it cites West Virginia data showing that 990 stream sites would be classified as impaired based on conductivity, compared to 409 samples that would be impaired based on biomonitoring. "Thus, the benchmark is found to have a 41 percent error rate as an additional criterion to protect water quality."

While the GEI and Norwest Corporation analyses acknowledge potential correlations between conductivity and effects on aquatic life, they also conclude that current research is inconclusive and that more research is needed before EPA can set water quality standards based on conductivity as a benchmark.

The lack of laboratory testing on the conductivity standard also was highlighted in separate July 9 comments from the National Council for Air and Stream Improvement (NCASI), a research institute focused on environmental issues related to the forest products industry. While NCASI acknowledges that its members are unlikely to be immediately affected by issues related to the surface mining studies and EPA's associated guidance, it notes the "scientific methods might be applied elsewhere for conductivity or other water quality targets."

NCASI says confirming the conclusions of the conductivity study "using laboratory assays is possible, appropriate, and necessary" to account for differences in the effects of conductivity and other environmental factors on aquatic life. The group in its comments includes an analysis of a 1997 study referenced in the field-based

conductivity report, which attempts to reconstruct conductivity measures for laboratory water quality samples it generated. The analysis found that toxicity concentrations generated in the lab tests on water samples of different conductivity levels "were highly variable, clearly dependent upon ion composition, and trended in a manner opposite to that which would be expected if [conductivity] were a viable surrogate for toxic response."

EPA did not respond to a request for comment. -- *Nick Juliano*

EPA seeks fracking study comments (*Wyoming Business Report*)

By MJ Clark
July 15, 2010 --
DENVER — On Tuesday, the Environmental Protection Agency (EPA) conducted the second of four public meetings to gather comments on an upcoming study on the possible effects of hydraulic fracturing (fracking) on drinking water.

Representatives of the natural gas industry urged the EPA to limit the scope of the study, while environmental groups wanted the study expanded to also examine fracking's effect on air quality.

America's Natural Gas Alliance, a gas industry advocacy group, submitted comments last week and sought input on the makeup of the EPA study and advisory panels.

"History demonstrates that hydraulic fracturing can generate abundant, secure energy supplies, without adverse consequences to drinking water," alliance President and CEO Regina Hopper said in a letter to the EPA.

EPA to educate on water conservation (*UPI*)

Published: July 15, 2010 at 3:30 PM
WASHINGTON, July 15 (UPI) -- The U.S. Environmental Protection Agency has announced a program aimed at helping American consumers conserve water and save money, officials said.

The agency's WaterSense initiative "offers consumers simple tips that can help the environment and keep money in their pockets," an EPA release said Wednesday.

Consumers can save water with three simple steps of "check, twist and replace," the release said.

"Check" toilets for silent leaks, the EPA suggests, "twist" on a WaterSense labeled

bathroom faucet aerator, and replace a shower head with a similarly-labeled WaterSense model.

An industry partnership program sponsored by the EPA creating water-efficient products carrying the "WaterSense" label helped consumers save more than 36 billion gallons of water and $267 million on water and sewer bills in 2009, the agency said.

The EPA says it will publicize the WaterSense program with a traveling educational exhibit called "We're for Water."

PSC, EPA: Announce water conservation campaign (*Wisbusiness*)

7/15/2010
Contact: Teresa Weidemann-Smith
608-266-9600
We’re for Water
MADISON – The Public Service Commission of Wisconsin (PSC) has partnered with the U.S. Environmental Protection Agency (EPA) to promote water conservation and efficiency. The agencies are announcing a national ‘We’re for Water’ campaign to educate consumers about water-saving behaviors and WaterSense labeled products.

WaterSense is a partnership program that promotes products and practices to reduce both indoor and outdoor water use. The WaterSense label makes it easy for consumers to identify products that use less water. The ‘We’re for Water’ campaign creates a connection by helping consumers realize simple successes that make them feel good about using water efficiently.

“The PSC is proud to be a WaterSense partner. Wisconsin communities and businesses rely on a clean and sustainable supply of water for their economic livelihood,” said PSC Chairperson Eric Callisto. “Using water more efficiently can help delay the need for new supplies, which saves communities money and ensures that sufficient water will be available for future generations.”

“Consumers can lower their water bills by taking simple steps to reduce water use, such as replacing inefficient toilets and faucets,” said Jeff Ripp, the PSC’s Water Conservation Coordinator. “The ‘We’re for Water’ campaign is a great opportunity for government agencies, water utilities, businesses, and citizens to work together to promote water conservation.”

The PSC and the EPA encourage consumers to take the “I’m for Water” pledge on the WaterSense website and to follow these simple water conservation tips:

* Check toilets for silent leaks. Leaky toilets are the largest source of wasted water in the home.

* Twist on a WaterSense labeled bathroom faucet aerator to save water and energy

* Replace your showerhead with a WaterSense model that uses less water and energy.

WaterSense labeled products—including high-efficiency toilets, faucets, showerheads, and landscape irrigation equipment—must meet EPA's criteria for water efficiency and performance. For a complete list of WaterSense products, please visit: http://www.epa.gov/watersense/products/.

The PSC is an independent state agency that sets rates for 584 Wisconsin water utilities. The PSC works with these utilities to promote water conservation by reducing water lost through leaky water mains, setting water rates that encourage efficiency, financing toilet rebates and other incentives, and through customer outreach and education. For more information about the PSC's water conservation efforts, please visit: http://psc.wi.gov/water/.

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