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ADMINISTRATOR JACKSON
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Companies balk at EPA's smog-limit recommendations (*USA TODAY*)

By Brian Winter, USA TODAY
Utility companies, refineries and factories may have to spend up to $90 billion to meet new smog standards proposed by the Environmental Protection Agency on Thursday, a cost they say is too high in the current economy.

The EPA said those costs will be offset by up to $100 billion in savings in health care as people breathe cleaner air, resulting in fewer cases of asthma, bronchitis and other smog-related symptoms.

"EPA is stepping up to protect Americans from one of the most persistent and widespread pollutants we face. Smog in the air we breathe poses a very serious health threat, especially to children," EPA Administrator Lisa Jackson said in a statement. Smog "dirties our air, clouds our cities and drives up our health care costs across the country."

The EPA proposal would lower the permitted concentration of ground-level ozone, the main ingredient in smog, to a level of between 60 parts per billion to 70 parts per billion. The exact level will be decided by the Obama administration later this year after hearings.

The previous standard, adopted in 2008 by President George W. Bush's administration, put the limit at 75 parts per billion.

Parts of Texas, California and the northeast coast have historically struggled most with heavy smog. However, an EPA statement showed that counties in states as diverse as Indiana, Oregon and Utah would be in violation of the tougher limits if they went into effect today.

Counties and states will have up to 20 years to meet the limits or face government sanctions, most likely the loss of federal highway dollars. That could force power plants, oil producers and others to find new ways to cut emissions.

The American Petroleum Institute, which represents energy companies, said there was "no basis" for the EPA decision. In a statement, it said the change "could mean unnecessary energy cost increases, job losses and less domestic oil and natural gas development and energy security."

The "proposal, if finalized, will keep unemployment high and put another Washington-based regulation in the way of economic recovery," Sen. James Inhofe, R-Okla., said in a statement.

Frank O'Donnell, president of the advocacy group Clean Air Watch, said the EPA decision has "no impact on today's recession" because companies will have so much time to meet the new standards.

"Cleaning up pollution creates jobs rather than taking them away," O'Donnell said.

He also said the new rules would result in fewer premature deaths and missed days of work that can be caused by high smog levels.

"It's pretty easy to argue there's a net economic benefit to cleaning up the air," O'Donnell said.

Hitting lower smog limits will take joint effort (*Salt Lake Tribune*)

Environment » EPA's crackdown on ozone will require Western states to work together.
By Judy Fahys
The Salt Lake Tribune
Updated:01/07/2010 11:38:59 PM MST

Utah regulators were still brainstorming ideas for dealing with a nationwide ozone-pollution crackdown when, on Thursday, the U.S. Environmental Protection Agency announced plans to tighten the health standard even more.

Cheryl Heying, director of the Utah Division of Air Quality, said lowering ozone pollution will require Western states to work together on solutions. At least some ozone pollution drifts from state to state, from Los Angeles ship docks to Zion National Park and from California wildfires to the Wasatch Front, she said.

"It's important to make sure we have a healthy environment," Heying said, "but this is going to be tough to implement."

Nearly two years ago, the Bush administration announced limits on smog that were slightly stricter than ones that had been in place since 1997.

But 11 states and environmental groups sued. They charged that the Bush administration standard of 75 parts per billion did not properly take health effects into account because it ignored the recommendation of the EPA's own science panel, which suggested limits in the 60-70 ppb range.

On Thursday, Lisa Jackson, the EPA administrator under President Barack Obama, announced her agency had re-examined more than 1,700 scientific studies and public comments from the 2008 decision and is reconsidering the lower smog limit.

"EPA is stepping up to protect Americans from one of the most persistent and widespread pollutants we face," Jackson said, calling smog "a very serious health threat" that also harms the environment and economy.

"Using the best science to strengthen these standards is long overdue action that will help millions of Americans breathe easier and live healthier."

The EPA estimates the health benefits to be between $13 billion and $100 billion -- by reducing premature death, asthma, bronchitis, medical visits and missed work and school. The costs of cleaning up ozone are estimated between $19 billion and $90 billion.

National groups had a predictably broad range of opinions about the EPA's plan. The American Lung Association applauded it. The American Petroleum Institute panned it.

Two Utah organizations that weighed in before the 2008 ozone decision are also expected to participate during the 60-day comment period for the latest proposal.

Utah Moms for Clean Air previously urged EPA to adopt ozone limits close to 60 ppb. Co-founder Cherise Udell said regulators have a moral obligation to address the health effects of ozone.

"It is urgent and imperative that we have government intervention," she said. "It's unfortunate, but it's imperative [because if regulators] are not doing that, they are not doing their job."

The Utah Manufacturers Association still holds that tougher standards should only be adopted if there is proof that the health benefits will outweigh the economic burden of tougher ozone controls.

If the standards get "too oppressive," industry and the state's economy will suffer, said UMA President Tom Bingham.

"We just want to make sure," he said, "that everyone does their part."

Heying noted that it's impossible now to say how ordinary Utahns or their industries might be asked to help solve the state's problem. Until two years ago, the state met the federal ozone limits -- though barely -- and regulators had a few more years to come up with a comprehensive smog-reduction strategy.

But now as many as nine counties, from three corners of the state, have to deal with ozone, and reducing it won't be as simple as pointing a finger at smokestacks or drivers.

Based on what Western states learned during their decadelong efforts to reduce regional haze, wind spreads the West's pollution around.

As an example, Heying pointed to ozone data on national park areas. Craters of the Moon in Idaho, Mesa Verde in Colorado, Yellowstone in Wyoming and Dinosaur National Monument in Utah all have ozone levels that exceed what EPA says is healthy. And all of them can blame that pollution -- at least in part -- on Pacific ports and wildfire smoke that are beyond their control.

That makes ozone not just an issue for states, but a problem requiring regional, national and even international coordination. The group of states that worked together on haze in the West's national parks have already reorganized to tackle this issue, Heying added.

"We have to target each one of these [ozone factors] and not point fingers, she said. "We all have our sources of pollution, but it's everywhere."

Ozone: Utah's summertime pollution problem

This odorless, colorless pollutant, regulated under the federal Clean Air Act, is created when sunlight and heat chemically react with hydrocarbons and nitrogen oxides from vehicles, gasoline stations, paint, degreasers, industry emissions and many other sources, including the terpenes from pine trees. Elevated levels can cause a range of health effects, from asthma attacks, chest tightness and throat irritation to premature death. Although the very young, the very old and people with heart and lung conditions are most susceptible, ozone also can damage healthy lungs. Ozone is present year-round, but generally reaches dangerous levels in Utah only in sunny, hot periods. Depending on what limit the EPA eventually chooses for ozone, such places as Santa Clara, Logan, Tooele and Ogden could face new curbs on ozone, based on air monitoring done between 2006 and 2009.

Source: Utah Division of Air Quality and Brigham Young University.

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Public comments
To view detailed information, go to www.epa.gov/groundlevelozone/
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Thursday, January 7, 2010, 4:03pm MST

EPA administrator touts green jobs (*Phoenix Business Journal*)

by Patrick O'Grady

Phoenix Mayor Phil Gordon and a host of local business leaders touted the growth of green jobs and the potential of future programs during a forum with U.S. Environmental Protection Agency Administrator Lisa Jackson Thursday.

Jackson was in town for events, including Edison Electric Institute's annual conference. The forum highlighted what various agencies have done with money from the American Recovery and Reinvestment Act as well as what may be on the horizon.

Jackson, whose agency on Thursday released findings that could lower the levels of smog allowed in metro areas, said the economy must transition to green jobs.

"There is no conflict between wanting a clean environment, a healthy environment, and having a good economy," she said.

Gordon said the Phoenix area has gained about 5,200 green jobs working with the EPA and receiving stimulus money for projects ranging from weatherization to retraining workers.

Rufus Glasper, chancellor of **Maricopa County Community College**s, said the institutions is the largest group working to train workers in a green economy. The district is partnering with Phoenix to transform one of its campuses into a sustainable site housing numerous programs.

The city also is partnering with Arizona State University to bring a broader reach with its **Global Institute of Sustainability**. The institute has partnered with several groups on a grant from the U.S. Department of Energy that could transform the area around the Metro light rail corridor and create upward of 8,000 green jobs, said Rob Melnick, executive dean and chief operating officer at the institute.

“We can demonstrate how funding up front can generate new economic endeavors,” he said.

The region has also been able to save existing jobs by thinking green. ARRA projects, such Tres Rios, which received about $36 million in stimulus funds, saved hundreds of jobs, officials said.

EPA proposes nation's strictest smog limits ever (*Los Angeles Times*)

It wants to toughen the ozone limit adopted in 2008 by cracking down further on power plants, factories and landfills. Much of the U.S. could then be in violation of federal regulations.
By Jim Tankersley
January 8, 2010
Reporting from Washington
The Environmental Protection Agency proposed the nation's strictest-ever smog limits this morning, a move that could put large parts of the country in violation of federal air quality regulations.

The EPA proposed allowing a ground-level ozone concentration of between 60 and 70 parts per billion, down from the 75-ppb standard adopted under President George W. Bush in 2008.

That means cracking down even further on the emissions from power plants, factories, landfills and motor vehicles which bake in sunlight and form smog.

Obama administration officials and environmental groups say the new standards align with the levels scientists say are needed to safeguard against increased respiratory diseases, particularly in children, and that they could save $100 billion in heath costs over time. The EPA also said compliance costs could total up to $90 billion nationwide.

A 65-ppb standard -- the middle of the proposed range -- would avert between 1,700 and 5,100 premature deaths nationwide in 2020, compared to the 75-ppb standard, the EPA estimates. The agency projects the stricter standard would also prevent an additional 26,000 cases of aggravated asthma, compared to the Bush-era standard, and more than a million days when people miss work or school.

The EPA also proposed setting a "secondary standard" to protect plants and trees from

repeated smog exposure during growing season, a move environmentalists said would boost national parks, forests and sensitive ecosystems.

Announcing the proposals, EPA Administrator Lisa Jackson said the agency was "stepping up to protect Americans from one of the most persistent and widespread pollutants we face. . . . Using the best science to strengthen these standards is a long overdue action that will help millions of Americans breathe easier and live healthier."

Environmentalists praised the agency for proposing regulations that match the unanimous recommendations of an EPA science advisory committee.

"We applaud EPA for listening to health professionals and scientists, and proposing a rule that provides real protection for millions of people," said Bruce Nilles, Director of the Sierra Club's Beyond Coal Campaign, adding, "This rule will help ensure that all major sources of pollution get cleaned up; it is another indication that the Obama administration sees the big picture and is working hard to put safeguards in place to build the clean energy future."

Industry groups warned the regulations would increase business costs.

The American Petroleum Institute said in a press release that the proposal "lacks scientific justification" and that "there is absolutely no basis for EPA to propose changing the ozone standards promulgated by the EPA Administrator in 2008. To do so is an obvious politicization of the air quality standard setting process that could mean unnecessary energy cost increases, job losses and less domestic oil and natural gas development and energy security."

The proposal now enters a public comment process, which will include open hearings next month in Arlington, Va.; Houston and Sacramento before the EPA makes its final decision.

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Hurricane Katrina propels Jackson's justice quest at EPA (*Associated Press*) This story also appeared: *Dailyrecord.com*

Former NJ environmental chief seeks equality for minorities
DINA CAPPIELLO
Associated Press Writer
January 7, 2010
NEW ORLEANS (AP) — More than four years after Hurricane Katrina, the single-story brick rancher in Pontchartrain Park where Lisa Perez Jackson grew up stands empty.

Floodwaters long ago ate away the walls of her corner bedroom, where the current head of the Environmental Protection Agency once hung Michael Jackson and Prince posters and studied her way to the top of her high school class.

Faded spray paint, left by search teams to indicate that no bodies were found, serves as a reminder of the day Jackson evacuated her mother, Marie, to Bossier City ahead of the approaching storm.

Katrina was the closest that an environmental disaster had hit home for someone who has spent her career solving environmental problems. Now, she's in charge of ensuring that all communities are equally protected from pollution.

The storm's toll on Jackson's childhood house and on New Orleans, particularly the Ninth Ward where she was raised, has intensified her quest for what's known as environmental justice. That means involving and getting fair treatment for the poor and minorities, who often endure the greatest exposure to environmental hazards but are outside the mainstream movement trying to find solutions.

It's this fight that Jackson wants most to be remembered for from her tenure as President Barack Obama's chief environmental steward.

As the first black EPA administrator, Jackson has infused race and class into environmental decisions even though she acknowledges it's not a top priority for Obama. She's changed the way EPA does business with minorities and has called on the predominantly white environmental movement to diversify.

In speeches, she says she's trying to alter the face of environmentalism. She started in her own office, appointing a special adviser for environmental justice issues and hiring a multiracial staff to lead an agency where she often finds herself the only nonwhite at the table.

"This is a unique moment, where you now have a person of color in charge of the EPA for the first time ever and not trying to make that into a one-liner, but say, 'OK, what does that mean?'" said Jackson, 47, in an interview with The Associated Press.

"It means that I can sit in a room ... and maybe use my position to hear in a different way folks who don't feel heard. ... It's about me trying to figure out what I would like people to say about the Lisa Jackson EPA when I'm done. And I want them to say, 'You know, she really opened that agency up, she really made ways that have lived past her for that agency to speak to people of color, to speak to the poor, and to make sure their issues are taken into account.'"

That philosophy was on full display during her first visit back to New Orleans as EPA head in November. Some community activists who felt shut out by the EPA during the Bush administration got a chance to meet with the agency leader for the first time.

When one group crashed an invitation-only luncheon with environmental justice leaders, Jackson told the organizers that she still wanted to hear what they had to say.

"I was shocked. When she said I am going to listen to you, I said, 'Huh?'," said Albertha Hasten, president of the Louisiana Environmental Justice Community Organizations Coalition, who said she was unaware the meeting required an invitation.

Jackson's next stop was a sit-down with representatives of some of the nation's largest environmental groups. Not only did the color of those around the table change, but so did the topic. Hasten and others discussed soil contamination, illegal dumping and health problems caused by industries in their communities. The big environmental groups talked to Jackson about the importance of saving the disappearing Gulf Coast.

"I feel both sides," said Jackson in an interview after the two meetings.

Adopted at two weeks old from Philadelphia, Jackson and her two brothers were raised by Benjamin Perez, a postal delivery man in New Orleans' French Quarter, and his wife, Marie, who sometimes worked as a secretary. Her father died when Jackson was in the 10th grade.

She grew up in the middle-class black suburb of Pontchartrain Park. The tight-knit neighborhood, centered around a golf course, resembled more of a Mayberry, the fictional Southern town from "The Andy Griffith Show," than a pit of pollution amid industry, according to Troy Henry, a neighborhood resident and a candidate for mayor. It was home to politicians and professionals — and the actor Wendell Pierce.

"When I was growing up, it wasn't like I looked around and said, 'Well, I gotta do something about this, I live next door to a factory,'" said Jackson. "It is not that neighborhood."

Her mother says she was "sheltered from some of the hurt that other people felt. She realized the differences and she knew that there were some people that didn't have the same things she had. She always realized that neighborhoods were different, she realized as she got older ... waterways and our pollution and our canals and the oil refineries and the drilling ... (are) detrimental to people."

After graduating from a girls' only Catholic high school, Jackson made it to Tulane University, where she stood out in the chemical engineering department. She was one of the smartest, and the lone black woman in her class.

Sam Sullivan, emeritus associate dean of engineering who recruited Jackson to Tulane in the late 1970s, said, "She is a minority, her family was not rich. She grew up in that environment, so she can relate to some of the problems that people at that level have that frankly a lot of people who have been in that job just couldn't do."

Before Jackson took over at the EPA, Robert Bullard, regarded as the father of

environmental justice, had "basically zero" contact with agency chiefs. He's met with Jackson at least a dozen times.

"We never had anything like that before," said Bullard, director of the Environmental Justice Center at Clark Atlanta University. "What that openness and access has to do with is that African-Americans and communities of color were shut out."

Months after Katrina hit, Jackson was under consideration to be environmental chief for New Jersey Gov. Jon Corzine — a job she later took — and she couldn't get back to New Orleans when her mother returned to Pontchartrain Park to clean up.

The house, like many in the neighborhood, was filled with 6 feet to 8 feet of water. There was no flood insurance to cover the damage, so Jackson's mother eventually sold the home to the state.

Jackson hasn't forgotten the photograph of her mother sent to her by the Catholic charity that helped gut her house. It shows Marie Perez in a wheelchair watching as all the belongings collected over her life were removed. She also can't forget how she was unable to financially help her mother to rebuild.

During her visit to New Orleans in November, Jackson went back to Pontchartrain Park and learned that the house would be razed and rebuilt into an energy-efficient model.

"After the hurricane I kept saying if I were rich, I would knock this house down, and rebuild an energy-efficient, elevated house for my mother," Jackson said. "But then to be able to come back as the head of the EPA and say maybe I couldn't help my mother in her one instance, and thank God she is OK, but maybe I can help some people and help my city and help the Gulf Coast. You know even one or two times would make a difference."

E.P.A. Announces Strict New Health Standards for Smog (*Associated Press*) This story also appeared: *New York Times, Washington Post, Grist Magazine, Kansas City Business Journal, Virginia Pilot, Washington Times*

By THE ASSOCIATED PRESS
WASHINGTON (AP) -- The Environmental Protection Agency on Thursday proposed stricter health standards for smog, replacing a Bush-era limit that ran counter to scientific recommendations.

The new limits -- which are presented as a range -- will likely put hundreds more counties nationwide in violation, a designation that will require them to find additional ways to clamp down on pollution or face government sanctions, most likely the loss of federal highway dollars.

The tighter standards will cost tens of billions of dollars to implement, but will ultimately save billions in avoided emergency room visits, premature deaths, and missed work and school days, the EPA said.

The proposed range was what scientists had recommended during the Bush administration. However, former President George W. Bush personally intervened and set the standard above what was advised after protests from electric utilities and other industries. The Bush standard was still stricter than the previous smog standard set in 1997.

EPA Administrator Lisa Jackson said in a statement Thursday that science, this time around, had been followed.

"EPA is stepping up to protect Americans from one of the most persistent and widespread pollutants we face," Jackson said. "Using the best science to strengthen these standards is long overdue action that will help millions of Americans breathe easier and live healthier."

The Obama administration last year had indicated it planned to scrap the Bush smog limits, when it asked a federal judge to stay a lawsuit challenging the March 2008 standards brought by 11 states and environmental groups.

Smog is a respiratory irritant that has been linked to asthma attacks and other respiratory illnesses. It is formed when emissions from burning gasoline, power and chemical plants, refineries and other factories mix in sunlight.

While smog has been a long-term problem in parts of Texas, California, and along the northeast Coast, the new standards could affect counties in Idaho, Nevada, Oregon, the Dakotas, Kansas, Minnesota and Iowa for the first time based on EPA data.

Environmentalists immediately endorsed the decision. "If EPA follows through, it will mean significantly cleaner air and better health protection," said Frank O'Donnell, president of the advocacy group Clean Air Watch.

Representatives of the oil and gas industry, which said they have already invested $175 billion toward environmental improvements, were quick to say the proposal lacked "scientific justification."

"There is absolutely no basis for EPA to propose changing the ozone standards promulgated by the EPA Administrator in 2008," the American Petroleum Institute said in a statement. "To do so is an obvious politicization of the air quality standard setting process that could mean unnecessary energy cost increases, job losses and less domestic oil and natural gas development and energy security."

The EPA proposal presents a range for the allowable concentration of ground-level ozone, the main ingredient in smog, from 60 parts per billion to 70 parts per billion.

That's equivalent to 60 to 70 tennis balls in an Olympic-sized swimming pool full of a billion tennis balls. EPA will select a specific figure within that range later this year.
The Bush standard adopted in 2008 was 75 parts per billion. Since 1997, it had been 84 parts per billion.
The stricter limit comes with additional costs, from $19 billion up to $90 billion a year by 2020, according to EPA. The Bush administration had put the cost to industry and drivers to meet its standard at between $7.6 billion to $8.5 billion a year.
Counties and states will have up to 20 years to meet the new limits, depending on how severely they are out of compliance. They will have to submit plans for meeting the new limits by end of 2013 or early 2014.

Originally published 04:38 p.m., January 7, 2010, updated 05:00 p.m., January 7, 2010

EPA pushes much tougher smog limits (*Washington Times*)

Joseph Weber
The Obama administration on Thursday proposed tighter regulations on smog to replace those imposed by President George W. Bush and, if approved, would be the most stringent in U.S. history.

The Environmental Protection Agency said the changes are needed because many believe the Bush administration standards failed to adequately protect humans, but the new standards were immediately attacked by leading business groups.

The agency said the changes, if enacted, will save the country $13 billion to $100 billion in health care costs. However, implementing the plan will cost $19 billion to $90 billion. EPA Administrator Lisa P. Jackson called the regulations long overdue.

Smog -- also known as ground-level ozone -- is the result of emissions from vehicles and factories reacting to the sun. Smog can aggravate such health problems as asthma and heart and lung disease. The proposed changes also would affect power plants, landfills and motor vehicles.

EPA officials said children are most at risk for smog-related problems because their lungs are still developing, they are active outdoors, and they have a higher incidence of asthma compared with adults.

"Smog in the air we breathe poses a very serious health threat, especially to children," Ms. Jackson said.

The EPA is proposing two standards: one to protect humans and another to protect the environment, especially plants and trees.

The primary standard would set the smog level at 0.060 to 0.070 parts per million (ppm) measured over eight hours, compared with the Bush administration standard of 0.075 ppm, set in March 2008.

But critics said the tougher standards were poorly timed as U.S. industry struggles to rebound from a deep recession.

"It's completely unnecessary to pile on the industry sector in today's economy," said Bryan Brendle, director of energy and resources policy at the National Association of Manufacturers (NAM). The American Petroleum Institute also issued a statement strongly criticizing the EPA move.

The Obama administration last year had indicated it planned to scrap the Bush smog limits, when it asked a federal judge to stay a lawsuit challenging the March 2008 standards brought by 11 states and environmental groups. The new limits will likely put hundreds more counties nationwide in violation of federal pollution standards, a designation that will require them to find additional ways to clamp down on pollution or face government sanctions, most likely the loss of federal highway dollars.

On Thursday, environmentalists praised the EPA move.

Frank ODonnell, president of Clean Air Watch, called the proposed smog standards "a breath of fresh air from the government" that could "translate into fresher air for every American." But Mr. Brendle predicted that U.S. industry will bear most of the multibillion dollar implementation cost estimated by the EPA.

One of the biggest cost increases related to the proposed changes, Mr. Brendle said, is that American power plants will have to install or enhance "scrubbers" and other smog-reducing equipment, with the increased costs being passed on to factories that consume about a third of the country's energy.

Mr. Brendle also said the proposal follows another recent EPA finding that clears the way for new attempts to regulate greenhouse-gas emissions.

He said the proposal is also poorly timed considering the government records show that air quality has improved 25 percent from 1980 to 2008.

The agency said it began working on the standards in September and that the proposed changes are based on public input, more than 1,700 scientific studies and findings by the independent Clean Air Scientific Advisory Committee, which recommended standards in the ranges proposed Thursday.

The EPA will hold three more public hearings through early February before making a final decision.

EPA seeks stricter limits on smog pollutants (*Washington Post*)

By Juliet Eilperin
Washington Post Staff Writer
Thursday, January 7, 2010; 11:47 AM
The Environmental Protection Agency on Thursday proposed limiting the allowable amount of pollution-forming ozone in the air from 75 to between 60 and 70 parts per billion for any eight-hour period, significantly tightening rules the Bush administration had set for the nation's most widespread air pollutant.

The smog proposal, which must undergo 60 days of public comment before becoming final, would help determine the quality of the air Americans will breathe for at least a decade. Under the Clean Air Act, the federal government must reexamine every five years whether its ozone standards are adequate, but it traditionally takes more than 10 years to enact new rules.

The final target that the Obama administration adopts will have huge implications for the regulations state and local officials will have to set in the coming months to meet the new federal requirements. Power plants and motor vehicles are significant emitters of pollutants such as nitrogen oxides and other chemical compounds, which form ozone when exposed to sunlight, but sources as small as electric lawnmowers could face restrictions depending on what EPA chooses as its ultimate goal.

Smog exposure is linked to an array of heart and respiratory illnesses. It causes burning and inflammation in sensitive tissues, and can harm wilderness areas and farm crops by stunting the growth of trees and plants.

"Smog in the air we breathe poses a very serious health threat, especially to children and individuals suffering from asthma and lung disease," EPA Administrator Lisa P. Jackson said in a statement. "Using the best science to strengthen these standards is a long overdue action that will help millions of Americans breathe easier and live healthier."

Depending on the level of the final standard, EPA estimates the proposal will cost between $19 billion and $90 billion to implement and will yield health benefits of between $13 billion and $100 billion. The proposal would translate into thousands of avoided premature deaths by 2020, though the exact number depends on what exact limit the agency adopts.

Clean Air Watch President Frank O'Donnell called ozone "one of the most dangerous" pollutants in the country. "Smog can, and does, kill. This action will literally save lives and mean better health protection from coast to coast."

But the administration's plan could spark resistance among industries that will face new regulatory requirements.

Edison Electric Institute spokesman Dan Riedinger, whose group represents the majority of electricity generators in the United States, said "there's huge uncertainty about what this and other regulatory requirements will entail for utilities and other sectors."

Ozone standards have been the center of a political and legal battle since the spring of 2008, when the EPA set a looser limit than what its own scientific advisers had suggested and President Bush himself intervened to scale back the agency's proposal at the last minute. The new proposal mirrors what EPA's Clean Air Scientific Advisory Committee unanimously recommended in 2007.

Under Bush, EPA set the allowable amount of ozone in the air at 75 parts per billion (ppb) for any eight-hour period.

Children and the elderly are particularly vulnerable to smog: Studies show that children who grow up in areas with high ozone concentrations never develop the same lung capacity as ones who live in less polluted areas, and are more likely to develop asthma and other respiratory illnesses.

Under Bush, EPA officials had initially tried to set a lower seasonal limit on ozone to protect wildlife, parks and farmland, as required under the law, but Bush forced the agency to abandon that proposal just before it announced the new standards.

The American Lung Association challenged the Bush ozone rules in federal court, and as a result EPA agreed in September to go back and review more than 1,700 scientific studies and a raft of other materials which served as the basis for the agency's 2008 decision. EPA also announced that as part of its smog proposal it will also set a secondary, seasonal limit to protect plants and trees from prolonged exposure to ozone.

JANUARY 7, 2010, 3:10 P.M. ET

EPA Proposes Stricter Smog Standards (*Wall Street Journal*)

By MARK PETERS
Reuters
Smog covers downtown Los Angeles in April 2009.

The U.S. Environmental Protection Agency proposed stricter national smog standards Thursday, opting to tighten controversial Bush-era environmental regulations.

Tighter smog rules are expected to affect factories, oil and natural-gas companies, and utilities, which will be required to reduce their emissions of Nitrogen oxides. The standards govern what is known as ground-level ozone, which has been linked to asthma and other respiratory illnesses.

The agency proposed setting the acceptable ozone limit in the air between 0.06 and 0.07 parts per million. The EPA under President George W. Bush reduced the acceptable limit in the air to 0.075 ppm from the previous limit of 0.084 ppm.

The EPA in September announced it would reconsider new smog standards set under the Bush administration. Environmentalists and a coalition of states protested the Bush-era regulations, saying they didn't go far enough to protect human health. Business groups contended the regulations were too strict and would be costly to compile with.

A scientific advisory committee to the EPA had urged the Bush administration to adopt limits no higher than 0.07 ppm parts, and urged it to consider even lower limits.

"Using the best science to strengthen these standards is a long overdue action that will help millions of Americans breathe easier and live healthier," said EPA Administrator Lisa Jackson in a statement.

Write to Mark Peters at mark.peters@dowjones.com

EPA taking public comment on stricter ozone standards (*Corpus Christi Caller Times*)

By Denise Malan
Thursday, January 7, 2010
CORPUS CHRISTI — The federal government will tighten smog standards, but how much depends on public comment, the U.S. Environmental Protection Agency announced Thursday.

The final decision could have a large impact locally. Nueces and San Patricio counties are close to violating the current standard of 75 parts per billion. The new standard would be between 60 and 70 parts per billion.

The Corpus Christi Air Quality Group will meet Jan. 21 to discuss ways to help Corpus Christi remain in compliance. Group chairwoman Gretchen Arnold said stakeholders on the committee, such as the Regional Transportation Authority, industries, small businesses and others will explore ways to reduce emissions.

The city currently has an agreement known as an ozone flex plan with the state and federal government to help keep the area in compliance, known as attainment.

“It’s not my position as chair of the group to wait and see what EPA does,” Arnold said. “It’s incumbent on us to review the flex plan, review our suite of options to reduce emissions and get those programs designed and in place now.”

The final rule is expected by August. The 60-day public comment period will start when the proposed rule is published in the Federal Register. There will also be a public meeting Feb. 2 in Houston to discuss the rule.

Environmental and medical groups welcomed the news, saying tighter standards will better protect human health. Ozone, the primary component of urban smog, forms when chemicals from industry and vehicles react in sunlight. It can cause respiratory problems, especially in the elderly and children.

“Smog in the air we breathe poses a very serious health threat, especially to children and individuals suffering from asthma and lung disease,” EPA Administrator Lisa Jackson said in a news release. “It dirties our air, clouds our cities, and drives up our health care costs across the country. Using the best science to strengthen these standards is a long overdue action that will help millions of Americans breathe easier and live healthier.”

The area’s current ozone level is 71, based on a rolling average of the fourth-highest readings for each of the past three years. Readings are measured for eight hours.

Because 2009 had relatively low levels, the average should drop to 70 when those numbers become official, Arnold said. That would put Corpus Christi right on the edge of compliance if the EPA goes with the highest end of its proposed range. If it sets the level at 60 or 65, the area would be out of attainment.

If an area goes out of compliance, the EPA works with local officials to form a plan to bring the area within standards. That could include costly pollution controls for industry and stricter inspections of vehicle emissions.

The EPA estimates the cost of implementing the new standard will be $19 billion to $90 billion but would yield between $13 billion and $100 billion in health benefits.

New EPA smog limits could dictate cuts in Hampton Roads car emissions (*Virginia Pilot*)

By Cory Nealon
247-4760
11:11 PM EST, January 7, 2010
Hampton Roads and other population hubs in Virginia would be in violation of tougher smog limits proposed Thursday by the federal Environmental Protection Agency.

Meeting the standards could involve cutting back emissions from cars, power plants and other pollution sources, according to the state Department of Environmental Quality, which monitors air quality in Hampton, Suffolk and other parts of Virginia.

According to the latest data, the amount of ground-level ozone concentration in the Hampton Roads is 77 parts per billion. The EPA wants to cut the acceptable number nationwide to between 60 and 70 parts per billion.

"It means that we would have to do more to improve air quality," said Bill Hayden, a DEQ spokesman. "It's going to be a challenge."

Other areas of the state, including Northern Virginia, Fredericksburg, Richmond, Roanoke and Winchester, also would not meet the proposed standards, Hayden said.

The EPA estimates the tougher limits could avert 1,700 to 5,100 premature deaths nationwide in 2020 and cost up to $90 billion to implement. It predicts a savings of $100 billion in health costs, particularly from respiratory illnesses.

The proposal comes two years after the EPA lowered the smog limit to 75 parts per billion. Even though Hampton Roads exceeds the amount, it is not in violation of the standard because it has one more year to comply, Hayden said.

"We don't know exactly how it would be done," he said.

Virginia in recent years has targeted power plants in its effort to improve air quality.

Examples include 2004 regulations that cut emissions and outgoing Gov. Timothy M. Kaine's plan to examine industrial facilities that weren't subject to updated regulations because they were grandfathered by the 1970 federal Clean Air Act. Announced in June, the DEQ will initially look at power plants in Chesterfield and Giles County, and a MeadWestvaco facility in Covington.

This past summer Virginia had the fewest days on record that did not meet national air-quality standards for ozone, according to the DEQ.

New smog limits to hit Bay Area counties hard (*San Francisco Chronicle*)

Peter Fimrite, Chronicle Staff Writer
Thursday, January 7, 2010

Numerous California counties, including several in the Bay Area, will have to get tougher on polluters to meet strict new limits on smog proposed Thursday by the Environmental Protection Agency.

The tighter regulations, which would replace Bush-era rules, are expected to leave hundreds of counties nationwide out of compliance with federal standards and cost up to $90 billion a year to implement by 2020.

In the Bay Area, four counties would have been out of compliance under the Bush rules, which were supposed to kick in between 2014 and 2020. The new rules would make it even tougher for those four counties - Alameda, Contra Costa, Santa Clara and Solano - to comply. The proposed rule would add Napa County to that out-of-compliance list.

The smog levels in San Francisco, Marin, San Mateo and Sonoma counties would be acceptable even under the stricter rules.

EPA officials said the proposed rules would ultimately save billions in avoided emergency room visits due to respiratory conditions, premature deaths, missed work and school.

"Using the best science to strengthen these standards is long overdue action that will help millions of Americans breathe easier and live healthier," said EPA Administrator Lisa Jackson.

Smog is created by the breakdown of chemical emissions that spew from vehicle exhaust pipes and refinery smokestacks. It has been linked to asthma and other respiratory illnesses.

The EPA proposal would limit ground-level ozone, the main ingredient in smog, to between 60 parts per billion and 70 parts per billion measured over an 8-hour period. The exact number will be determined later this year after hearings. The standard adopted in 2008 by the Bush Administration was 75 parts per billion.

Counties miss mark

As many as 40 California counties would fail to meet the pollution limits under the most lenient scenario, but most of them would have been out of compliance with the Bush rules, regulators said.

"We estimate that three out of four Californians are breathing air that fails to meet federal health standards," said Leo Kay, the spokesman for the California Air Resources Board, who singled out the Central and Sacramento valleys and the Los Angeles basin as the worst polluters. "We're cursed by our geography, the population bases and the amount of vehicle miles driven in California."

Kay said that counties that fail to reduce smog from vehicles and industry will face government sanctions, most likely the loss of federal transportation dollars.

Past recommendation

President Obama indicated last year that he would scrap the smog limits set by former President George W. Bush. The proposal that the EPA came up with Thursday was what scientists had recommended to Bush in 2008, but he set the standard above what was advised, evidently as a result of protests from electric utilities and the petroleum industry.

Several environmental groups and 11 states filed a lawsuit challenging the Bush standard of 75 parts per billion.

The EPA's new regulations were hailed by environmentalists and regulatory officials despite the fact that they could cost California millions of dollars.

"I'm happy with the rules because they are consistent with what scientists and health experts are telling us," said Rolf Skar, a senior campaigner with Greenpeace. "It's a relief to once again see science-based decision making."

Industry differs

Representatives of the oil and gas industry begged to differ, saying the proposal lacked "scientific justification."

"There is absolutely no basis for EPA to propose changing the ozone standards promulgated by the EPA administrator in 2008," the American Petroleum Institute said in a statement. "To do so is an obvious politicization of the air quality standard-setting process that could mean unnecessary energy cost increases, job losses and less domestic oil and natural gas development and energy security."

Counties and states will have up to 20 years to meet the limits, depending on how severely they are out of compliance. They will have to submit plans to comply with the law by the end of 2013 or early 2014, according to the EPA.

"In spite of all the progress we've made, we still have a long way to go," Kay said. The new standards will "require those rural counties to come up with additional local smog-forming emission reductions, and it is going to require those of us who live in cities to tighten the belt even further."

Tomorrow is a Spare the Air day, the second of the week. B2

The Associated Press contributed to this report. E-mail Peter Fimrite at pfimrite@sfchronicle.com

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/01/07/MNK21BF3FI.DTL

This article appeared on page A - 1 of the San Francisco Chronicle

Tougher smog standards: New EPA proposal would lower limit to 60-70 parts per billion (*Chicago Tribune*)

States would get till 2013 to outline how they would comply with proposal
By Michael Hawthorne
Tribune reporter
January 8, 2010

Chicago and other urban areas across the U.S. would need to clamp down harder on air pollution under tough smog limits proposed Thursday by the Obama administration, which scrapped a George W. Bush-era rule that ignored the latest scientific advice.

More stringent standards for ground-level ozone, commonly known as smog, also could hit smaller cities for the first time. That could require cleaner factories and fuels, and potentially tailpipe emissions checks, in Rockford and downstate communities such as Peoria, Springfield and Bloomington-Normal.

The proposed rules announced by the U.S. Environmental Protection Agency promise cleaner air that could help prevent thousands of asthma attacks, emergency room visits and early deaths, and cut back on health costs.

Consumers could end up paying slightly more for gasoline and electricity as industry passes along the expense of refining cleaner gas and retrofitting power plants to emit less pollution.

A growing amount of research indicates that smog poses greater health risks than previously thought. President Barack Obama promised during his campaign to strengthen a smog standard imposed in 2008 by the Bush administration, which rejected recommendations from independent scientists and children's health experts.

"Using the best science to strengthen these standards is a long-overdue action that will help millions of Americans breathe easier and live healthier," EPA Administrator Lisa Jackson said.

Smog forms when the sun's heat alters a mix of chemicals from car tailpipes, diesel exhaust and the smokestacks of factories and coal-fired power plants. Its main ingredient is ozone, and the terms smog and ozone are often used interchangeably.

Naturally occurring ozone in the upper atmosphere blocks the sun's harmful ultraviolet radiation. But closer to the ground it can trigger breathing problems, especially on hot, stagnant days.

Under the EPA's new proposals, the allowable level of smog would drop to 60 to 70 parts per billion, down from the current standard of 75 parts per billion. Pediatricians and environmental groups recommended the lower limit to protect children and the elderly.

The latest push to improve air quality would dramatically increase the number of U.S. counties in violation of federal smog limits. After a final limit is set in August, states will be given until 2013 to outline how they will comply, and, depending on the severity of the problem, up to two decades to meet the standards.

As in past battles over environmental regulations, the tougher smog limits face intense opposition from business groups.

"To do so is an obvious politicization of the air quality standard-setting process that could mean unnecessary energy cost increases, job losses and less domestic oil and natural gas development and energy security," the American Petroleum Institute said.

The EPA estimates that complying with the new standards would cost $19 billion to $90 billion a year by 2020.

Those costs would be at least partly offset by public health savings, estimated at $13 billion to $100 billion during the same period. Moreover, analyses of earlier air quality standards show they generally cost less than predicted, in part because businesses find cost-effective ways to comply.

Scientists are finding that long-term exposure to even low levels of smog can cause serious health problems. It increases the risk of death from respiratory disease by up to 50 percent in polluted cities such as Chicago, according to an 18-year study of nearly a

half-million people, published last year in the New England Journal of Medicine.

If the stricter smog limit of 60 parts per billion is adopted, it could prevent up to 12,000 premature deaths annually from lung and heart disease, the EPA estimates. Hundreds of thousands of children nationwide also would be spared lung problems.

"Millions of children, older adults and people with chronic lung diseases need EPA to defend them," said Charles Connor, president and CEO of the American Lung Association. "We urge EPA to set the final standard where it provides the greatest safeguards to the most people."

Air quality regulations have been tangled in legal battles for more than a decade. Enforcement of a smog standard imposed in 1997 by the Clinton administration was delayed for years by challenges from business groups. The U.S. Supreme Court has upheld the EPA's authority to base air-quality standards on public health, without considering economic concerns.

Another court decision forced the Bush administration to update the standard in 2008. But the Bush EPA set a limit that was less stringent than recommended by the agency's scientific advisers.

Chicago met the Clinton and Bush smog standards more quickly than predicted, in part because of a federal crackdown on pollution from power plants and cars. Some state regulators think most of the country can clean up even more without the need for big changes in the day-to-day lives of Americans.

In Illinois and other states, regulations already on the books or in the works will require cleaner fuels and engines, and the White House is mulling tighter limits on pollution from power plants and factories.

"There is no question that businesses will have to do more to clean up," said S. William Becker, executive director of the National Association of Clean Air Agencies. "But the fact is they will have several years to prepare. They can do this."

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Two for the environment (*Los Angeles Times*)

January 8, 2010 Friday
Home Edition
MAIN NEWS; Editorial pages Desk; Part A; Pg. 26
After eight long years during which regulators pillaged the environment rather than protecting it, there's a clean breeze wafting out of Washington. This week, the Obama administration took key steps toward reversing two of President George W. Bush's more

egregious assaults on science, conservation and public health.

Remember Tim DeChristopher? He was the courageous University of Utah student who, in December 2008, thwarted the Bush administration's 11th-hour attempt to auction off pristine parcels of Utah's red-rock desert for oil and gas development by submitting bogus bids. DeChristopher was partially vindicated when a federal judge later blocked the land leases because the Bureau of Land Management hadn't bothered to evaluate the impact of drilling on air quality and prehistoric artworks. That prompted a review of BLM procedures, which culminated Wednesday when Interior Secretary Ken Salazar announced a series of reforms to ensure that such fiascoes aren't repeated.

Under the changes, there will be more government and public review of proposed leases and a better planning process. Congressional Republicans and the oil industry are crying foul, saying Salazar's initiatives will create delays and lead to higher energy prices. But it's hard to believe things could get worse for the industry than they are now; the Bush administration's laissez-faire attitude led to multiple court challenges of leasing decisions. In essence, the failure of federal regulators to do their job forced the courts to do it for them, costing the industry millions in legal fees and worsening delays.

In even better news for everyone who breathes, the **Environmental Protection Agency** on Thursday proposed a stricter federal standard for smog. In 2008, the **EPA's** science panel had unanimously recommended an air standard of less than 70 parts per billion of ozone, a pollutant that has been linked to respiratory conditions and premature death. Scientists also proposed a secondary standard during growing seasons to protect crops, whose growth is retarded by ozone -- the main ingredient in smog. Yet after direct intervention from Bush, the secondary standard was rejected and the primary standard was set at 75 parts per billion, too high to protect human health. After reviewing the evidence, **EPA** Administrator Lisa P. Jackson is now proposing to set the standards that the agency had originally endorsed. Meeting the tougher rules will be expensive, but not as costly as treating the medical conditions linked to smog.

The score: Public recreational, cultural, health and conservation interests 2; polluters 0. The game has changed.

EDITORIAL / OP-ED / COMMENTARY / LETTERS

January 8, 2010
Editorial

A Push for Cleaner Air (*New York Times*)

Between them, the Obama administration and the federal courts have reversed most of the Bush administration's wrongheaded environmental regulations. But a few bad rules linger on the books, among them an inadequate health standard governing harmful ozone, which most people call smog.

Mr. Obama's Environmental Protection Agency is now proposing to get rid of this rule and replace it with a stronger standard. This would result in cleaner air and better health for millions of Americans.

Ozone is a photochemical reaction that occurs when sunlight mixes with nitrogen oxides and other pollutants from power plants, vehicles, refineries and industrial facilities. It poses a serious health threat, especially in children and people suffering from asthma and lung disease, and is responsible for respiratory-related emergency room visits, hospitalizations and premature deaths.

Apart from their health advantages, the new rules proposed reflect the administration's effort to restore science, as opposed to politics, to its rightful place in environmental rule-making. In 2008, the E.P.A.'s independent board of scientific advisers unanimously recommended that the ozone standards be set at somewhere between 0.060 and 0.070 parts per million.

Responding, in part, to industry pressure, the Bush administration imposed a less exacting and less protective standard of 0.075 parts per million. The new proposal, to be issued after a 60-day comment period, is expected to be somewhere in the range originally proposed by the scientific panel.

Some big polluters, including the oil companies, are likely to resist since the new standards would require investments in stronger pollution controls on power plants, refineries and chemical plants. The standards could also provide the impetus for cleaner vehicles.

Lisa Jackson, the E.P.A.'s administrator, should stick to her guns. When Carol Browner, then the administrator, first tightened health standards for smog and other pollutants like soot in 1997, industry groups rose up as one, predicting bankruptcy. But technology almost always catches up. In the end, costs are a fraction of the original claims, and the air is a lot cleaner.

Editorial:

EPA ruling offers middle ground approach on mining (*Herald Dispatch*)

January 07, 2010 @ 10:45 PM
The Herald-Dispatch
The decision by the Environmental Protection Agency to allow a mountaintop removal coal mine in Boone and Lincoln counties may signal how government regulators and the coal industry will move forward from this point.

If that's the case, neither the coal industry nor opponents of mountaintop removal mining are likely to be happy, but the EPA may be navigating a methodical, middle ground approach that makes sense under the circumstances.

The EPA informed the U.S. Army Corps of Engineers on Tuesday that it now supports issuing a permit for Patriot Coal's Hobet 45 mine, a decision that will keep about 460 people working at the company's Corridor G complex in Lincoln and Boone counties. The Corps issued the permit Wednesday. The EPA said it worked closely with Hobet Mining and the Corps to redesign the proposed Hobet 45 mine to eliminate nearly 50 percent of stream impacts, reduce anticipated stream contamination and protect public health.

The application for the Hobet mine was one of 79 held up for extra scrutiny in September as part of the Obama administration's attempt to curb environmental damage from mountaintop removal mining. The EPA said at the time that each permit likely would cause significant damage to water quality and the environment.

Since Tuesday's announcement, environmental groups have roundly criticized the EPA's decision, but they should keep in mind that the EPA so far has balked at backing another permit because of environmental concerns.

The agency also said on Tuesday that it and Mingo Logan Mining Co., a subsidiary of Arch Coal, have agreed to continue discussions at least until early March about the proposed Spruce No. 1 mine in Logan County. The EPA has determined that the proposed mine raised significant environmental and water quality concerns, and the group will discuss ways to make the project acceptable. If no agreement is reached, mining at the site will be prohibited, the EPA said.

In announcing the EPA's stance on those two proposed mines, EPA Administrator Lisa P. Jackson said her agency's goal is "to ensure Americans living in coal country are protected from environmental, health and economic damage."

Those are the appropriate concerns, and they require a delicate balance. Simply shutting down mountaintop removal mining really isn't feasible, considering the role coal plays in providing electricity to the nation and the potential impact on jobs. But neither can the EPA be expected to sign off on these projects without carefully looking at the environmental impacts and ensuring that mining companies adhere to the rules on the books.

From the standpoint of West Virginia's economy, it's encouraging to see that the EPA is willing to discuss with coal operators ways they can move forward with their plans and keep people working. From each case, the coal operators can gain a better understanding of what's acceptable and what's not.

From an environmental perspective, the EPA is taking a look at the environmental impacts of mountaintop removal mining and working to minimize any damages.

Neither side in this passionate battle over mountaintop removal mining is "winning," per se, but the stalemate may be over.

A new conservative party? (*Washington Times*)

January 8, 2010 Friday
B, COMMENTARY; Pg. 3
A new conservative party?;
If Republicans fail, an alternative caucus will rise
By Jeffrey T. Kuhner SPECIAL TO THE WASHINGTON TIMES
The Democratic Party is crumbling. President Obama's socialist revolution is slowly shattering the fragile Democratic coalition and making the party increasingly unpopular with voters.

Fearing humiliating defeats in the 2010 midterm elections, prominent Democrats - Sen. Christopher Dodd of Connecticut, Sen. Byron Dorgan of North Dakota and Colorado Gov. Bill Ritter Jr. - have announced they will not seek re-election. This is only the tip of the electoral iceberg. The Democrats risk suffering huge losses in November - including control of the House of Representatives and maybe even the Senate.

Public opinion is turning against the Democratic legislative agenda. The bailouts, the attempted government takeover of our health care system, imposing cap-and-trade, hoping to end the secret ballot in the organization of unions, massive tax increases and granting amnesty to illegal immigrants - these radical policies will permanently transform America. Mr. Obama is on the verge of achieving a cultural revolution.

Conservatives are the last line of defense. The burgeoning "tea party" movement represents resurgent traditionalist forces. It is more than a call for limited government and fiscal sanity. It is an embryonic nationalist-populist coalition that threatens the corrupt Beltway establishment. The patriotic right understands that we are slowly, relentlessly losing our country. Our globalist elites have turned their backs on America. The symptoms of decay and decline are everywhere: runaway spending, ballooning deficits, the erosion of our manufacturing base, the loss of national sovereignty, the onslaught of illegal immigration and an imperial, arrogant political class.

Yet, is the Republican Party the most effective vehicle to spearhead the conservative counterrevolution? Many on the right believe that electing Republicans will stem the growth of statism. They are wrong.

The presidency of George W. Bush is an example. Mr. Bush racked up massive deficits for eight straight years. He inherited a surplus of $127 billion and left office with a budget deficit of nearly $1.2 trillion. Mr. Bush was a Keynesian conservative, who federalized education, erected a costly prescription-drug entitlement program for seniors, attempted to grant citizenship to illegal aliens, passed expensive - and ineffective - economic stimulus packages, and supported the bailouts of Wall Street, delinquent homeowners and the auto industry. In short, Mr. Bush and the Republican Party paved the way for the triumph of Big Government.

Led by Republican National Committee Chairman Michael Steele, the GOP claims it has changed. The party of Barry Goldwater and Ronald Reagan is allegedly returning to its conservative roots. Mr. Steele vows that political exile has chastened - and humbled - Republicans, teaching them the folly of their spendthrift ways.

But conservatives would be wise to follow the old adage: Fool me once, shame on you. Fool me twice, shame on me. Actions speak louder than words. And it should take more than a mea culpa from Mr. Steele to buy conservatives' allegiance.

Instead, the "tea party" movement should demand that the Republican Party outline a detailed platform for the 2010 elections. To receive conservative-populist support, Republicans must promise to repeal Mr. Obama's policies root and branch.

This means Obamacare must be rescinded - immediately. The election should be turned into a referendum on government-run health care.

Taxes must be slashed. Government spending must be reined in, with sweeping cuts across the board. A balanced budget must be passed every year - with no exceptions. The Education Department must be eliminated.

Labor unions must be rolled back. Real tort reform must be implemented. Draconian rules against carbon emissions passed by the **Environmental Protection Agency** must be abrogated; the **EPA's** ubiquitous regulatory power substantially scaled back.

Unfair trade agreements must be scuttled - unilaterally, if necessary. A security wall must be built within 12 months all along our porous southern border. English must be made the official language, and bilingualism prohibited.

One-nation conservatism would not only revive the GOP as the majority party, but restore limited government, middle-class prosperity and national cohesion. For the right, it is the road back to power - and enduring dominance.

Republicans are poised for major gains this year. Electing more Republican politicians, however, is not the same thing as ending the march of Big Government liberalism. If Republicans refuse to adopt an America-first manifesto or worse, promise to enact these policies but fail to do so, then the "tea party" movement in 2012 should do the unthinkable: Break away and form a third party.

The Republican Party was born in reaction to the decrepit, unsustainable status quo of the 1850s. It stood on the ruins of the old Whig Party. Then, the issues were slavery and secession. Today, it is socialism and sovereignty. Republicans have become part of the problem. They need to be part of the solution. Otherwise, like the Whigs, the angry winds of history will blow them into dust.

Jeffrey T. Kuhner is a columnist at The Washington Times and president of the Edmund Burke Institute, a Washington think tank. He is the daily radio host of the "Kuhner Show" on WTNT 570-AM (www.talk570.com) from noon until 3:00 p.m.

AIR

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E.P.A. Seeks Tighter Rules To Cut Down Air Pollution (*New York Times*)

January 8, 2010 Friday
Late Edition - Final
Section A; Column 0; National Desk; Pg. 1
By JOHN M. BRODER
WASHINGTON
The Environmental Protection Agency on Thursday proposed a stricter standard for smog-causing pollutants that would bring substantial health benefits to millions of Americans while imposing large costs on industry and local governments.

The standard would replace one set by the Bush administration in March 2008, which has been challenged in court by state officials and environmental advocates as too weak to adequately protect human health and the environment.

The Obama administration's proposal sets a primary standard for ground-level ozone of no more than 0.060 to 0.070 parts per million, to be phased in over two decades. Regions with the worst smog pollution, including much of the Northeast, Southern and Central California and the Chicago and Houston areas, would have more time than other areas to come into compliance.

The new rule would replace the standard of 0.075 parts per million imposed by the Bush administration over the objection of an **E.P.A.** scientific panel, which wanted a tighter limit. The previous standard of 0.084 parts per million was set in 1997 by the Clinton administration.

The Obama administration is also proposing a secondary smog standard that would vary with the seasons to protect plants and trees from repeated exposure.

The agency estimated that complying with the new standard would cost $19 billion to $90 billion a year by 2020, to be largely borne by manufacturers, oil refiners and utilities. But the agency said that those costs would be offset by the benefits to human health, which it valued at $13 billion to $100 billion a year in the same period.

The new standard would force hundreds of counties that meet the current law to take costly steps to get back into compliance. Under the current standard of 0.075 parts per million, 322 counties of the 675 that monitor ozone levels are out of compliance. If the 0.070 limit is adopted, 515 counties would be out of compliance. Only 15 of the 675 monitored counties now meet the 0.060 standard.

In areas that do not meet the new standards, state and local governments will have to impose regulations to reduce the pollutants that produce smog, using technologies that have already cut such emissions from smokestacks, tailpipes and manufacturing plants, or new technology as yet uninvented. The nearly 40-year history of the **Clean Air Act** has shown that science -- and the threat of costly penalties -- have given industry the tools and incentive to find ways to cut ozone-producing gases.

Penalties for noncompliance include fines and loss of federal highway financing.

Agency analysts project that if the stricter standard is adopted, as many as 12,000 premature deaths per year from heart or lung diseases could be avoided, along with thousands of cases of bronchitis, asthma and nonfatal heart attacks.

"**E.P.A.** is stepping up to protect Americans from one of the most persistent and widespread pollutants we face," Lisa P. Jackson, the agency's administrator, said in a statement. "Smog in the air we breathe poses a very serious health threat, especially to children and individuals suffering from asthma and lung disease. It dirties our air, clouds our cities and drives up our health care costs across the country."

Smog or ground-level ozone is not emitted by a single source, but is, according to the

E.P.A., formed by a reaction of nitrogen oxides, volatile organic compounds, carbon monoxide and methane in the presence of sunlight. The main sources of these pollutants are power plants and factories, fumes from volatile solvents, vehicles emissions and gasoline vapors. Smog is worse in the summer because of heat and sunlight, and can travel hundreds of miles from its source and affect small towns, rural communities and wilderness areas.

The leader of an association of air-quality enforcement agencies welcomed the proposal.

"This is exactly what states and localities have advocated for 30 years," said S. William Becker, executive director of the National Association of Clean Air Agencies. "This will not be easy to achieve, whichever number the **E.P.A.** ultimately chooses, but it's a decision that will ensure that public health is protected with an adequate margin of safety."

Mr. Becker also said that the projected costs of compliance were likely to be lower than the agency's estimate. "And the benefits will likely trump the costs many times over," he said.

The American Petroleum Institute, the oil companies' chief lobby, criticized the proposal as costly and likely to be ineffective. The group said there was no new scientific basis for changing the standard set at the end of the Bush administration.

"To do so is an obvious politicization of the air-quality standard-setting process that could mean unnecessary energy cost increases, job losses and less domestic oil and natural gas development and energy security," the group said in a statement issued minutes after the agency's announcement.

The trade association for electric utilities, the Edison Electric Institute, reacted warily.

"We probably won't know for a couple of years just what utilities and other emissions sources will be required to do in response to a tighter ozone standard," said John Kinsman, the institute's senior director for the environment. "States will have to cast a very wide net when targeting sources for emissions cuts, in part because utilities already have made substantial reductions in ozone-related emissions."

The **E.P.A.** will take public comment on the proposal for 60 days and expects to issue a final rule in August with a single standard between 0.060 and 0.070 parts per million. By the end of 2013, states must submit plans showing how areas that do not attain the new standard will be brought into compliance. The new rules would be phased in between 2014 and 2031, with deadlines depending on how dirty the air is in a given region.

Frank O'Donnell of Clean Air Watch, an advocacy group, said that the ozone rule was the most significant environmental action the Obama administration was likely to take this year.

"This will ultimately mean cleaner air all across America," Mr. O'Donnell said. "This is going to drive pollution control into the next decade and beyond."

EPA gives Shelby County the ozone okay (*Tri State Defender*)

By Tri-State Defender Newsroom Unrated

EPA gives Shelby County the ozone okay

Memphis and Shelby County Health Department officials have announced that the Environmental Protection Agency (EPA) has re-designated Shelby County from non-attainment status to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone effective February 3.

The re-designation indicates that the EPA has determined that Shelby County has met the most recent standard to date. Additionally, the EPA re-designation means that Shelby County has a maintenance plan to address any potential future air quality issues.

“This is good news for residents of Shelby County because this designation underscores the vast improvements that have been made in air quality,” said Yvonne Madlock, Director of the Memphis and Shelby County Health Department.

“Such an improvement in air quality signals that individuals who experience asthma and other respiratory issues can expect fewer complications that can be triggered by poor air quality. This designation also indicates that this area is more attractive for businesses and industries considering expansion or relocation of business operations to Shelby County.”

Madlock said the air quality improvements are the result of community wide efforts.

“Our air is cleaner not only because of the cooperation of major industries to reduce the emission of ozone producing contaminants, but cleaner air also results from reductions in mobile sources of air pollution related to the changes in life-style that each of us as private citizens of Shelby County have made,” she said.

"When we control the idling of our cars, stop our fuel fill-ups at the 'click,' mow our grass when the sun is down, each of us contributes to a healthier environment. These changes have been supported by the many community partnerships established and strengthened by the Clean Air Coalition."

The EPA initially designated Shelby County as nonattainment of the 1997 ozone NAAQS on June 15, 2004. Subsequent air quality improvements through the end of 2008 led to the submission to the EPA of the Shelby County Redesignation Request and Maintenance Plan last February. On Nov. 19, the EPA announced it was proposing that the plan met all the requirements of the Clean Air Act to change the legal designation attainment. The recent action makes that proposal final.

Ozone is a lung-scarring compound that is formed at ground level when emissions of oxides of nitrogen and volatile organic compounds react in the presence of sunlight. The primary sources of these emissions are from human activities such as fuel burning and the use of solvents and coatings. Elevated levels are typically only detected in the warmer months when there is enough sunlight to drive the reaction.

Even though Shelby County has received attainment from the EPA, the Health Department continues to urge residents to be aware of the air quality forecasts and when elevated pollution is predicted, be prepared to take appropriate health precautions and use pollution reduction measures that can help reduce harmful ozone levels. That includes carpooling or using mass transit, not topping off gasoline (stopping at the click), planning ahead and linking trips, not idling an engine for more than 30 seconds, and mowing the grass when the sun is low.

EPA pushes tougher smog rules (*The Hill*)

By Ben Geman - 01/07/10 11:01 AM ET
The Environmental Protection Agency rolled out draft rules Thursday that would toughen Bush-era standards for air quality.

EPA said the rules on smog-forming pollutants are intented to protect public health. The agency specifically is tightening National Ambient Air Quality Standards for ozone imposed by the Bush administration that activists and the agency's science advisers called too weak.

Frank O'Donnell, president of the advocacy group Clean Air Watch, calls the new rules "the most significant environmental step the Obama administration will take this year."

The agency is rejecting the Bush administration's 2008 standard of 0.075 parts per million (ppm), and is instead proposing a standard in the range of 0.060-0.070 ppm.

Also, EPA is proposing to create a "a distinct cumulative, seasonal 'secondary' standard, designed to protect sensitive vegetation and ecosystems, including forests, parks, wildlife refuges and wilderness areas," according to a summary on EPA's website.

EPA says scientific evidence shows the need for tougher standards for ozone-forming pollutants emitted from tailpipes, power plants, refineries and other industrial sources. The Bush administration did not tighten the standards enough, EPA argues.

"EPA is reconsidering the ozone standards to ensure that two of the nation's most important air quality standards are clearly grounded in science, protect public health with an adequate margin of safety and protect the environment," states an EPA summary of the proposal issued Thursday. "The ozone standards set in 2008 were not as protective as recommended by EPA's panel of science advisers, the Clean Air Scientific Advisory Committee (CASAC)."

Ozone reduces lung function, inflames airways and aggravates respiratory problems like asthma and lung disease, according to EPA. It can also damage vegetation.

New EPA smog limits proposed (*Associated Press*)

This story also appeared: *KVIA*

Associated Press - January 7, 2010 12:05 PM ET
DALLAS (AP) - New stricter federal health standards for smog mean more counties in Texas will be in violation of the Clean Air Act.

The Environmental Protection Agency on Thursday proposed the standards to replace a Bush-era limit that ran counter to scientific recommendations. The new limits will likely put hundreds more counties nationwide in violation of the Clean Air Act, a designation that will require them to find additional ways to clamp down on pollution or face government sanctions.

The Houston and Dallas areas have never met Clean Air Act requirements for ozone pollution. And other areas will also find themselves out of compliance, too, including those around San Antonio, Austin, El Paso and Tyler.

UPDATE 3-

U.S. EPA proposes stronger smog standards (*Reuters*)

2:20pm EST
(Recasts, adds details, comments from industry, environmental group, adds byline)
By Timothy Gardner
WASHINGTON, Jan 7 (Reuters) - U.S. environmental regulators on Thursday proposed stronger standards on lung and heart disease-causing smog that could cost industry up to $90 billion to implement.

Industry groups blasted the move, which won praise from environmental groups who had criticized the Bush administration for setting smog standards in 2008 that were looser than government scientists had recommended.

The Environmental Protection Agency proposed to limit ground-level ozone -- also known as smog -- at between 60 and 70 parts per billion measured over eight hours. That would be more stringent than the standard of 75 ppb set in 2008 by the Bush administration.

The EPA proposal will undergo 60 days of public comment before becoming final.

To comply with the tighter standards, factories and oil, gas and power companies would have to cut emissions of nitrogen oxides and other chemicals called volatile organic compounds. Smog forms when those react with sunlight.

"Coal-burning power plants are the 800 pound gorilla in the room," John Walke, a clean air lawyer at the Natural Resources Defense Council, said when asked who would get hit by the standard. But he added that airplanes, ships, locomotives and off-road vehicles would also be targeted, perhaps more than automobiles, which have had to cut pollution since the 1970s.

The EPA said the standard would cost $19 billion to $90 billion to implement. But it said it would cut healthcare bills from asthma, lung damage, and other diseases and lost work costs by $14 billion to $100 billion.

While the standards are federal, states monitor pollution levels and are largely responsible for getting industry to cut emissions.

Environmentalists said the move shows the Obama administration is willing to follow recommendations of the EPA's science advisors on pollution regulation, which they called a change from the Bush administration.

Frank O'Donnell, president of the nonprofit Clean Air Watch, said the proposal was a "breath of fresh air."

"If the EPA follows through, it will mean significantly cleaner air and better health protection," he added.

INDUSTRY SAYS ALREADY SPENT BILLIONS

Big industries said they have already spent billions to clean up emissions. The American Petroleum Institute said the proposal "lacks scientific justification," adding the oil and natural gas industry has invested more than $175 billion toward improving environmental performance of its products and facilities.

Spokesman Pat Hemlepp said the American Electric Power Co Inc <AEP.N> in Columbus, Ohio and the rest of the power sector have already worked hard to reduce nitrogen oxide emissions.

But he said if the rules do go in place, AEP would work with the states to come up with a plan, adding the company will participate in the comment period for the proposed rule.

John Kinsman, an environment director at the Edison Electric Institute, the association of investor-owned electric companies, said "we probably won't know for a couple of years" what power generators and other emissions sources will be required to do to cut the pollution. He said power companies produce less than 20 percent of U.S. nitrogen oxide emissions.

Jan 07, 2010

EPA proposes stricter smog standards than Bush-era limits (*USA TODAY*)

12:06 PM

The Environmental Protection Agency is proposing tougher health standards for smog, replacing a Bush-era limit that ran counter to scientific recommendations, the Associated Press reports.

The new limits will likely put hundreds more counties nationwide in violation and will require them to find new ways to clamp down on pollution or face government sanctions, such as the loss of federal highway dollars.

The EPA says the stricter standards will cost tens of billions of dollars to implement, but will ultimately save billions in a decrease in emergency room visits, premature deaths, and missed work and school days.

New EPA smog limits proposed (*Associated Press*)

Story also appeared: *Dallas Morning News*

01/07/2010
Associated Press
New stricter federal health standards for smog mean more counties in Texas will be in violation of the Clean Air Act.

The Environmental Protection Agency on Thursday proposed the standards to replace a Bush-era limit that ran counter to scientific recommendations. The new limits will likely put hundreds more counties nationwide in violation of the Clean Air Act, a designation

that will require them to find additional ways to clamp down on pollution or face government sanctions.

The Houston and Dallas areas have never met Clean Air Act requirements for ozone pollution. And other areas will also find themselves out of compliance, too, including those around San Antonio, Austin, El Paso and Tyler.

EPA wants to tighten standards (*Atlanta Journal-Constitution*)

January 8, 2010 Friday
First Replate Edition
NEWS; Pg. 1A
By Craig Schneider; Staff
A proposed stricter standard on smog-causing pollutants could cost industry and government millions to bring metro Atlanta into compliance, but it also could improve people's health as it cleans the area's dirty air.

Officials and advocates said the new standards proposed Thursday by the **Environmental Protection Agency** could hamper efforts to build new roads, slow regional growth, force industry to invest in cleaner technology and contribute to metro Atlanta's reputation as a smog-filled place.

But in the long run, the standards could help scrub the nation's most widespread air pollutant, which is linked to an array of heart and respiratory illnesses.

"Ground-level ozone, or smog, has plagued metro Atlanta for more than 25 years," said June Deen, advocacy director for the American Lung Association in Georgia. Lowering the limit could trigger clean-up requirements "that would benefit hundreds of thousands of citizens."

The Obama administration's proposal sets a standard for ground-level ozone of no more than 60 to 70 parts per billion. The smog proposal must undergo 60 days of public comment before officials settle on an exact number. The current rate is 75 parts per billion, adopted in 2008. The **EPA** estimated that complying with the new standard will cost, depending on which number is selected, $19 billion to $90 billion a year by 2020.

At the same time, if the administration targets the figure of 60 parts per billion, officials project that as many as 12,000 premature deaths from lung or heart disease could be avoided, along with thousands of cases of bronchitis and asthma.

"**EPA** is stepping up to protect Americans from one of the most persistent and widespread pollutants we face," the **EPA** said in a statement. "It dirties our air, clouds our cities, and drives up our health care costs across the country."

Metro Atlanta has been out of compliance with smog standards for about 30 years and stricter standards could drive even more communities out of the safe zone. The change could also make it tougher to bring the metro area into compliance, said Jac Capp, chief of the Air Protection Branch of the state Environmental Protection Division.

"Clearly, it would take us longer to get back into compliance," Capp said. "We've got a long way to go to get to the levels proposed today."

Georgia would have to update its existing plan to meet smog standards. That plan was making strides, Capp said. Several measures are already under way in metro Atlanta, including mandatory annual emission tests for vehicles and the switch to cleaner gasoline in the summer, when smog thrives.

Pollution-producing businesses could also be affected. Coal-fired power plants might have to devote more resources to cleaning their emissions in order to obtain compliance.

The change could drive efforts to get cars off the roads, fueling government and employer efforts at carpooling and telecommuting. Mass transit efforts might receive a boost. Some businesses could be forced to reduce the number of vehicles in their fleets or buy newer, cleaner vehicles, said Brian Carr of the Georgia-based Clean Air Campaign.

"It could change the way they do business," Carr said.

The change could cost Georgia businesses and government millions over years, he said. As more communities fall out of compliance, local officials may find it more difficult to attract businesses to their areas, he said.

Power plants and motor vehicles are significant emitters of pollutants that form ozone when exposed to sunlight, but sources as small as gas lawnmowers could also face restrictions.

The change could alter plans to improve transportation in metro Atlanta.

In general, stricter emission standards make it tougher to build new roads, said David Spear, spokesman for the state Department of Transportation.

He said it is too early to tell whether any road projects would be scrapped.

New restrictions could also add to road construction costs, particularly if a road must be built to bypass an area that is out of compliance.

In general, Spear expects more study and consideration would be put into any plan to build a roadway, to make sure the project is absolutely worthwhile.

"It's going to require us to build smartly," Spear said.

The new standard would replace one set by the Bush administration in March 2008, which has been challenged in court by environmental advocates who said it does not adequately protect people and the environment.

The American Petroleum Institute, the oil companies' chief lobby, issued a statement Thursday criticizing the proposal, saying there is no scientific basis behind it.

The group classified the **EPA's** proposal as an "obvious politicization of the air quality standard setting process that could mean unnecessary energy cost increases, job losses and less domestic oil and natural gas development and energy security."

Advocates say the change is needed.

"This is welcome news for Georgia's children," said Rebecca Watts Hull of Mothers and Others for Clean Air, a Georgia-based advocacy group. "A stronger ozone standard will result in ... stepped-up efforts to reduce harmful pollution in Georgia."

EPA Puts California On Notice To Advance Overdue Clean Air Act Fees (*Inside EPA*)

1/8/2010

U.S. EPA is warning the California Air Resources Board (CARB) and various California air districts that the regulators must adopt overdue Clean Air Act fee rules required under the federal law or face penalties, including cuts to federal transportation funding.

EPA in a letter sent last month to state air officials and Gov. Arnold Schwarzenegger (R) says the agency intends to make a finding that certain air districts are in violation of the state's commitment to meet federal air quality standards if fee rules are not soon adopted and submitted to the agency.

But a CARB spokesman this week downplayed the letter, saying that districts are advancing the fee rules.

The move follows EPA's proposed rejection of the San Joaquin Valley air district's fee rule because it exempted certain facilities from paying fees. The South Coast air district has also delayed adoption of its required fee, citing concerns that it is unfair and too burdensome on industry. The district says it is waiting for EPA to issue guidance on whether flexibility can be incorporated into the fee rules.

The controversy over how air districts design air act fees has been a key policy debate recently, especially at the South Coast and San Joaquin air districts. The fees are seen by environmentalists as critical to press industries to install the lowest-emitting

technologies to meet air quality goals. But air districts and industry officials argue that EPA should allow flexibility in how the fees are established because it is unfair to levy new fees on facilities that have done all they can to reduce emissions.

EPA officials Dec. 11 sent a letter to Schwarzenegger, CARB Chairwoman Mary Nichols, and air district officials notifying the state that EPA intends to make a statutory "finding of failure to submit" the fee rules for the Los Angeles-South Coast, Southeast Desert and portions of the Sacramento Metropolitan 1-hour ozone non-attainment areas. By 2000, states with areas designated as in severe or extreme non-attainment for federal air quality standards were required to submit plans to EPA for implementing the air act fees.

If California does not submit timely fee plans for these areas once the proposed EPA finding becomes effective, funding sanctions will apply as described in the law, the EPA letter states*. A copy of the letter is available at InsideEPA.com.*

The San Joaquin Valley air district has already adopted and submitted its fee to EPA. However, EPA has proposed to partially disapprove the rule, concurring with environmentalists that it illegally exempts "clean emissions units" and sources that begin operating after 2010. The valley district has defended its rule despite environmentalists' objections and EPA's proposal to disapprove the rule.

South Coast has repeatedly delayed adoption of its proposed fee rule. The district requested EPA to issue guidance on whether facility exemptions and other flexibility can be allowed.

Activists Reiterate Call For Stronger Ozone NAAQS Ahead of EPA Proposal (*Inside EPA*)

1/8/2010
Environmental and public health advocates are reiterating their calls for EPA to tighten its national ambient air quality standard (NAAQS) for ozone from 0.075 parts per million (ppm) to 0.060 ppm, one day ahead of EPA's anticipated release of its proposal to reconsider the health-based primary and welfare-based secondary standards set by the Bush administration.

The American Lung Association, Clean Air Watch and Earthjustice on a Jan. 6 conference call also emphasized the importance of the secondary NAAQS in protecting ecosystems, calling for a standard that would account for cumulative exposure over the entire growing season and a level near the lower end of the EPA's Clean Air Scientific Advisory Committee's (CASAC) recommended range.

EPA was slated to propose revisions to the standard Dec. 21 but announced in a letter from the Department of Justice to parties involved in litigation challenging the Bush-era

standard that the release would be delayed until Jan. 6 (*Inside EPA*, Dec. 25). The proposal is now widely expected on Jan. 7.

EPA Oct. 1 told the U.S. Court of Appeals for the District of Columbia Circuit in the case *State of Mississippi, et al. v. EPA* that it would revise the Bush EPA ozone standard at issue in the litigation.

The previous administration in 2008 issued an ozone NAAQS of 0.075 ppm, tightening the then-existing standard but not setting it as stringent as the levels recommended by CASAC, environmentalists, some states and other critics. CASAC urged the agency to set a health-protective primary ozone standard between 0.060 and 0.070 ppm, based on the latest available scientific evidence. Bush EPA staff had recommended a level for the primary standard of “somewhat below” 0.060 to 0.080 ppm.

The Bush EPA’s failed attempt to set a secondary standard different from the primary was also central to the controversy surrounding the 2008 ozone NAAQS decision, after the agency was overruled by White House regulatory chief Susan Dudley. Although EPA said in its Oct. 1 announcement that it would reconsider both the primary and secondary standards, it did not say whether it would set a distinct level or form for the secondary standard.

According to the preamble to the final rule, as early as 1996 EPA staff, CASAC and then-Administrator Carol Browner agreed that a cumulative, seasonal secondary ozone NAAQS was more biologically relevant than a 1- or 8-hour average used for the primary, health-based standard.

States Say New EPA Mobile Emissions Model Brings Major Data Challenge (*Inside EPA*)

1/8/2010
The much-anticipated release of EPA’s new model for calculating emissions of both conventional pollutants and greenhouse gases (GHGs) from mobile sources, dubbed MOVES2010, will impose significant challenges in obtaining adequate data to run the new system, state regulators say.

The Motor Vehicle Emissions Simulator (MOVES) 2010, unveiled Dec. 23, represents a significant advance over its predecessor, MOBILE6.2, EPA says. It will for the first time estimate emissions on a range of scales, from the national level down to emissions from individual transportation projects, the agency says. Another major benefit, EPA says, is that it will be able to express pollutant output as either total mass in a variety of units, or as emissions factors, measured in grams-per-mile, or in some cases grams-per-vehicle. The model will also for the first time include estimation of both GHG and air toxic emissions from on-road vehicles.

But MOVES2010 also requires a higher level of detailed information than MOBILE6.2, state sources say, making it potentially a better tool but also more difficult to keep updated with the requisite data. Because of this, the sources say it will take some time to implement the new model and judge its effectiveness.

However, they note if it is manageable, MOVES2010 will vastly improve the accuracy of how states measure vehicle and other mobile source pollution, including ozone, particulate matter (PM), nitrogen dioxide (NO2) and carbon monoxide (CO), and could become a vital tool to develop more accurate emissions inventories and state implementation plans (SIPs), which are blueprints for how states will meet ambient air quality limits.

“It will take some work before we have a clear picture of the results” of MOVES2010, says a source with the Mid-Atlantic Regional Air Management Association. “It is a challenge to develop the required input data, but the states are doing the best they can to compile it quickly.”

EPA advisors have already acknowledged the data challenges states will face under MOVES 2010, with the agency’s Clean Air Act Advisory Committee’s mobile source technical review panel noting last spring that the new model would place a heavy burden on states to obtain sufficient information, particularly as key data collection programs have been cut from federal and state budgets. For example, MOVES2010 requires a much greater amount of data on vehicle activities, such as statistics on cars’ driving modes, than MOBILE6.2 did, according to Michael Rodgers, a researcher from the Georgia Institute of Technology and a member of the mobile source panel.

EPA says in a policy guidance document on MOVES2010 that the agency will expect states to begin using the model in their emissions inventories for SIPs, but that states will not necessarily have to revise draft SIPs developed using the previous model if they are at an advanced stage. EPA in the guidance asks states to contact their regional EPA offices to make a determination on a case-by-case basis.

“In general, EPA believes that MOVES2010 should be used in ozone, CO, PM and NO2 SIP development as expeditiously as possible,” the agency says, citing an air act requirement that SIPs be drawn up based on the most current and applicable model available. However, “EPA believes that the Clean Air Act does not require states that have already submitted SIPs or will submit SIPs shortly after the release of MOVES 2010 to revise these SIPs simply because a new motor vehicle emissions model is now available.” *The guidance is available on InsideEPA.com.*

EPA is also allowing a grace period for states to use the new model in certain situations. For transportation conformity determinations -- which ensure that emissions from federally funded highway and transit activities fall within SIP mobile source emission budgets -- EPA will establish a two-year phase-in period, according to the policy guidance. The grace period will also apply for quantitative “hot-spot” analyses for CO,

coarse and fine PM, and regional emissions analyses, for all states except California, which uses a different EPA-approved model.

In the guidance, EPA says that MOVES2010 is its best tool for estimating both on-road and off-road mobile source emissions of criteria pollutants, as well as air toxics and GHG emissions from on-road sources. While EPA notes that there are no SIP or conformity requirements for air toxics or GHGs, the agency is expected to begin regulating GHGs from mobile sources later this year, making MOBILE2010 an important resource.

Advisers Retreat From Call To Classify Children As At-Risk In CO Review (*Inside EPA*)

1/8/2010
EPA's top scientific advisers are stepping back from their earlier plans to urge the agency to consider children as a specially vulnerable subpopulation when exposed to carbon monoxide (CO) after agreeing to water down language in a draft letter to EPA commenting on a key document to support the CO ambient air quality review, due to a lack of scientific evidence of harm. The change comes as top EPA officials are seeking to expand protections for children exposed to pollution.

EPA's Clean Air Scientific Advisory Committee's (CASAC) CO panel in a Dec. 22 conference call to consider EPA's first external review draft of its risk and exposure assessment (REA) for CO agreed to change language in the draft letter that called on EPA to broaden its definition of sensitive subpopulations exposed to the gas. The draft letter on the REA -- a document which informs EPA's review of CO national ambient air quality standards (NAAQS) - originally sought to include children as well as people exposed to secondhand smoke as sensitive groups.

The original letter identified susceptible subpopulations as "children, pregnant women, fetuses, people exposed to secondhand smoke, and people with anemias such as sickle cell anemia."

However on the conference call, panel members agreed to delete the references to children and those exposed to secondhand smoke as at risk, on the grounds that the scientific evidence of harm to these groups is too thin.

The change comes as EPA Administrator Lisa Jackson has made protecting children from pollution one of her top priorities and as the agency's Office of Children's Health Protection is playing a growing role in policymaking, leading to greater consideration of children and other sensitive groups in the agency's decisionmaking and potentially stricter rules.

On the CASAC conference call, members did urge EPA to broaden its definition of at-risk subpopulations beyond what the agency included in the REA, which only identifies those at risk as adults with coronary artery disease (CAD). Instead, CASAC in the draft letter urges the agency to “include others who are at elevated risk of CO-induced adverse effects” including people with cardiovascular disease or those who have had a stroke, calling that group “a more appropriate representation of susceptible subpopulations.” *The draft letter is available on InsideEPA.com.*

But the panel also admits in the draft letter that scientific information currently available may not be enough to include non-CAD subpopulations in a quantitative risk assessment, noting that “current data are suggestive of causal relationships” between CO exposure and health effects, but those links are not definitive.

“It is the panel’s recommendation that the next REA include some attempt to quantify CO exposures in other susceptible, non-CAD populations and provide qualitative, if not quantitative assessment of the health effects,” the draft letter says.

CASAC’s review of the REA -- which will provide critical guidance to EPA in setting a new NAAQS for CO for the first time since 1971 -- also questions EPA’s use of a very limited CO monitoring network to conduct the REA, reflecting concerns expressed by the agency itself in the REA.

A lack of CO monitors nationally prompted EPA to use data from only two monitors, one in Los Angeles and one in Denver, prompting fears that the resulting conclusions will be insufficiently complete for regulatory purposes (*Inside EPA,* Nov. 13).

CASAC’s draft letter notes, “Fundamental concerns with the current carbon monoxide monitoring strategy and limited amount of data at realistic CO concentrations further impede the quality of the REA. We concur with the document’s conclusion that adequate CO data is lacking for a robust [REA]. . . . The need for accurate measurements at lower concentrations has rendered many of the current CO monitors obsolete. Moreover, in order to obtain adequate temporal and spatial information, a more extensive monitoring network is needed.”

EPA is reviewing the CO NAAQS following a lawsuit by environmental groups who charged the agency failed to meet its statutory duty to review the NAAQS every five years. Environmentalists are also urging EPA to give special consideration to near-highway concentrations of CO since the pollutant can concentrate in heavily trafficked areas.

Environmental Groups Split Over Legality of EPA GHG ‘Tailoring’ Proposal (*Inside EPA*)

1/8/2010

Environmental groups are split over whether EPA has authority to finalize its legally questionable greenhouse gas (GHG) “tailoring” proposal that would temporarily ease the threshold for stationary sources subject to GHG rules. On the one hand, a large coalition of major environmental groups is supporting an exclusion for small sources by arguing “unusual and limited circumstances,” while the Center for Biological Diversity (CBD) says raising the permitting threshold from 100 or 250 tons per year (tpy) to 25,000 tpy for GHGs is “not justified” and wants EPA to begin immediately regulating GHGs from all sources.

CBD in its Dec. 28 comments lays out possible legal arguments that could support a future lawsuit against the rule if EPA finalizes it. However, the group last year pledged not to challenge the tailoring rule, which would apply to sources subject to prevention of significant deterioration (PSD) and Title V permits for a six-year time frame while EPA analyzes how to address smaller sources.

Despite the pledge not to sue, CBD asks EPA to reverse course on the tailoring rule. “EPA has substantially overstated the resources needed to implement permitting for pollution sources emitting less than 25,000 [tpy] and has failed to establish why the agency would need a full six years to conduct a study and develop guidelines for pollution reductions for sources below the proposed threshold. . . . EPA should revise the tailoring rule consistent with these comments to ensure that the agency fully complies with the Clean Air Act and that the public receives the full benefit and protection of this flagship law.” *Relevant documents are available on InsideEPA.com.*

In early December last year, CBD filed a separate petition with EPA asking it to declare carbon dioxide (CO2) and other GHGs as criteria pollutants subject to national ambient air quality standards (NAAQS), saying such a step is necessary to reduce atmospheric concentrations below catastrophic climate change levels.

In both the tailoring rule comments and the CO2 NAAQS petition, the group endorses strict implementation of the Clean Air Act, with one CBD source calling it “our strongest existing tool to address global warming.”

CBD’s comments on the tailoring proposal add, “While we appreciate the resource constraints faced by EPA and state agencies . . . we believe that EPA now should and can spend its time and increased resources on implementing the law without further delay.”

However, other environmental groups including the Natural Resources Defense Council, Sierra Club, Environmental Defense Fund and the Clean Air Task Force “fully support” the proposal. “[W]e also agree with the agency’s assessment in the proposed rule that immediate imposition of these requirements on all sources will cause significant administrative difficulties,” the coalition’s Dec. 28 comments say. “In these unusual and limited circumstances, it is appropriate for the agency to act immediately on the largest sources, and to do so by taking a step-by-step approach to implementing

the full requirements of the PSD and Title V programs to stationary source [GHG] emissions."

The groups add the administrative burden of regulating more than 1 million new GHG sources immediately "represents the rare instance where some departure from the literal terms of the statute is appropriate."

Meanwhile, industry groups are also strongly questioning the legality of the tailoring rule's approach, with the Competitive Enterprise Institute (CEI) noting that EPA is essentially seeking to unlawfully amend the Clean Air Act and the U.S. Chamber of Commerce asking "whether it is administratively prudent for EPA to proceed down this regulatory course at all -- particularly when the best EPA can do is a rule that may not withstand judicial scrutiny and, at best, only delays the permitting burdens on small and medium-sized businesses for a short period of time."

The National Association of Manufacturers notes that "the legal vulnerabilities of the proposal will enable potential plaintiffs to file lawsuits [claiming] that EPA should impose lower emissions thresholds for GHGs. A litigation strategy launched by various citizen groups could easily result in expanded EPA authority. Unfortunately, the tailoring proposal violates the plain meaning of the" Clean Air Act.

The National Petrochemical & Refiners Association says the tailoring rule is "doomed to failure."

And the National Environmental Development Association/Clean Air Project says EPA must go much further to defend the tailoring proposal under the judicial doctrines of administrative necessity and avoidance of absurd results, noting that the absurd results doctrine in particular "has only been applied in the rarest of circumstances, ones in fact which the Supreme Court has characterized as situations which 'shock the general moral or common sense.'"

The chamber and other industry groups also oppose EPA's position that the Clean Air Act automatically requires stationary source GHG limits once the agency finalizes first-time GHG rules for vehicles this spring, arguing instead that the link only applies if the agency sets a GHG NAAQS.

Industry also opposes EPA's classification of the tailoring rule as one of "relief," with the Alliance of Automobile Manufacturers noting in Dec. 28 comments that it is "rather an application of PSD" requiring a full regulatory impact analysis "of the burden on regulated entities (and state permitting authorities)."

The Edison Electric Institute, which represents investor-owned power companies, asks EPA to delay application of GHG rules to stationary sources until the vehicle rule is implemented, rather than effective, "beginning October 2011, at the earliest," while the Class of '85 Regulatory Response Group and the American Public Power Association,

which represent public power companies, ask EPA to raise the GHG threshold to 100,000 tpy.

At the same time, groups that represent state clean air regulators in their comments formalize their earlier complaints that EPA's proposal provides insufficient time for them to make the necessary statutory and regulatory changes to comply with the tailoring rule's new threshold (*Inside EPA*, Dec. 11). And Pennsylvania in its comments asks EPA to exempt GHG requirements for facilities that submitted PSD permits before Oct. 27, 2009, the date EPA issued the tailoring rule proposal.

EPA proposes strict new smog standards (*Greenwire*)

Robin Bravender, E&E reporter
01/07/2010
U.S. EPA today proposed significantly tougher smog standards after reconsidering the George W. Bush administration's controversial 2008 regulations.
The draft rule released by EPA proposes to revise the two standards aimed at protecting public health and welfare to comply with recommendations made by the agency's science advisers. The Bush administration had rejected those suggestions when issuing the 2008 national air quality standards for ground-level ozone, or smog, drawing criticism and legal challenges from environmental and public health groups.

"EPA is stepping up to protect Americans from one of the most persistent and widespread pollutants we face," EPA Administrator Lisa Jackson said in a statement. "Using the best science to strengthen these standards is a long overdue action that will help millions of Americans breathe easier and live healthier."

Smog forms when a mixture of pollutants from industrial facilities, power plants, motor vehicles and other sources react in sunlight. It can cause respiratory problems, including coughing, wheezing, shortness of breath and chest pain, and leads to increased risk of premature death in people with heart or lung disease.

The agency proposed to set the health-based "primary" standard for smog within a range of 60 to 70 parts per billion (ppb) when averaged over an 8-hour period. The Bush administration tightened the ozone limits from 84 ppb to 75 ppb in 2008, despite scientific advisers' recommendations to issue a standard between 60 ppb and 70 ppb.

EPA is also proposing a separate "secondary" standard aimed at protecting vegetation and ecosystems, including parks, wildlife refuges and wilderness areas. The draft rule recommends setting that standard within the range of 7 to 15 parts per million-hours. Such a standard would be based on a cumulative, weighted total of daily 12-hour ozone exposures to plants and crops over a three-month period. The agency's science advisers recommended setting a separate secondary standard prior to the release of the 2008 rule.

Former EPA Administrator Stephen Johnson was set to issue a more protective secondary standard in 2008, but the agency rewrote the regulations to include identical primary and secondary standards after the White House intervened on the eve of the agency's court-ordered deadline (*Greenwire*, May 20, 2008).

Enviro groups hail reversal

Environmental groups and Democratic lawmakers hailed today's proposal, saying that tighter ozone standards are long overdue. Industry groups, meanwhile, questioned the science behind the reconsideration and potential economic effects.

Frank O'Donnell, president of the advocacy group Clean Air Watch, said this reconsideration "may be the single most important environmental decision that the EPA makes this year."

Earthjustice attorney David Baron, who represented environmental groups in a lawsuit challenging the Bush standard, applauded EPA's proposal, saying the current standards do not protect public health with a margin of safety.

"We also welcome EPA's proposal of a separate standard to protect forests from ozone damage," Baron said. "According to the National Park Service, ozone pollution causes widespread tree damage and severely impacts tree growth. Both the Park Service and EPA's science advisers have called for a strong separate standard to protect our forests from ozone pollution."

Former House Oversight and Government Reform Chairman Henry Waxman (D-Calif.), who probed allegations of White House interference surrounding the 2008 standard, also welcomed the proposal.

"I am pleased that EPA is once again basing its clean air decisions on the advice of independent scientists," Waxman said. "I applaud this reversal of a Bush administration decision to ignore science."

Industry groups question science

Industry groups, however, expressed concern that the proposed regulations are not needed to protect public health and welfare and that they will impose undue economic burdens.

"This goes well beyond the statute requirement of requisite to protect health and welfare," said Amy Chai, staff counsel for the National Association of Home Builders.

"It places an impermissible burden on the industry," Chai added. "Obviously our industry at this point is just not equipped to deal with a burden that is not going to contribute positively to air quality."

The American Petroleum Institute said in a statement that the action lacks scientific justification. "EPA acknowledges the newer studies on ozone 'do not materially change any of the broad scientific conclusions regarding the health effects of exposure,'" the group said in a statement. "Given that conclusion, there is absolutely no basis for EPA to propose changing the ozone standards promulgated by the EPA Administrator in 2008."

Depending on the final standard, EPA said its proposal would yield health benefits between $13 billion and $100 billion. The estimated cost for implementing the draft rule range from $19 billion to $90 billion.

EPA will accept public comment on the rule for 60 days after publication in the *Federal Register*. The agency plans to hold two public hearings on Feb. 2 in Arlington, Va., and Houston and a third on Feb. 4 in Sacramento, Calif. EPA plans to issue its final standards by Aug. 31.

The agency proposed an accelerated schedule for determining whether areas are in compliance with the primary standard and is accepting comments on whether to designate areas for a secondary standard on an accelerated schedule.

Anticipated EPA standards will place Austin in nonattainment status (*Community Impact Newspaper*)

Written by Mary Tuma Thursday, 07 January 2010
Central Texans will have to hold their breath one more day to find out if the city they live in meets national air quality standards. Initially slated for Dec. 21, the federal agency postponed the announcement until after the winter holidays and pushed the release date again to Jan. 7.

Legislators, doctors and environmental groups gathered to commend the proposed standards at the Texas State Capitol on Jan. 6. The more stringent regulations, anticipated to be set at 70 parts per billion, would place Austin in “nonattainment” status according to their current levels if they become the official standard in 2010.

The undesirable designation is subject to negative environmental and economic consequences, such as barriers to access federal transportation funds.

Eva Hernandez of the Sierra Club’s Beyond Coal Campaign said the state now has the opportunity to halt the building of coal plants and urged review of the existing permits as a way to reduce ozone pollution. | Photo by Mary Tuma

Yet, the Sierra Club and lawmakers, like State Representative Eddie Rodriguez, view the new status as an opportunity to improve air quality, help Texans become healthier

and halt the development of coal plants, the largest categorical source of ozone in the state.

“We are not where we need to be in terms of safe, clean air,” said Rodriguez. “There has to be a statewide effort and there has to be accountability from the state’s leadership, the Legislature and TCEQ.”

“We should also continue where we left off last session with our bipartisan effort to incentivise energy conservation. We need to make clean energy accessible and affordable to all Texans.”

Rodriguez suggested changing TCEQ’s permitting processes to evade penalties associated with the more protective ozone rule and even retiring the state’s oldest, dirtiest coal plants.

“Central Texas is currently on the edge of nonattainment,” said Eva Hernandez of the Sierra Club’s Beyond Coal Campaign. “The tough part is that the number of areas that are nonattainment in Texas are going to double.”

Twice as many counties would hold the status, including El Paso, East Texas/Longview Tyler/Marshall, El Paso, San Antonio and possibly Corpus Christi, Victoria/Goliad, and Waco/Temple. DFW, Houston/Galveston, and Beaumont/Port Arthur are currently in non-attainment of air quality standards.

“TCEQ has really have been a rubber stamp for coal plants and other major industrial sources of air pollution across the state for years,” said Hernandez. “Unfortunately, because of that Texas asthma rates have doubled in the last ten years.”

Austin pediatrician Dr. Don Williams pointed to evidence that suggests ozone pollution reduces lung growth in children and increases problems with asthma control.

“The health effects from coal plants lead to damage to the respiratory cardiovascular, and nervous systems and contribute to four of the top five leading causes of death in the U.S.: heart disease, cancer, stroke, and chronic lower respiratory disease,” said Williams.

The EPA will hold a 60-day public comment period on the proposed ozone rule revision.

If the rule becomes a standard this August the EPA will require the TCEQ to prepare and submit an implementation plan that must drastically reduce ozone pollution.

For previous coverage on Austin's air quality status, read: Austin narrowly avoids penalties for air quality

Find more news about HealthNews

New smog curbs could cost smaller localities (*Boston Globe*)

January 8, 2010 Friday
NEWS; National; Pg. 2
New smog curbs could cost smaller localities;
But EPA says rules will save more lives
By Dina Cappiello, Associated Press
WASHINGTON - Hundreds of communities far from congested highways and belching smokestacks could soon join America's big cities and industrial corridors in violation of stricter limits on lung-damaging smog proposed yesterday by the Obama administration.

The costs of compliance could be in the tens of billions of dollars, but the government said the rules would save billions - and lives - in the long run.

More than 300 counties - mainly in the Northeast, Southern California, and the Gulf Coast - already violate the current, looser requirements the Bush administration adopted two years ago and will find it even harder to reduce smog-forming pollution enough to comply with the law.

The new limits being considered by the **Environmental Protection Agency** could more than double the number of counties in violation and reach places like California's wine country in Napa Valley and rural Trego County, Kan., and its 3,000 residents.

For the first time, counties in Idaho, Nevada, Oregon, the Dakotas, Kansas, Minnesota, and Iowa might be forced to find ways to clamp down on smog-forming emissions from industry and automobiles or face government sanctions, most likely the loss of federal highway dollars.

The tighter standards will ultimately save billions in avoided emergency room visits, premature deaths, and missed work and school days, the **EPA** said.

``**EPA** is stepping up to protect Americans from one of the most persistent and widespread pollutants we face," said Lisa Jackson, agency administrator. ``Using the best science to strengthen these standards is long overdue action that will help millions of Americans breathe easier and live healthier."

Global warming is expected to make it worse, because smog is created when emissions from cars, power and chemical plants, refineries, and other factories mix in sunlight and heat.

Representative Edward J. Markey, a Massachusetts Democrat, praised the new standards, asserting that the Bush administration ignored science with the more lenient limits.

``The Bush administration set flawed standards that failed to protect public health,'' Markey, the chairman of the House Energy and Commerce Committee's subcommittee with oversight of **EPA,** said in a statement. ``We can all breathe a little easier knowing that a proscience Obama administration and **EPA** is back on the beat.''

The proposal presents a range for the allowable concentration of ground-level ozone, the main ingredient in smog, from 60 parts per billion to 70 parts, as recommended by scientists during the Bush administration. That's equivalent to a single tennis ball in an Olympic-sized swimming pool full of tennis balls.

EPA plans to select a specific figure within that range by August. Counties and states will then have up to 20 years to meet the new limits, depending on how severely they are out of compliance.

They will have to submit plans for meeting the new limits by the end of 2013 or early 2014.

Former president George W. Bush personally intervened in the issue after hearing complaints from electric utilities and other affected industries.

His **EPA** set a standard of 75 parts per billion, stricter than one adopted in 1997 but not as strict as what scientists said was needed to protect public health.

Some of those same industries reiterated their opposition yesterday to a stronger smog standard.

``We probably won't know for a couple of years just what utilities and other emissions sources will be required to do in response to a tighter ozone standard,'' said John Kinsman, a senior director at the Edison Electric Institute, an industry trade group.

``Utilities already have made substantial reductions in ozone-related emissions,'' he added.

Parts of the country that have already spent decades and millions of dollars fighting smog and are still struggling to meet existing thresholds questioned what more they could do.

They've already cut pollution from the easier sources, by increasing monitoring and enforcement and requiring car emissions tests.

EPA estimates that meeting the new requirements will cost industry and motorists from $19 billion up to $90 billion a year by 2020. The Bush administration had put the cost of meeting its threshold at $7.6 billion to $8.5 billion a year.

Environmentalists endorsed the new plan. ``If **EPA** follows through, it will mean significantly cleaner air and better health protection,'' said Frank O'Donnell, the

president of the advocacy group Clean Air Watch.

Material from the Washington Post was also used in this report.

Midstate counties, Atlanta unlikely to meet new air quality standard
(*Macon Telegraph*)

Georgia
January 8, 2010 Friday
S. HEATHER DUNCAN; hduncan@macon.com
January 8 2010
Bibb County, plus the part of Monroe County near a major coal-fired power plant, were placed in a “nonattainment zone” in 2004 for failing to meet a less restrictive ozone standard. Area air quality improved enough to lose the designation in 2007.

But Macon is expected to fall back into nonattainment under the new, tougher standard being proposed.

The process of designating these new nonattainment areas was frozen last year while the **EPA** reconsidered the standard.

Macon and Atlanta will almost certainly fail to meet any new standard in the range the **EPA** is considering, said Georgia state air branch chief Jac Capp.

The standard will be based on air quality in 2008 through 2010, Capp said, so much may depend on air quality this summer. Depending on how 2010 goes, Augusta, Columbus and Athens might fall into nonattainment at the 70 parts per million level, Capp said.

If, on the other hand, the **EPA** chooses the toughest standard at 60 parts per million, “every air monitor in the state would be in violation,” including Savannah, Brunswick and other counties.

“These are very tough standards they’re proposing,” said Ray Clark, a governmental affairs consultant for the Middle Georgia Clean Air Coalition. “The thing I think these elected officials do now is redouble their efforts, and they’re going to have to try to engage the entire region, from the faith community to the civic community to homeowners.”

When the first Macon nonattainment zone was created, the **EPA** initially proposed to include Houston County and the state successfully argued against it.

“If Houston County gets tagged, that could be very serious,” said Linda Smyth, community chairperson for the Robins Air Force Base environmental advisory board.

“That could be very serious for any new missions or growth,” and could be a strike against the base during decisions about base closures.

Macon Mayor Robert Reichert, who also serves as chairman of the Middle Georgia Clean Air Coalition, said the Macon area’s three biggest air pollution challenges are nearby power plants, diesel traffic on the interstates and emissions from Norfolk Southern’s Brosnan Yard.

The coalition and the state are negotiating with Norfolk Southern to help purchase cleaner switch engines for Brosnan Yard using grant money. One of Macon’s ozone monitors is next to the major train yard.

Columbia's air too dirty under new rules (*The State*)

(Columbia, South Carolina)
January 8, 2010 Friday
By SAMMY FRETWELL; sfretwell@thestate.com
January 8 2010
South Carolina will have to clean up the smog over Columbia, Greenville and Charleston or face federal sanctions that could affect expanding industries and motorists across the state.

That's the potential impact of stricter new smog rules proposed Thursday by the U.S. Environmental Protection Agency. The EPA in September signaled its intent to tighten smog standards enough to put midsize cities, like Columbia, out of compliance with the rules. On Thursday, it formally unveiled the plan.

Nationally, the tighter standards would cost billions of dollars to put in place, but eventually would save billions in health care costs, according to the **EPA.**

"**EPA** is stepping up to protect Americans from one of the most persistent and widespread pollutants we face," agency administrator Lisa Jackson said. "Smog in the air we breathe poses a very serious health threat, especially to children and individuals suffering from asthma and lung disease. It dirties our air, clouds our cities and drives up our health care costs across the country."

Ground-level ozone, or smog, forms when pollution from cars and factories mixes with heat and sunlight. It forms mostly on steamy summer days. Not only does smog make breathing harder, but it also can kill trees and plant life.

The **EPA** for decades has targeted smog in the nation's biggest cities, but the agency in recent years has focused on tighter rules that affect more cities.

Overall, counties representing most major S.C. metro areas could fall out of compliance

with a new standard for ground level ozone, the key ingredient in smog. In addition to Columbia, that would include the Charleston, Greenville and Aiken metro areas.

The standard proposed Thursday would be in a range of 60 to 70 parts per billion, with the final number to be determined later. The existing standard is 84 parts per billion.

Former President Bush had proposed dropping it to 75 parts per billion, which also could have put the Columbia area out of compliance. But the Bush rules never took effect in the face of criticism that they did not go far enough. A team of scientists called for a range of 60 to 70.

If the tighter rules take effect, industries wanting to locate or expand in areas not meeting the standard face installation of costly new pollution controls. Business leaders have expressed concern about that in jobs-hungry South Carolina.

The rules - which would not take full effect for at least five years - also could force metropolitan areas to better control sprawl, said David Farren, an attorney with the Southern Environmental Law Center. Over time, that will reduce the need for more people to drive long distances to work.

Farren noted, too, that older cars might have to undergo emission tests to make sure they are not pumping too many smog-forming pollutants into the air.

Representatives of the oil and gas industry, who said they already have invested $175 billion toward environmental improvements, were quick to say the proposal lacked "scientific justification," The Associated Press reported.

Laura Varn, a spokeswoman for the state-owned Santee Cooper power company, said her utility would comply with whatever rules become final, but she noted the company is "already doing a lot."

Adam Myrick, a spokesman for the S.C. Department of Health and Environmental Control, said his agency had just received the **EPA** proposal Thursday and that it was too early to make an assessment. But Myrick said DHEC has tried to let people know about the looming new standards.

The Associated Press contributed. Reach Fretwell at (803) 771-8537.

EPA plan a concern in state (*Tulsa World*)

Proposed air standards could lead to development restrictions in 15 counties.
By JIM MYERS World Washington Bureau
Published: 1/8/2010 2:23 AM
Last Modified: 1/8/2010 4:20 AM

WASHINGTON — More than a dozen Oklahoma counties could end up in violation of the Obama administration's newly proposed smog standard, a move designed to help Americans breathe easier and live healthier.

U.S. Sen. Jim Inhofe warned that those counties not in attainment would face restrictions on economic growth and development.

"This is not the time to do that sort of thing," the Oklahoma Republican said, pointing to the economic woes that are worse in other areas of the country. "The Obama administration's proposal, if finalized, will keep unemployment high and put another Washington-based regulation in the way of economic recovery."

In releasing the much-anticipated proposal, the Environmental Protection Agency said many believe that the standards imposed by the Bush administration were not protective enough of human health.

"EPA is stepping up to protect Americans from one of the most persistent and widespread pollutants we face," EPA Administrator Lisa Jackson said. "Smog in the air we breathe poses a very serious health threat, especially to children and individuals suffering from asthma and lung disease. It dirties our air, clouds our cities, and drives up our health care costs across the country."

Jackson said using the best science to take what she called "long-overdue action" would help millions of Americans live healthier lives.

The EPA's proposal sets the primary standard to protect public health at between 0.060 and 0.070 parts per million measured over eight hours.

The Bush standard, set in March 2008, was 0.075 parts per million.

A secondary standard would be set to protect the environment, especially plants and trees.

Inhofe identified Tulsa County as a potential violator of the proposed standard along with Adair, Caddo, Canadian, Cherokee, Cleveland, Creek, Dewey, Kay, Mayes, McClain, Oklahoma, Ottawa, Pittsburg and Sequoyah counties.

Citing the progress at cleaning up the air in the state, Inhofe laid out a plan to work with Oklahoma Gov. Brad Henry and other leading Democrats across the country to persuade the administration at least to delay the proposal.

"We will try to put forth a united front," he said.

Although the proposal might not look all that significant, it should be viewed as a serious change, one that would have a "very detrimental" impact, Inhofe said.

As the senior Republican on the Senate Environment and Public Works Committee, Inhofe is a key player on such issues.

The Governor's Office did not appear to share the senator's concern. Henry did not comment, and his administration staked out what appeared to be a wait-and-see stance.

Paul Sund, the governor's spokesman, said the Governor's Office had not had an opportunity to review the proposal.

"We look forward to discussing the proposal in greater detail," he said.

Skylar McElhaney of the Oklahoma Department of Environmental Quality conceded that the proposed standard would have an impact but added that the DEQ will await a final announcement.

"Specifically what that impact will be is unknown at this time," McElhaney said.

The EPA estimated the cost of applying the proposed standard to be from $19 billion to $90 billion.

Depending on what will become the final standard, the agency stated, the proposal would yield benefits between $13 billion and $100 billion.

It would also help reduce premature deaths, aggravated asthma, bronchitis cases, hospital visits and missed days at work and school because of sickness, the agency said.

The proposal will be published in the Federal Register, and a 60-day period for public comment will follow.

Three hearings on the proposal are scheduled for next month in Texas, Virginia and California.

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ANTHRAX

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Article published Jan 8, 2010

Hunt for anthrax: EPA takes samples from ministry center in Durham (*Foster's Daily Democrat*)

DURHAM — Crews from the Environmental Protection Agency suited up in protective suits and respirators on Thursday and entered the building where a Strafford County woman was exposed to anthrax last month.

While the testing was to focus on the area where a drum circle event was held on Dec. 4, authorities said they would be taking samples from the entire building in an effort to learn as much about this "rare" occurrence as possible.

Mike Nolitinski, the EPA on-site coordinator, said the sample taking includes using a vacuum cleaner device to collect materials and send it away to a lab. Foam swabs are also used to take samples.

"We'll be sampling all day today and hopefully will be out of here by dark," he said.

Nolitinski said results from those samples should be available by mid-next week.

Nolitinski, along with health and town officials, briefed the media late Thursday morning about the testing to the building and took questions about the case.

Officials still aren't releasing any personal information about the Strafford County woman suffering from gastrointestinal anthrax but said she remains in critical condition at a Boston Hospital and is improving, according to Chris Adamski, chief of disease control at the New Hampshire Department of Public Health.

Health officials say the woman swallowed the anthrax spores during a drum circle event at the Waysmeet Center, which houses the United Campus Ministry for UNH.

Adamski estimated that more than half of about 60 people who attended the drum circle have decided to take antibiotics or get vaccinated against the disease. She said the state made that option available to those individuals but say it's unlikely the spores affected them.

"This is a very rare occurrence and we believe that even those at the event are at a low

risk," she said.

Adamski was unable to explain why the spores affected the particular victim but noted that officials are actively investigating.

Health officials say they are confident the spores came off African drums that were used at the event and say the banging and hitting of the drums may have caused an anthrax spore to come off it.

Today's testing could confirm investigators' theory about the manner of exposure or move them into a different direction.

At this point, two of the 64 drums at the event have tested positive for anthrax spores. An electrical outlet in the building also tested positive for the spores. Fifty-two of the 64 drums tested negative, and the remaining 10 drums are still being tested, according to Adamski.

Adamski said studies have shown it takes a high dose of anthrax to cause a person to get critically sick but said it's unknown if that's the case here.

"It's possible we may never know the precise mechanism that caused her illness," she said.

The Rev. Larry Brickner-Wood, who runs the ministry, said the act of drumming can be a very spiritual experience, but acknowledged the trauma from this experience may prevent future drum circles at the ministry.

"It's been a traumatic experience because a young woman is suffering and her family is suffering," he said. "It's something we have to reflect and pray on."

The African drums have been the focus of the investigation because of similar cases involving animal hides used to make the drums.

In 2007, two members of a Connecticut family were treated for skin anthrax traced to the hides. In 2006, a New York dancer and drum maker who collapsed after a performance in Pennsylvania recovered from the first case of naturally occurring inhalation anthrax in the United States since 1976.

According to state public health officials and The National Institute of Allergy and Infectious Diseases, there have been no previous confirmed cases of gastrointestinal anthrax in the United States.

ASBESTOS

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Asbestos in Glenfield (*The Montclair Times*)

Thursday, January 7, 2010
Last updated: Thursday January 7, 2010, 1:48 PM
BY GEORGE WIRT
The Montclair Times
OF THE MONTCLAIR TIMES
Montclair School District officials have closed off an area within Glenfield School this week after a burst pipe damaged some floor tiles containing asbestos.
Schools Superintendent Frank Alvarez said a portion of the boys locker room in the middle school located on Maple Avenue was shut down as a precaution.
"The problem is confined to an area that has been secured by the school administration," Alvarez told the Times. "It will remain off limits to students."
Classes in the gifted and talented, visual and performing arts magnet school were unaffected, according to Dana Sullivan, the district's business administrator.
The school has remained open all week. Students and faculty have kept to their regular schedules.
"Other than the boys not changing for P.E. or dance classes, Glenfield Middle School is operating as normal," Principal Alex Anemone told The Times. "With issues involving student safety and security, we always have to err on the side of caution."
Alvarez said Anemone and his staff moved quickly to isolate the affected area this past Monday, Jan. 4. That's when faculty and students returning after the long Christmas and New Year's holiday break found that a broken heating pipe greeted them with an unexpected mess.
"Over the winter recess, a heating pipe burst in the boys' locker room," Anemone wrote in a letter sent to Glenfield parents. "The corresponding water damage compromised some of the floor tiles. As a precaution, we have not allowed students in that space."
Anemone explained that school officials "tested the tiles for asbestos" and that the tiles "did test positive for asbestos."
As a result, officials said the boys' locker room will remain closed "until further notice."
In addition, Anemone informed parents that school administrators conducted air quality tests in the locker-room area.
"At this time, we do not yet have the results of the air quality tests," Anemone stated in his message. "We will release the findings when they arrive."
Alvarez said the damaged asbestos tiles will be removed as soon as possible.
"I expect remediation work to be conducted this weekend," Alvarez said.
Asbestos is a natural mineral that was widely used in construction and building materials until the 1970s, when its use was restricted by the Consumer Products Safety Commission, citing public health concerns. The U.S. Environmental Protection Agency banned all new use of asbestos in 1989. However, many older public and commercial buildings, including schools, and private homes throughout the nation, still contain asbestos insulation and other products containing asbestos.
The EPA has said that "intact, undisturbed asbestos-containing materials generally do not pose a health risk. These materials may become hazardous and pose increased risk if they are damaged, are disturbed in some manner, or deteriorate over time and release asbestos fibers into building air."

The Asbestos Hazard Emergency Response Act administered by the EPA recommends that asbestos in school buildings be managed "in place." According to the EPA, removal of asbestos-containing materials is not usually necessary unless the material is severely damaged or will be disturbed by a building demolition or renovation project.
In May 2008, an accidental release of asbestos fibers in a second-floor hallway of Renaissance Middle School forced officials to shut down the school for four days while crews conducted a cleanup and carried out an extensive series of air samples.
The asbestos fibers at Renaissance were part of the building's insulation and were disturbed by a work crew that broke into a plaster wall while installing a new fire door in the school building on Munn Street.
The Renaissance School building is owned by the Immaculate Conception Roman Catholic Parish and is leased by the Montclair Board of Education.
With the scheduled opening of the new $35 million Charles Bullock School this September, the Renaissance program will move into Rand School on North Fullerton Street. Rand School is being vacated by its elementary school program, which is relocating into Bullock School.
In his letter, Anemone reassured parents that officials will "test for air quality before allowing the space to be reopened to staff and students."
"As always, safety is our greatest priority," Anemone stated.
Contact George Wirt at wirt@montclairtimes.com.

BROWNFIELDS

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Coalition Pushing Brownfields Reauthorization Despite Limited Appropriations (*Inside EPA*)

1/8/2010
A coalition of developers and local government officials are working with members of Congress to develop legislation for reauthorizing EPA's brownfields program despite EPA's failure to garner appropriations funding at the level of current authorization, a shortcoming that has stymied previous reauthorization attempts.

Representatives from the National Brownfields Coalition, a consortium of local government officials and property development interests, have been meeting with the offices of Rep. Frank Pallone (D-NJ) and Sen. Arlen Specter (D-PA) to draft a reauthorization bill, according to a coalition source. The legislation should be proposed early next year, and the group is "confident" that it will pass both houses by the end of 2010, according to the source.

The coalition has long pushed for increasing the authorized funding for cleaning up and redeveloping brownfields properties above the program's current authorization of $250 million, calling for an initial increase of $100 million and additional annual authorization

increases of $50 million to bring authorized levels to $600 million. But such efforts have faced opposition from some lawmakers because EPA has failed to request appropriations as high as authorized levels and has barely funded more than one-third of the brownfields grant applications it receives. For example, in fiscal year 2010, EPA only requested $100 million for brownfields.

Mayors from communities impacted by the auto industry's restructing are lobbying the Obama administration to double brownfields appropriations in its FY11 budget -- from $100 million to $200 million -- to clean up as many as 160 shuttered automobile industry sites, but that would still fall short of the $250 million authorization level.

But the coalition source says brownfields proponents "are not hearing the appropriations argument" in the 111th Congress due to congressional staffing and committee changes. Pallone, who sits on the House Energy & Commerce Committee, and Specter, who is a member of the Senate Environment & Public Works and Appropriations committees, have both been "receptive" to the group's proposal, the source says.

A spokesman for Pallone says brownfields reauthorization "remains a priority." Specter's office did not respond to calls by press time.

Despite the coalition source's optimism about the prospect of brownfields reauthorization happening next year, a second source tracking brownfields issues says Congress' preoccupation with health care and climate change is overwhelming the committees that would need to act on a reauthorization bill. "Not much will go through at this point," the second source says.

The coalition's proposed legislation -- which would raise brownfields grant ceilings to $1 million and broaden eligibility for petroleum, non-profit and publicly owned sites -- would expand the brownfields program and provide an impetus for increasing appropriation levels, the coalition source says. Moreover, if the bill goes through Congress and "gets a lot of play in the media and from activists" it will help pressure EPA and the administration to make brownfields "a higher budgetary priority," he adds.

The proposal also includes providing liability exemptions to local and state governments attempting to address mothballed sites, but the coalition is "fully prepared" to drop or modify its provisions, the coalition source says. Proponents of the brownfields program have long hailed the redevelopment of contaminated sites as a means to create jobs, increase air quality, prevent urban sprawl and help revitalize communities.

CLIMATE CHANGE / GLOBAL WARMING

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Senate faces climate-change challenge (*Hearst News*)

Web Posted: 01/07/2010 12:00 CST
By Jennifer A. Dlouhy - Hearst News Service
WASHINGTON — It took Democratic leaders weeks of negotiations, deal-cutting and floor debate before they could squeak a broad health care overhaul bill through the Senate last month.

But that was nothing compared to the challenge this spring if those leaders press forward with controversial legislation to combat global warming.

The plan to cap greenhouse gases blamed for the earth's changing climate is complicated by election year politics and fears about exacerbating the nation's economic woes.

It's also hindered by moderate Democrats' wariness about the centerpiece of the leading proposals: so-called cap-and-trade programs that would allow carbon dioxide emitters to comply with steadily tightening greenhouse gas limits either by cutting their emissions or by buying and trading allowances to release the substances.

The leading climate change proposals face deep opposition from Republicans worried about the potential price tag for utilities, manufacturers and consumers.

The proposals also are eyed skeptically by Democrats in coal-producing regions whose home-state industries could be battered by new carbon caps.

Although the House narrowly passed its version of climate change legislation last June, the issue has languished in the Senate, where Majority Leader Harry Reid, D-Nev., has said the issue won't be debated until spring at the earliest — after the chamber deals with a financial regulatory overhaul and a jobs bill.

In the meantime, Sens. John Kerry, D-Mass.; Joe Lieberman, I-Ct.; and Lindsey Graham, R-S.C., are working on a compromise measure designed to attract the crucial 60 votes needed to overcome procedural hurdles and to advance controversial legislation in the Senate.

Because a handful of Democrats — including Sens. Mary Landrieu of Louisiana and Ben Nelson of Nebraska — are unlikely to support a final climate change bill, supporters know they will need to win some Republican votes to prevail.

The three are planning on combining a cap-and-trade plan with expanded offshore oil and gas drilling, new incentives and loans for nuclear power and support for developing so-called “clean coal” technology that can trap carbon dioxide released when the fossil fuel is burned.

Lieberman said the mix of ideas represents “a shared vision about how we get over 60 votes.”

Graham argues the proposals for expanding offshore drilling, boosting nuclear power and capping carbon dioxide are too controversial to pass the Senate on their own. But combined together, they stand a chance of passage.

“We're marrying up concepts that have never been married up before,” Graham said. “The energy bill will never have 60 votes for the nuclear power provisions that I desire. We'll never have offshore drilling standing alone. They'll never get the (House climate change) bill passed standing alone.

“Let's combine concepts of controlling pollution and energy independence,” Graham added. “That's where the votes are at.”

The negotiations have been cheered on by the U.S. Climate Action Partnership, an umbrella group of environmental advocacy groups and businesses — including GE, Dow Chemical and Shell — that backed the House-passed bill.

But some environmental advocates, already concerned about the compromises made to win passage of the House bill, worry the measure will be weakened further in the push for 60 votes.

Industry groups whose members could be hit hard by carbon caps so far have panned the Kerry-Lieberman-Graham outline. Protections for refiners and expanded drilling opportunities, they say, do little to fix a fundamentally flawed approach to capping carbon dioxide.

EPA Faces Legal Hurdle Over Small Business Impacts Of Climate Rules (*Inside EPA*)

1/8/2010
Small business advocates are warning that EPA improperly certified that it need not convene special panels to review the regulatory impact of its climate rules on small businesses, opening the door to new legal attacks against the rules which would test for the first time whether EPA improperly decided not to conduct such panels.

Under the Regulatory Flexibility Act (RFA), EPA and the Occupational Health & Safety Administration (OSHA) must certify that their proposed rules will not harm a substantial number of small businesses or else conduct small business review panels to consider regulatory alternatives that pose less of a burden on small entities. The law holds other agencies to a less stringent requirement that they conduct a “regulatory flexibility analysis.”

For both its proposed rule regulating vehicle greenhouse gases (GHGs) and its "tailoring" rule -- which seeks to exempt most small sources from GHG permit requirements -- EPA certified that it need not conduct the special small business review panels.

But the Small Business Administration's (SBA) Office of Advocacy late last year sent the agency a letter warning that its decision to avoid small business review panels on its proposed vehicle GHG rule and its "tailoring" rule is unlawful.

In its regulatory impact analysis associated with the tailoring rule, EPA says it will exempt as many as 6 million small emissions sources from permit requirements, saving an estimated $54 billion in permit costs. However, the agency did not conduct an assessment of the environmental and human health risks posed by these GHG emissions (*Inside EPA*, Oct. 30).

But the advocacy office charges in its Dec. 23 letter that even though the tailoring rule seeks to exempt many small sources from regulation, there are still at least 1,200 small businesses nationwide that would have to obtain first-time Clean Air Act permits because they emit in excess of the proposed rule's 25,000 ton permit threshold. The advocacy office says this triggers a requirement under section 609(b) of the RFA for the agency to convene a special small business advocacy review (SBAR) panel because the costs of obtaining the permits and associated project delays may exceed 3 percent of annual operating expenditures for the small businesses affected.

"Had EPA thoroughly analyzed the potential reach of the GHG permitting requirements on small entities, it would have learned that the GHG Tailoring Rule will not benefit a substantial number (over 1,200) of small entities," the office says in its letter to EPA.

SBA also says EPA's certification under the vehicle GHG rule is unlawful because the agency did not consider the permitting impacts on stationary sources that result because the vehicle rule, when finalized, will subject all other emission sources to GHG permit requirements under the air act. The vehicle rule "immediately and automatically triggers the regulation of GHGs from stationary sources, including a panoply of small entities," the advocacy office says.

The small business agency calls on EPA to reconsider the GHG endangerment finding, extend the effective date on the GHG vehicle rule and set a higher regulatory threshold of at least 50,000 tons in the tailoring rule.

SBA's comments come in the wake of growing concerns by industry and states that EPA is failing to conduct formal review panels for small business and federalism concerns in their rulemakings (*Inside EPA,* Dec. 11).

While SBA charges that EPA's certification is unlawful, EPA argues that because the proposed tailoring rule will relieve the regulatory burden for a substantial number of facilities, the agency has discretion under the law to avoid a small business review

panel. “We have . . . concluded that this proposed rule would relieve regulatory burden for a substantial number of small entities, and thus I certify that it will not have a significant economic impact on a substantial number of small entities,” Administrator Lisa Jackson said in the proposed tailoring rule.

Although Jackson certified that the rule will not harm small businesses, she nevertheless vows to consult informally with small entities, the White House Office of Management & Budget and SBA to address the potential impact of the permit requirements on small entities. “EPA is not required to consult in this manner when it has certified that a rule will not have a significant economic impact on a substantial number of small entities, but we believe that engaging in such consultation before finalization of this rule will help us to better understand and address the potential [permit] regulatory concerns of small entities that might experience such impacts,” the rule states.

But SBA says the informal small business consultation EPA is proposing is not sufficient. “Such outreach does not typically result in the identification of significant regulatory alternatives, which is one of the primary objectives of the panel process.”

SBA argues that several factors, including EPA’s own regulations, require creation of a formal small business advisory panel. For example, EPA’s relevant guidance features a matrix that shows that when a rule will adversely affect over 1,000 small businesses it should conduct a review panel if any of the small businesses will face costs greater than 3 percent of their annual operating expenses.

An SBA source says the exact question at issue has never been tested in court, but an analogous situation, subject to the same judicial standard of review, has. A 1997 ruling by a federal district court in Virginia found that the National Marine Fisheries Service (NMFS) improperly certified that it needn’t conduct a less intensive regulatory flexibility analysis. In that case, *N.C. Fisheries v. Daley*, the court remanded a NMFS-set fishing quota because the agency did not update its analysis from a year earlier on whether the regulatory flexibility analysis should have been triggered. “That was the first case that everybody goes to,” the SBA source says.

SBA also cites in support a 2007 decision by the U.S. Court of Appeals for the D.C. Circuit, *Aeronautical Repair Station v. Federal Aviation Administration*, which ruled that FAA should have conducted a small business review panel even though its drug and alcohol testing regulation’s only impact on small businesses was on contractors and subcontractors working on behalf of the large businesses actually regulated by the rule.

An EPA spokesman recently said the agency is not required by law to conduct the review panel for the GHG rulemakings, but an agency spokeswoman did not reply to a request for comment on SBA’s criticisms. -- *Jonathan Strong*

Ky. lawmaker introduces resolution questioning climate science (*Greenwire*)

01/07/2010
Questioning the validity of research on climate change, the chairman of the environment committee in the Kentucky House of Representatives has introduced a bill that would ban state and local governments from limiting carbon dioxide emissions.

Democratic Rep. Jim Gooch, who introduced the resolution, said limits on greenhouse gas emissions would cripple Kentucky's coal-dependent economy, adding that the bill would draw publicity and help people in Kentucky "understand what's at stake."

Gooch is vice president of a construction company that works with the coal industry. He has drawn attention in the past for his outspoken criticism of climate science, most notably by inviting global warming skeptics to speak at a state hearing two years ago. He cited the recent release of e-mails stolen from British climate scientists as one reason for introducing the resolution.

"I do not think our scientists understand the science of our planet," he said.

Tom FitzGerald, director of the Kentucky Resources Council, said Gooch is wrong in his criticism of climate change science, though he is right to be concerned about the impact of emissions legislation on the state's economy. FitzGerald said the state would be served better by investing in energy efficiency and renewable energy (James Bruggers, Louisville *Courier-Journal*, Jan. 6). **-- GN**

ENFORCEMENT
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EPA Proposes To Double Enforcement Priorities, Raising Doubts On Focus (*Inside EPA*)

1/8/2010
EPA is proposing to double the number of categories it will prioritize for enforcement over the next few years, raising questions about whether the proposed list is so broad that it will dilute the agency's focus on key needs at a time when the enforcement program has seen a diminution of its enforcement results.

An environmentalist calls the list a "hodgepodge," while raising concerns that Clean Water Act enforcement at power plants is not on the list.

That EPA is proposing to carry over several of its existing priorities indicates the agency recognizes there is still serious, ongoing noncompliance in these areas, adds an

informed source. But having too many priorities is nearly as dangerous as having no priorities, the source says.

Under its current set of priorities for fiscal years 2008-10, EPA is targeting concentrated animal feeding operations (CAFOs), old sewer systems and stormwater runoff in its water program; new source review (NSR) permit violations and toxics in its air program; and financial assurance in its hazardous waste program. EPA says the sector-based approach has yielded big results in emissions reductions, cleanups and improved water treatment systems.

But EPA enforcement data for FY09 shows a major drop of more than $6 billion in injunctive relief compared to FY08 -- the last full year of the Bush administration's enforcement efforts -- and a similarly massive drop of roughly 3 billion pounds of pollution reduced (*see related story*).

The agency's proposed list of priorities for 2011-13, unveiled Jan. 4, carries over many of the existing priorities, including CAFOs; wet weather municipal water infrastructure; NSR permit violations and air toxics; Resource Conservation & Recovery Act (RCRA) financial assurance; and mineral processing. *Relevant documents are available on InsideEPA.com.*

But the agency is also considering adding several new sectors that would double the scope of the agency's enforcement focus, if finalized as proposed, including environmental justice (EJ), which agency officials have previously suggested they would not include as a priority category.

"Making EJ a separate enforcement priority should not diminish the importance of, or take the place of, incorporating EJ concerns in all of the national enforcement priorities," EPA says in a description of the proposed EJ category. Rather, such a focus would signify the Office of Enforcement & Compliance Assistance's (OECA) "commitment to apply enforcement tools as an important means of protecting at-risk communities," the agency says.

In addition to the geographically based EJ priority, the candidate list includes surface impoundments; RCRA corrective action enforcement; resource extraction, including natural gas and mountaintop mining; wetlands; marine debris; pesticides at day care facilities and worker protection standards for pesticides.

Nearly all the proposed sector candidates include using EJ factors to prioritize enforcement in those communities. For example, the plan for enforcing resource extraction activities says, "A growing number of resource extraction activities occur near population centers that include tribal, low income and minority communities. These populations may consequently suffer disparate impacts associated with energy/mining resource extraction activities."

EPA has traditionally targeted industrial sectors for priority enforcement based on evidence of widespread non-compliance that occurs nationally and has a large environmental impact.

But last fall, members of EPA's National Environmental Justice Advisory Council (NEJAC) urged EPA to focus its priorities on EJ communities -- which include low-income and minority populations that are disproportionately impacted by pollution.

OECA's David Hinden appeared to reject the suggestion, arguing it would depart from the usual criteria the agency uses to select enforcement priorities, adding that the agency could focus on geographic areas of concern in addition to separately maintaining its sector-based priorities program. "The national priorities are not the only priorities of EPA. They are not everything, though they do give us our biggest outcomes," Hinden said on a Sept. 24 conference call with NEJAC (*Inside EPA*, Oct. 2).

But in the proposed priorities unveiled Jan. 4, EPA is proposing to have each EPA region identify a disadvantaged community in a geographic area in which EPA would perform targeted enforcement, including targeting of facilities within national priority sectors.

The agency "would address these threats over a defined time frame, using an integrated strategy that makes appropriate use of all of the compliance assurance tools it has at its disposal (inspections, compliance assistance, compliance monitoring, administrative and civil actions)." It would also coordinate enforcement efforts with community involvement, supplemental environmental projects, stewardship and voluntary programs to address issues that can't be effectively met through enforcement alone. Because of the unique issues facing each community, the statutory authorities used and the actions taken will vary from region to region, the agency says.

But the informed source is questioning the utility of a geographically based EJ enforcement priority, saying it is hard to define how such enforcement would work. "It's so diffuse," the source says. "What is the enforcement priority?" Environmental justice is obviously a key issue for Administrator Lisa Jackson, but it should be a priority for everyone at the agency, not just OECA, the source says.

Beyond environmental justice, none of the major industrial sectors targeted for priority enforcement are a surprise. EPA enforcement chief Cynthia Giles previously said the agency was planning to target wetlands and energy extraction (*Inside EPA*, Dec. 5).

Many industry sources expected clean air enforcement to remain a priority given the environmental benefits and monetary penalties gained. Sources also foresaw EPA's plan to target surface impoundments, since the waste storage facilities pose significant environmental risks.

While the agency says it plans to focus on surface impoundments in the chemical, oil and paper sectors, industry sources say it could eventually open the door to

enforcement against coal ash disposal sites at power plants and other industrial facilities -- a top priority for environmentalists. But some sources noted the agency could not include coal ash sites as an enforcement priority until it develops RCRA rules for them -- which are not scheduled for proposal until later this year (*Inside EPA*, Sept. 11).

The environmentalist expresses surprise that the proposed list does not include a greater focus on water act enforcement, noting that CAFOs have been an agency priority for 10 years and that wetlands have also been a previous priority. There are across-the-board program issues and some regulated sources that are undermonitored and underregulated, such as power plants, which are the “most obvious” and a “fairly easy target,” the source says.

“We’re about to bring our third case” alleging water act violations at a power plant, “and if we can find them, I assume EPA could too,” the environmentalist says.

The informed source also questions EPA’s proposal to include pesticides at day care facilities and marine debris on the priorities list, saying the pesticide issue is very narrow, both in terms of the type of facility and the substance.

EPA appears to acknowledge concerns about the pesticide priority, noting that the agency has not conducted sufficient inspections in this sector to identify a pattern of noncompliance, although “anecdotal evidence such as reported pesticides exposure incidents and calls/referrals to state and local health departments suggest that a pattern of noncompliance may exist since pesticides exposures should not be occurring if label directions were properly followed.”

The informed source also says that selection of marine debris is an odd choice because it includes factors like household waste, on which EPA typically does not focus, wet weather issues that already are included as a separate enforcement priority, and vessel discharges, which have just begun to be permitted.

EPA defends its plan to target marine debris, saying it causes numerous ecological, public health and economic impacts. The agency adds that although the problem stretches beyond the set of responsibilities of any individual EPA office, it is well equipped to address the stressors that lead to marine debris, including solid waste, stormwater and combined sewer overflows, and vessels. -- *Lara Beaven*

Latest EPA Enforcement Data Shows Major Decline In Relief, Pollution Cuts (*Inside EPA*)

1/8/2010
EPA’s just-released enforcement data for fiscal year 2009 shows a major drop of more than $6 billion in injunctive relief compared to FY08 -- the last full year of the Bush

administration's enforcement efforts -- and a similarly massive drop of roughly 3 billion pounds of pollution reduced.

While the figures released Dec. 23 are, as expected, significantly lower than the FY08 data, the agency on its Web site says it "continues to vigorously enforce the nation's environmental laws." EPA's press release on the data cautions that the enforcement figures vary significantly from year to year and are dependent upon the number of large cases that settle in a given year. Additionally, EPA notes the data do not reflect the "totality" of annual enforcement activities.

The data show that EPA Office of Enforcement & Compliance Assurance (OECA) efforts netted 580 million pounds of pollution reduced, treated or eliminated, about a 3.3 billion drop from the FY08 number of 3.9 billion pounds. For hazardous waste treated, minimized or disposed, the drop is even larger, from 6.5 billion pounds in FY08 to 780 million pounds in FY09, which ended Sept. 30.

Similarly, contaminated soil to be cleaned up as a result of enforcement dropped from 100 million cubic yards in FY08 to 28.7 million cubic yards in FY09, according to the data.

Investments in pollution control and cleanup, known as injunctive relief, dropped from $11.7 billion in FY08 to $5.3 billion in FY09, a roughly $6.4 billion cut. Some portions of OECA's total civil penalties assessed also dropped, including a decline in administrative penalties from $38.2 million in FY08 to $31.6 million in FY09, and a larger drop in judicial penalties assessed, from $88.4 million in FY08 to $58.5 million in FY09.

However the results do contain some increases in enforcement data, including a jump for investments in environmentally beneficial projects -- a key part of many consent decrees -- from $39 million in FY08 to $41 million in the latest data. EPA's criminal enforcement efforts also brought in $96 million in fines and restitution in FY09, representing a $32.5 million increase over the FY08 figure of $63.5 million. The amount committed by liable parties to clean up Superfund sites also increased from $1.5 billion in FY08 to $1.9 billion in FY08.

Some pollution reduction figures also show an increase, including a significant rise in the amount of contaminated water to be cleaned up, from 255 million cubic yards in FY08 to 431 million cubic yards in FY09.

One Bush EPA official earlier this year said that given the track record on the amount and size of Obama EPA enforcement settlements, it would be difficult for the FY09 figures to match FY08 -- a year when the Bush EPA concluded civil and criminal enforcement actions requiring polluters to spend a record $11.8 billion on pollution controls, cleanup and environmental projects, exceeding the FY07 amount by approximately $800 million.

OECA also reported last year that its FY08 efforts would lead to 3.9 billion pounds of pollution reduced or removed annually from the environment, the highest level since FY99. That estimate exceeds the combined results obtained during FY04-07 by almost 100 million pounds, according to the FY08 year-end report. But almost half of the FY08 reductions were the result of a single EPA enforcement action against American Electric Power for alleged violations at power plants in several states, which led to a settlement saving $32 billion in health costs per year.

While the FY09 numbers show a decline, several sources have said they expect the Obama EPA's future fiscal year enforcement numbers to show an increase due to what they see as a ramping up of OECA's work.

For example, EPA Administrator Lisa Jackson has ordered an overhaul of Clean Water Act enforcement by state and federal officials to ensure better compliance with the water law. And Adam Kushner, director of OECA's civil enforcement office, said earlier this year the agency was seeing "rampant noncompliance" with EPA's new source review emissions control rules, prompting the agency to initiate dozens of enforcement actions against coal-fired power plants and several industrial sectors in 2009 that are still ongoing.

EPA's press release announcing the FY09 data notes that the figures are dependent upon the number of large cases settled in a given year. "While these large cases are a vital part of our work to protect public health and improve compliance, they do not reflect the totality of the annual environmental enforcement activities, and do not capture the number and variety of enforcement actions taken to help clean up local communities," the agency says.

EPA also released a new mapping tool that allows the public to view the locations of facilities that were the subject of enforcement actions, which "will help increase transparency, improve access to data, and provide the public with the bigger picture of enforcement activity occurring in communities around the country."

ENVIRONMENTAL LAWS

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Industry Files Flurry Of New Suits Against EPA, Taking On Activists' Role (*Inside EPA*)

1/8/2010
Industry and free-enterprise groups have filed more than a dozen new lawsuits and petitions against Obama EPA rules over the past eight weeks, a trend that some sources say shows industry under this administration has taken on the role of

environmentalists under the Bush administration in aggressively challenging and delaying agency regulations.

One informed source says industry is in a “visiting team role,” because it does not have the ear of the Obama EPA. “When you are the person on the outside looking in, you don’t have a choice but to litigate,” the source says.

But other sources point out that activists are also challenging some of the Obama administration’s environmental policies and say that it is too early to determine industry’s approach to litigation because the administration may become more stringent as the economy recovers.

A range of industry and limited-government groups have filed at least 14 lawsuits in the last two months against Obama EPA actions, challenging air, water, toxics and waste decisions.

The groups have brought 11 suits against air rules, including air toxics regulations and the high-profile finding that greenhouse gases endanger human health, as well as lawsuits against a water efficiency specification, a Superfind site listing and a rule to limit emissions of climate-warming chemicals. While most of the suits target actions initiated or supported by the Bush administration, the suits challenging EPA’s greenhouse gas endangerment finding and a separate rule staying eased fine particle (PM2.5) requirements allowed by the Bush EPA target actions originated by the Obama administration.

One industry source says the increase in industry litigation under the Obama administration is part of an ongoing cycle in which environmentalists challenge rules under industry-friendly administrations and industry files suits under activist-friendly administrations. “The shoe is on the other foot,” the source says. “It’s par for the course. It doesn’t matter who is in office and it doesn’t matter what the rule is . . . somebody is going to sue,” the source says.

It remains to be seen whether industry will match environmentalists’ success in delaying rules under the Bush administration, the source says. But the Clean Air Act is prescriptive and the courts are likely to overturn Obama EPA rules that push the boundaries of the act, like the agency’s effort to limit GHG regulations to large facilities, just as the courts overturned some Bush administration rules, like its cap-and-trade plan for criteria pollutants from power plants.

A second industry source argues that the increase in lawsuits is just a product of the quantity of rules under the Obama administration, and says the volume of regulations will only increase. “Given the scope and the pace of regulatory action in the Obama EPA I think you would expect to see the number of lawsuits grow. I think it’s an almost unprecedented pace and scope of regulatory action,” the source says.

But one mining industry source says it is too soon to decipher any trend in industry's litigation strategy because the Obama administration may not yet have "shown its hand" in how it plans to regulate. The Obama EPA may actually be holding back right now in regulating industry in an effort to protect jobs and may regulate industry even more aggressively as the economy recovers. "The prospects for increased litigation are there. But it is premature, given the impact of the economy on public policy, to determine the extent of any heightened litigation," the source says.

But the source also notes that Bush administration rules faced suits from both environmentalists and industry and points out that environmentalists are also opposing EPA decisions they say do not go far enough.

In one example of activists challenging Obama EPA rules, Environmental Defense Fund has petitioned the court to review the agency's final GHG reporting rule.

Industry suits against the Obama EPA's rules cover a range of issues, but most center on air pollution.

A coalition of agriculture, mining and energy groups Dec. 23 filed a petition with the U.S. Court of Appeals for the District of Columbia Circuit seeking review of EPA's Dec. 15 finding that GHGs endanger human health, a finding that will trigger regulation of the GHGs under the Clean Air Act. The petition does not include any substantive arguments, but a Dec. 24 press release from one petitioner, National Cattlemen's Beef Association, raises concern about the accuracy of the agency's data. *Relevant documents are available on InsideEPA.com.*

In a related development, the Southeastern Legal Foundation, which advocates for a smaller government, filed a petition with EPA on behalf of nine Republican members of Congress asking the agency to reconsider the finding in light of "climategate," the controversy surrounding the release of thousands of hacked e-mails from the University of East Anglia in Norwich, England, which climate change skeptics say show efforts by scientists to manipulate climate change data.

And the Competitive Enterprise Institute, a libertarian think tank, filed a Dec. 2 petition with EPA amending the group's Oct. 5 filing that sought to delay the finding, arguing that the contents of the climategate e-mails "may well destroy" the agency's justification that greenhouse gases endanger public health and should be regulated under the Clean Air Act. The group has also vowed to file suit over the finding.

Regarding GHG reporting, the American Chemistry Council (ACC), American Petroleum Institute (API), the Fertilizer Institute, and the Energy Recovery Council, a waste-to-energy group, have filed separate petitions with the D.C. Circuit seeking review of the rule. Environmental Defense Fund has also challenged the reporting rule.

The reporting rule petitions also do not include substantive arguments, but industry in the past has raised concern about the breadth of the rule's requirements. For example,

API in June 9 comments argued that EPA does not have legal authority to require ongoing annual reporting as the rule requires. “EPA . . . is over-reaching this authority, which does not authorize it to require the proposed indefinite monitoring, recordkeeping, and reporting from most sectors of the economy regarding emissions with a currently uncertain regulatory status,” the comments said.

Industry is also challenging a number of Obama EPA air quality rules. For example, in late November, the Utility Air Regulatory Group, the National Environmental Development Association’s Clean Air Project and Mirant California LLC filed separate challenges to an EPA final rule regarding fine particles. The rule stayed a controversial Bush-era policy that allows certain “grandfathered” sources to continue to use coarse particulate matter as a surrogate for fine particulates in analyzing the impacts of proposed projects under new source review requirements.

Both aluminum and plywood manufacturers filed December lawsuits in the D.C. circuit challenging long-standing air toxics rules specific to their industries that the Obama EPA says should immediately be subject to a court ruling that barred exemptions from air toxics limits during periods of startup, shutdown and malfunction.

In addition, API is challenging EPA’s air toxics standard for refineries, and ACC is challenging the agency’s air toxics standard for chemical manufacturing area sources in separate Dec. 23 petitions before the D.C. Circuit.

The National Association of Homebuilders filed a petitions with the 5th, 7th and D.C. Circuits to review an EPA rule governing stormwater discharges from the construction industry that included a controversial numeric limit for turbidity, a measure of water clarity.

Solvay Fluroides, a company that manufactures and sells fluorochemical products Dec. 30 filed a petition with the D.C. Circuit to review an EPA rule to phase out the use of hydrochlorofluorocarbons, which are ozone-depleting chemicals with a high global warming potential. Falcon, a manufacturer of water-free urinals, filed a Nov. 23 petition with the D.C. Circuit seeking review of a WaterSense specification for excluding the use of water-free urinals. And U.S. Magnesium LLC Nov. 5 petitioned the D.C. Circuit to review EPA’s listing of the company’s site in Tooele County, UT, on the Superfund list of contaminated sites. -- *Kate Winston*

FUEL

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Groups want more tests on higher-ethanol U.S. fuel (*Reuters*)

4:57pm EST

By Tom Doggett

WASHINGTON (Reuters) - A coalition of oil companies, car and engine manufacturers and fuel sellers told the Obama administration on Thursday not to increase the amount of ethanol blended into gasoline based on inadequate test data.

The Environmental Protection Agency said last month it needs more time to decide on a industry request to boost the level of ethanol in gasoline to 15 percent from 10 percent, but indicated it would likely approve the higher fuel blend for new American cars.

Gasoline approved to have a higher volume of ethanol would help absorb the annual increase in ethanol supplies required by Congress in its attempt to reduce U.S. petroleum imports. The higher blend would help the U.S. ethanol industry, which was hard hit in 2008 by the economic downturn and a drop in crude oil prices to nearly $30 a barrel. Many companies were forced into bankruptcy and some production capacity was also idled.

Crude oil prices have since rebounded to above $80.

The EPA plans to make a final decision on so-called E15 gasoline by mid-June.

"We are writing to express our concern that EPA may decide to allow E15 based on limited or inadequate data," the group said in a letter to agency head Lisa Jackson. "We urge EPA to base its decision on a complete and sound scientific record."

The agency already said it was waiting until this summer, so it can review test data on how a higher ethanol-gasoline ratio would affect engines. [ID:nN01495211] Initial tests showed vehicles built after 2001 would likely be able to handle E15, the agency said.

However, the coalition said the EPA needs to asses the effects of E15 on the existing automobile fleet, motorcycles and nonroad equipment as well as retail gasoline station pumps and storage tanks.

"As you proceed with important decisions that could affect the long-term success of ethanol and possibly other biofuels in the U.S. market, it is imperative that those decisions be based on a complete understanding of the potential impacts of increased levels of ethanol on all segments of the end-user market," the coalition of 14 trade groups said.

It also said the EPA should reopen the E15 comment period so the public can review the new test data and that the Energy Department should spend all the $15 million approved by Congress for research on increasing ethanol-blend levels.

The coalition includes the Alliance of Automobile Manufacturers, American Petroleum Institute, Motorcycle Industry Council, Boat Owners Association of the United States and the National Association of Convenience Stores.

The Renewable Fuels Association, which is the trade group for ethanol producers, says the EPA should go ahead and approve intermediate ethanol blends, such as gasoline with 12 percent ethanol, while the agency completes its testing on E15.

(Reporting by Tom Doggett; Editing by Lisa Shumaker)

Report takes aim at U.S. ethanol policy (*Greenwire*)

Jenny Mandel, E&E reporter

01/07/2010

The federal biofuels policy is expensive, ineffective from an energy security standpoint and environmentally damaging, according to a think tank policy study that urges Congress to revise ethanol targets to more "achievable" levels.

The **study**, published by the James A. Baker III Institute for Public Policy at Rice University, focuses primarily on corn-based ethanol and cites a host of problems with current production models.

Ethanol displaces just 185,000 barrels per day of gasoline, the report argues, compared with average demand of 9 million barrels per day, so it is not effective as a substitute for imported oil.

The authors point out that federal mandates for advanced biofuels made from cellulosic ethanol and non-food crops are not likely to be met for several years, thanks to limits on how much ethanol can be blended into the gasoline supply. The mismatch causes unnecessary uncertainty for refiners, they say.

Furthermore, they argue, the $4 billion spent by the federal government in 2008 to subsidize biofuels production amounts to $1.95 per gallon on top of retail gasoline cost, a considerable burden for taxpayers.

The report also takes aim at the environmental benefits attributed to biofuels, arguing that corn ethanol production will lead to increased farm acreage under production, more fertilizer use resulting in degraded water quality, soil erosion and more water used for irrigation.

The report says four toxic ingredients in gasoline -- benzene, toluene, ethylbenzene and xylenes -- can also accumulate in soil at higher levels from leaks of 85 percent ethanol fuel (E85) than from gasoline or low-ethanol fuel, posing a human health hazard.

Taking aim at import tariffs on sugar-based ethanol, the report says importing ethanol from Latin America could help the United States meet its biofuels goals at lower cost to taxpayers.

The study was funded in part by Chevron Technology Ventures, a part of the oil company that has its own biofuels research program focused largely on second-generation cellulosic ethanol.

The report authors call on Congress to lower the levels and shorten the time frames for ethanol use set out in the Energy Independence and Security Act of 2007 and to limit support for corn-based ethanol.

"There is no consensus on the climate-friendly nature of U.S.-produced corn-based ethanol, and it should not be credited with reducing GHGs when compared to the burning of traditional gasoline," they say.

'Myths ... and half-truths'

Matt Hartwig, director of public affairs for the Renewable Fuels Association, which represents the corn ethanol industry, took issue with many of the report's conclusions.

"Not surprisingly, this oil industry-sponsored analysis relies on myths, generalities [and] half-truths to dismiss ethanol while providing no comparison to our increasingly dangerous and costly addiction to oil," Hartwig said.

Specifically, Hartwig said the report fails to account for animal feed byproducts from ethanol production that reduce the percentage of corn crops devoted to fuel, ignores increasing crop yield trends and erroneously assumes that a large amount of corn is irrigated rather than rain-fed.

He disagreed with the report's assessment that corn ethanol is as emissions-intensive as gasoline, saying that most assessments show benefits from ethanol outside of the controversial question of how the effects from international land-use change should be counted.

Finally, Hartwig said the report's discussion of tariffs ignores policy on the Brazilian side that affects the competitiveness of U.S. ethanol.

"A debate about the appropriate role of biofuels is valid and should occur, but not without proper context," Hartwig said.

HAZARDOUS WASTES

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Activists Push Back On Industry Lobbying Against Strict Coal Ash Rules (*Inside EPA*)

1/8/2010
Environmental groups seeking strict hazardous waste coal ash rules are pushing back against industry lobbying that has succeeded in delaying EPA’s plan to regulate the waste, meeting with top EPA officials and challenging the standard setting organization

ASTM International, which took the unprecedented step last month of warning against a hazardous waste classification.

Groups including the Sierra Club, Environmental Integrity Project (EIP) and Earthjustice at press time were slated to meet with EPA Administrator Lisa Jackson and agency waste chief Mathy Stanislaus Jan. 6 at the agency's request and planned to urge the agency to move forward with a strict hazardous waste regulation under the Resource Conservation & Recovery Act (RCRA).

The groups are especially interested in countering the Dec. 22 letter ASTM sent to Jackson warning that if the agency defines coal waste as hazardous the organization would drop its specification recommending its use as a material in concrete due to liability and public perception concerns -- eliminating a key driver for the beneficial reuse of coal ash (*Inside EPA*, Dec. 25).

Environmentalists have also scheduled a Jan. 8 meeting with ASTM where they hope to discourage the organization from what activists call advocacy and return to its role as a neutral testing body, one source says.

The Dec. 22 ASTM letter was seen by many as a game changer in EPA's effort to develop hybrid rules for the ash. The agency is seeking to designate discarded ash as hazardous subject to strict RCRA waste handling, storage and treatment requirements under subtitle C, while ash that is reused in concrete or elsewhere would be designated as nonhazardous under subtitle D as a way to promote its beneficial reuse.

But ASTM's warning that any hazardous classification would prompt the group to drop the material from its concrete specification effectively drove home industry arguments that a hazardous classification would impose a stigma on beneficial reuse. Industry officials are also arguing that even if the material could be reused, stricter waste management requirements would be cost prohibitive and could force many power plants to shut down, threatening electricity reliability.

However, environmentalists argue in a Dec. 28 letter to Stanislaus that the organization's stance on potential legal liability stemming from a subtitle C designation is inconsistent because coal ash is already considered a "hazardous substance" under Superfund law. "Legal liability attaching to manufacturers or consumers of concrete made with fly ash need not be driven by the EPA's hazardous waste determination if legitimate beneficial uses are exempted from subtitle C classification," the activists' letter states.

They also argue that ASTM already sets specifications for products containing high levels of hazardous substances, such as the high metals levels contained in Portland cement -- a product for which ASTM has set specifications. "Certainly, ASTM would not recommend that Portland cement be removed as a concrete component, despite the legal liability these hazardous constituents pose to transporters and manufacturers," the activists say.

The groups also charge that the ASTM letter was written by individuals connected to the coal waste reuse industry, calling it an unprecedented departure from ASTM's mission of creating consensus standards.

The two signatories to the ASTM letter, Jenny Hitch and Anthony Fiorato "have significant financial interest in the marketing and reuse of coal ash," the environmentalists' letter says. Hitch is marketing director for Full Circle Solutions, which finds commercial markets for coal combustion products, and works for ISG Resources, America's largest marketer of coal combustion products, the letter says. Fiorato runs a for-profit subsidiary of the Portland Cement Association, which opposes a hazardous RCRA classification.

The activists' lobbying is aimed at shoring up support for long-awaited rules to regulate the ash produced by power plants. EPA Administrator Lisa Jackson had vowed that the agency would propose the rules by the end of 2009, partly in response to a massive December 2008 coal ash spill in Tennessee.

But on Dec. 17, days before the first anniversary of the spill, EPA announced that it was delaying the proposal due to the "complexity of the analysis" being conducted. Many sources say EPA is redoing the cost-benefit analysis which found no impact of RCRA rules on the beneficial reuse industry.

Although EPA has delayed issuance of the proposal, the agency may have little choice but to seek some hazardous waste designation, as agency lawyers have found that less stringent solid waste rules would be unenforceable at the federal level and create major permitting uncertainty (*Inside EPA*, Sept. 25).

An EPA spokeswoman said this week that the agency has no set time frame for issuing the proposal.

One EIP source says activists are now seeking to strongly rebut the the ASTM letter and what the source calls misleading claims by the Electric Power Research Institute (EPRI), a research group, that heavy metals in coal ash are similar to levels of the metals in rock, as well as EPRI's claims that as many as 400 power plants would be forced to shut down under hazardous RCRA coal waste rules.

The source says the EPRI comparisons of the arsenic levels in coal ash and rock -- contained in a presentation the group gave to OMB in October -- is a "card trick" because it is not done to scale. But when done at scale, it shows that arsenic in coal ash is 1,000 times higher than in rock, the source says.

Additionally, EPRI's plant shutdown claims are based on assumptions that all coal waste is treated as a high hazard, subject to the strictest waste handling requirements. "It is silly . . . and someone is going to have to write a rebuttal. What a waste of time," the source says, adding, "It is so primitive, but they are counting on people having 30 seconds to think about this issue," the source says. However, the claims are "so

transparently misleading that . . . if that's what we're up against we've really got a lot of work to do. . . . [EPA] should look at [EPRI's] claims and see it for what it is and laugh, basically, not make us write up a rebuttal."

However, an EPRI source says that the presentation does note that arsenic levels in ash are about 10 times higher than in rock, while noting the overall composition of ash is similar to rock, "I think we always tell a fairly complete story but people don't always choose to see [it]," the source says.

The EPRI source adds that the report on plant shutdowns is in the midst of internal review and will not be released for a few months.

Additionally, the EIP source says activists will work to ensure that the ASTM signatories' industry ties are disclosed and also raise substantive issues, such as the fact that Portland cement is itself already a hazardous substance. "This is not a sissy industry. They are moving a product that carries some risk . . . It is a stretch to say [using coal ash even if it is declared hazardous] is not an issue they could manage."

The groups also have a meeting planned with ASTM Jan. 8 where the activists will seek to understand the organization's stance. "They set standards all the time for materials that have components that are hazardous waste. It is incredibly inconsistent for them to turn around and do what they did. We want to hear them out and let them know where we're at, and try to get them to be the neutral body they claim to be. However, our main focus is on EPA and OMB and how they view the letter," a third source says.

ASTM could not be reached for comment at press time.

Meanwhile, industry and environmentalist sources say industry groups have taken their concerns about EPA's planned rule up the chain to President Obama's Chief of Staff Rahm Emanuel in an effort to win his backing of their effort to convince EPA to propose a RCRA rule without including a hazardous classification as its preferred option. One industry source expects EPA to issue the proposal soon and says a menu of options without a preference "is about all they can do at this point. They've been backed into a corner."

The source adds industry groups may also seek a meeting with White House energy and environment czar Carol Browner, who so far has not been publicly involved in the issue but may be integral behind the scenes. However, Browner, who served as EPA head under President Clinton, is not expected to back industry's position, since she supported hazardous waste rules for coal waste back in 2000 but was ultimately overruled, sources say. The industry source says a meeting with Browner would be more about "getting in front of her to explain the potential impacts and wearing her down."

One environmentalist, however, says Browner should be a key player in the White House involvement in the review of the EPA proposal but has been conspicuously

absent. “I want to know where she is. . . . I assume she knows quite a lot about this because of her involvement 10 years ago. We are facing similar issues [now]. Industry has the playbook down and I’m hoping we know better this time.” -- *Dawn Reeves*

MOUNTAINTOP MINING
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Case builds against mining tactic (*Los Angeles Times*)

January 8, 2010 Friday
Home Edition
MAIN NEWS; National Desk; Part A; Pg. 16
THE NATION;
Case builds against mining tactic;
Scientists urge a halt to permits to remove mountaintops to extract coal.

By Tom Hamburger
WASHINGTON
Mountaintop coal mining, which involves blowing up mountain peaks to get access to coal seams below, should be halted immediately because of growing evidence of its environmental and health threats, scientists urged Thursday in the journal Science.

The paper, by a group of hydrologists, ecologists and engineers, presents a new and difficult challenge to the Obama administration, which has upset environmentalists by continuing to approve such permits even as it has promised to rely on scientific expertise in deciding whether to grant permits for the controversial practice.

The **Environmental Protection Agency** recently released a permit for a large mountaintop removal mine in West Virginia, which raised objections from environmental activists.

Coal companies say the practice is more efficient and safer than traditional deep-shaft mining, and that steps are taken to mitigate damage. Environmentalists say it degrades the landscape, destroys habitat and pollutes streams that get filled with debris from explosions.

The issue is politically touchy for President Obama, who won his election with the support of environmentalists but also needs support from voters in coal states, such as Ohio, where he won by a narrow margin.

The authors of the paper urged the **EPA** and U.S. Army Corps of Engineers to reject all new mountaintop mining permits.

"The scientific evidence of the severe environmental and human impacts from mountaintop mining is strong and irrefutable," said lead author Margaret Palmer of the University of Maryland Center for Environmental Science.

The paper, which analyzed findings from previous studies along with new water-quality data from West Virginia, outlined environmental degradation at mining sites and downstream, "including harmful consequences for both aquatic and terrestrial ecosystems."

The authors also described health effects associated with surface mining for coal in the Appalachian region where most of this mining takes place. The problems include elevated death rates, lung cancer and kidney disease in coal-producing communities.

The **EPA** said in a statement Thursday that the article "underscores **EPA's** own scientific analysis regarding the substantial environmental, water and health impacts that result from mountaintop mining operations."

But environmentalists said the **EPA's** efforts to regulate mountaintop mining have been inadequate.

"The permit that the **EPA** just released this week is not consistent with what the scientists are saying," said Joan Mulhern, counsel to Earthjustice, which has taken legal action to halt the practice.

"The Obama administration has pledged in general to . . . do what the science dictates. This unequivocal new study has got to drive them to phase out the practice," Mulhern said.

She and other environmentalists had been mystified and confused by the administration's approach, which blocks some permits but approves others. She said the administration has not responded to requests for clarification.

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Jim Tankersley in the Washington bureau contributed to this report.

Pressure builds against mountaintop coal mining (*Los Angeles Times*)

The Obama administration, which has pledged to heed scientific expertise on the issue, should reject all new mountaintop removal permits, scientists say, citing environmental and health effects.
By Tom Hamburger
January 8, 2010
Reporting from Washington

Mountaintop coal mining, which involves blowing up mountain peaks to get access to coal seams below, should be halted immediately because of growing evidence of its environmental and health threats, scientists urged Thursday in the journal Science.

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Jim Tankersley in the Washington bureau contributed to this report.

Scientists decry impacts of mountaintop coal mining (*Washington Post*)

By David A. Fahrenthold
Washington Post Staff Writer
Thursday, January 7, 2010; 2:00 PM
Mountaintop coal mining -- in which Appalachian peaks are blasted off and stream valleys buried under tons of rubble -- is so destructive that the government should stop giving out new permits to do it, a group of scientists said in a paper released Thursday.

The group, headed by a University of Maryland researcher, did one of the most comprehensive studies to date of the controversial practice, also known as "mountaintop removal."

Afterward, they did something that scientists usually don't: step beyond data-gathering to take a political stand.

"Until somebody can show that the water [that runs off mine sites] can be cleaned up . . . this has got to be stopped," said Margaret Palmer, a professor at the University of Maryland Center for Environmental Science, and the study's lead author.

For now, Palmer said, "there is no evidence that things like this can be fixed."

The group's paper, published in the journal Science, was released in the same week that the U.S. Environmental Protection Agency -- which has been closely scrutinizing these mines -- angered environmentalists by supporting a new mine permit. The EPA said the Hobet 45 mine, in West Virginia, had made changes that would eliminate nearly 50 percent of the environmental impacts, and protect 460 union mining jobs.

Palmer, in a telephone interview, said the group's work did not echo the idea implicit in this EPA decision, that there could be a "good" mountaintop mine, whose environmental consequences were acceptable.

"The science is clearly against that," she said.

Mountaintop mining occurs mainly in West Virginia and Kentucky, though there also are mines in far-Southwest Virginia and in Tennessee. The industry has said these sites are key to the economy of a coal-dependent region, because they allow miners to get at coal seams that are too thin, or too close to the surface, to be reached by tunneling.

Instead, mountains are literally moved to get at the coal.

Their tops are sheared off with heavy machinery and explosives, exposing the coal inside. At some mines, the mountain is rebuilt with rubble after the mining is finished; at others, it is left flat. At most sites, there is still excess rock and dirt, which is typically used in "valley fills," burying a stream valley to its brim.

In Thursday's report, scientists found was that environmental damage extends far beyond the boundaries of the mine. They said that when rainwater falls on a filled valley it filters not through the usual tree roots and topsoil, but through a jumbled mass of rocks from far below the surface.

It emerges, the scientists found, imbued with pollutants it should not have: traces of metals and chemicals called sulfates, which can be toxic to the insects and fish that live in small Appalachian streams. They found no instances in which streams running off mined sites have recovered their old biodiversity -- a blow to the coal industry's contention that these sites, when left alone, will become vibrant again.

"To us, it's like smoking and cancer. It's just so clear-cut" that streams below mine sites are left damaged, Palmer said. She said the study indicated that water quality and life in streams began to suffer when 5 to 10 percent of a watershed was affected by mining. Several watersheds in West Virginia already exceed that number, Palmer said.

The study also found evidence of effects on human health, including water wells contaminated with chemicals from mines and elevated levels of hazardous dust in the air.

Posted on Thu, Jan. 07, 2010

After review of mountaintop mining, scientists urge ending it (*Kansas City Star*)

By RENEE SCHOOF
McClatchy Newspapers

Scientific evidence that mountaintop-removal coal mining destroys streams and threatens human health is so strong the government should stop granting new permits for it, a group of 12 environmental scientists report in Friday's issue of the journal Science.

The consequences of this mining in eastern Kentucky, West Virginia and southwestern Virginia are "pervasive and irreversible," the article finds. Companies are required by law to take steps to reduce the damages, but their efforts don't compensate for lost streams nor do they prevent lasting water pollution, it says.

The article is a summary of recent scientific studies of the consequences of blasting the tops off mountains to obtain coal and dumping the excess rock into streams in valleys. The authors also studied new water-quality data from West Virginia streams and found that mining polluted them, reducing their biological health and diversity.

Surprisingly little attention has been paid to this growing scientific evidence of the damages, they wrote, adding: "Regulators should no longer ignore rigorous science."

New permits shouldn't be granted, they argued, "unless new methods can be subjected to rigorous peer review and shown to remedy these problems."

The Science article cites a number of potential health risks from removing mountaintops and filling in valleys, including contaminated well water, toxic dust and fish that are tainted with the chemical selenium. It also looked at environmental damage to the mining and fill areas and to streams below them.

"The reason we're willing to make a policy recommendation is that the evidence is so clear-cut," said Margaret Palmer of the University of Maryland, the lead author of the Science study and a specialist on the ecology of streams. Palmer has personal ties to Appalachia. Her family is from western North Carolina, and she spent much of her childhood there.

The assessment came days after the Environmental Protection Agency approved a permit under the Clean Water Act for Patriot Coal Corp.'s mountaintop Hobet 45 mine in West Virginia. The EPA reached a deal with Patriot to change the original plans. Instead of burying six miles of streams, the company will bury three. The EPA said that other changes would reduce stream contamination and protect public health.

At the same time, the agency acknowledged the environmental costs.

Mountaintop-removal mining has destroyed roughly 2,040 square miles of land in Appalachia and buried more than 2,000 miles of streams, EPA spokeswoman Enesta Jones said in an e-mail.

In a news release about its approval of the Hobet 45 mine, the EPA said:

"Scientific studies have increasingly identified significant water quality problems below surface coal mining operations that can contaminate surface waters for hundreds of years. Data from coalfield communities also indicate that coal mining is responsible for causing fish kills and contaminating fish and wildlife."

The statement says that the EPA is "committed to use its Clean Water Act regulatory authorities to reduce environmental and water quality impacts associated with surface coal mining."

The EPA's approval of the Hobet 45 mine, announced Tuesday, was the first major mountaintop mining permit the agency has approved from a batch of 79 that it said raised concerns. The mine is expected to employ 460 unionized miners.

Environmental groups condemned the decision and said that even with the changes, the mine would destroy forests and streams.

The 1977 Surface Mining Control and Reclamation Act calls for balancing environmental protection with the nation's need for coal. Half the nation's electricity comes from burning coal. According to the Department of Energy, coal also contributes 36.5 percent of the nation's emissions of carbon dioxide, the main heat-trapping gas that's accumulating in the atmosphere.

Mountaintop mining has increased because it's good for coal companies' bottom line. In a recent commentary, West Virginia Democratic Sen. Robert Byrd, 92, the longest-serving U.S. senator in history, noted that mountaintop removal allows companies to employ fewer miners to produce the same amount of coal.

The scientists' review of other scientific reports and their own new study of state-government data on streams in West Virginia found that chemicals released into the streams from mining dumps harm plants and animals.

Many of the streams had toxic concentrations of selenium. The chemical, which occurs naturally in coal, leaches from it and from the rocks that are dumped into the streams. Fish and birds with high levels of selenium have been found to have reproductive failures. State advisories warn people about eating too much selenium-contaminated fish.

The pollution remains long after the mining ends, the article says. Palmer said that no stream ever had been fully restored.

"The changes in water chemistry have never been shown to be fixable," she said in an interview. She and her co-authors wrote that companies are required to take steps to make up for lost stream habitat and functions but these steps don't work to protect or restore water quality.

The EPA has the authority to veto mining permits and it enforces rules that govern how mountaintop mining is conducted. In 2002, the agency changed a definition of valley fill and in 2008 it changed a rule about a buffer zone around streams. Both changes worked in favor of companies that wanted to fill streams with mining debris. Environmental groups are pressing the Obama administration to reverse the decisions.

ON THE WEB

A guide for all ages by U.S. scientists: "Climate Literacy: The Essential Principles of Climate Science": http://www.climate.noaa.gov/education/

PESTICIDES

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EPA delays Report on Flea and Tick Products That May Harm Pets (*Consumer Affairs.com*)

Pet owners continue to report adverse effects on animals
By Lisa Wade McCormick
ConsumerAffairs.com
Copyright 2009 © All Rights Reserved
January 7, 2010
Pet owners worried about the adverse reactions thousands of animals nationwide have experienced to topical flea and tick products will have to wait a little longer for any action from the Environmental Protection Agency (EPA).

The agency previously told ConsumerAffairs.com that it planned to issue a report last fall about "spot-on" flea and tick products, which pet owners say have triggered "horrific" reactions in their dogs and cats. But according to the EPA, the agency is still reviewing reports and other "complex technical issues" regarding the problem, and will likely not take any action for weeks.

"[The] EPA has been evaluating the data submitted on adverse incidents associated with the spot-on flea and tick pet products and is nearing completion of its review," the agency's spokesman, Dale Kemery, said. "Due to the large amount of data and the complex technical issues associated with the review of the data, our report is not ready for public release."

"We anticipate publicly releasing the document in early 2010," Kemery said. The EPA will post its findings about topical flea and tick products, and any regulatory action it may take, on its Web site.

The report would come nearly a year after the EPA announced it was "intensifying" its scrutiny of topical flea and tick products.

Hundreds of pet owners have written to ConsumerAffairs.com since then, claiming that their dogs and cats suffered burns and welts on the skin, started to drool excessively, shake uncontrollable, whimper in agony, lose control of their legs, or experience other neurological problems after using these products.

The agency decided last April to take a closer look at these EPA-registered-products because of the growing number of reports it had received about adverse reactions.

During an interview with ConsumerAffairs.com last summer, the agency confirmed it had received more than 44,000 reports of harmful reactions associated with the products, including skin irritation, seizures, and even deaths. The EPA also documented the uptick in complaints it received about these products from previous years.

"How can this product still be on shelves?"

The increase in incidents only fuels pet owners' anger over the products remaining on the market.

"I applied Sergeant's Silver Flea & Tick squeeze-on to both of my dogs and within a few minutes they both started scratching, drooling, running around, panting, twitching, vomiting, rolling around," a New Jersey pet owner named Noemi told us. "Their doctor prescribed them medication and it took weeks for it heal. My dog still has a scar on his back that may never go away. He has white fur and all I see is this dark mark on his back to remind me daily of what happened."

"People have been complaining on this site (ConsumerAffairs.com) about this product since 2007," she added. "When is this product going to be removed from the shelves?"

The EPA has told us all options "are on the table," including requiring companies to change their formulas or pulling products off the market.

But a leading veterinary toxicologist and other experts in the field caution the EPA about pulling these products off store shelves. They say an outbreak of fleas and ticks could pose more serious health problems to pets and humans, and that the products pose minimal risks when used as directed.

A 2009 study by the American Society for the Prevention of Cruelty to Animals (ASPCA) found that the majority of illnesses linked to "proper use" of topical flea and tick products were mild. Cats were more susceptible to illnesses and deaths from the "misuse" of these products, according to the study.

"The important take home message is that although adverse reactions can occur with all flea and tick products, most effects are relatively mild and include skin irritation and stomach upset," said Dr. Steven Hansen, ASPCA veterinary toxicologist and Senior Vice President, Animal Health Services. "Pet parents should not discontinue using products as directed by the product label when faced with a flea infestation."

Hansen's words offer little solace to pet owners who say they've seen firsthand the agonizing pain and problems caused by the products. They include Melissa of Hamilton, New Jersey, who worried her two Pugs were going to die after she applied Sergeant's Gold Flea and Tick Squeeze-On on them.

"A few hours after applying the medication to our dogs, both of them began to act completely out of character," she said. "They were both vomiting, foaming at the mouth,

running around and smashing their bodies into fences, furniture, bushes, shaking their heads violently almost as if something was inside their ears."

"We called a 24 hour vet hotline and we were told the dogs were having an allergic reaction," she said, adding chunks of one of the dog's hair later came out. "It took days to get this poison out of their systems."

"Our dogs could have died," she said. "We have a dog missing a huge part of his hair. It is extremely disturbing to look at. I would like this product taken off the shelves. It is poison, and complaints are all over the Internet about it. How can this product still be on shelves?"

Pamela of Marshall, Michigan had a similarly bad experience. "I applied Sergeant's Gold Squeeze-On flea and tick treatment to my dog," she said. "After the tube was applied, he started going crazy and pacing back and forth. I thought the fleas were driving him crazy until he went into a seizure and had non-stop foaming at the mouth, was panting, had huge pupils, was shaking, convulsing, eyes twitching, bloating, and temporarily lost (his) walking ability."

Pamela immediately called the company's emergency hotline. "I was talking to the lady when my dog went into yet another seizure," Pamela recalls. She said, "Get off the phone and call your vet now.'"

Pamela's vet told her to immediately wash her dog, Tyson, with Dawn soap. Tyson's condition had not improved by the time Pamela reached the vet's office.

"He was still shaking and had all the symptoms as before," she said. "His shaking was so bad it took five of us to hold him just to get the needle (with IV and other medications) in his leg."

Tyson is now on the mend, she said, but not fully back to normal. "I have read many other stories on the Internet about this product doing the same thing to other animals, even to the point of them dying," she said. "This needs to be pulled from the shelves before more people have to go through what I and other people already have."

"Horrible and dangerous"

During an interview with ConsumerAffairs.com last summer, the EPA's Kimberly Nesci said her agency was thoroughly examining this issue, and that its probe encompassed reviewing thousands of reports about adverse reactions.

At the time, Nesci said "anything is on the table" with regards to what the agency might do to take action against the products.

ConsumerAffairs.com also contacted several makers of topical flea and tick products for reactions to the EPA's proposed "intensified scrutiny." Hartz CEO Bill Ecker was the only one to respond at the time, saying that he welcomed their efforts.

Ecker also cited a study by Washington State University professor Dr. Charles T. Gaskin which analyzed the EPA's complaints about flea and tick products from 2006 to 2008. Ecker claimed that Gaskin's study revealed Hartz flea and tick products accounted for less then five percent of the adverse reactions reported during the timeframe analyzed.

But the scores of pet owners who continue to write in say they use these flea and tick products as directed -- and their dogs and cats still suffer horrible reactions.

"I put Sergeants Gold flea and tick on my Dachshund," pet owner Kimberly, of Portland, Oregon recently told us. "I used the one for small dogs (9-20 lbs) and just a few hours later my dog started itching and was extremely uncomfortable. He continued to be uncomfortable and couldn't hold still (and) he wouldn't eat or drink. He kept jerking and shaking his head and trying to rub himself on everything."

Her dog's problems persisted throughout the night, even after she gave him a bath. "And now, almost nine hours later, he is still twitching when he is still and he is still so uncomfortable," she said.

“This product is horrible and dangerous," Kimberly added.

POLITICAL

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Senate Backs Remaining EPA Nominees After Agency Agrees To Demands (*Inside EPA*)

1/8/2010

The Senate has confirmed Paul Anastas as President Obama’s nominee to head EPA’s research office after the agency promised to seek an expedited National Academy of Sciences (NAS) review of its risk assessment for formaldehyde, a review that Sen. David Vitter (R-LA) demanded before lifting a hold he had placed on Anastas.

Senators also confirmed Robert Perciasepe as deputy EPA administrator after Sen. George Voinovich (R-OH) released his hold on the nomination when the agency committed to conducting additional economic analysis of cap-and-trade legislation which he has requested for months. Voinovich says he has a commitment from EPA to conduct an economic analysis of cap-and-trade legislation that includes less-optimistic assumptions than previous EPA analyses.

Both nominations -- which have been pending for months -- were approved by voice vote Dec. 24 after senators approved health care reform legislation.

Anastas, known as the “father of green chemistry,” had been blocked as assistant administrator for the Office of Research & Development (ORD) due to concerns from Vitter and industry that the agency was reneging on a pledge by Bush EPA officials for a full-blown NAS review of its risk assessment for formaldehyde. “I’m glad the EPA has finally announced it will move forward with what it had already agreed to do over a year ago -- allow for a independent review by the National Academy of Sciences,” Vitter said in a statement to *Inside EPA*. “Because of the FEMA trailer debacle, Louisianians need the most reliable information possible about formaldehyde risk.”

The pending assessment is significant because it could determine the scope of several pending EPA regulations, including air toxics rules for natural gas turbines and ethanol refining facilities and Toxic Substances Control Act (TSCA) rules for wood products.

But in an undated letter to the Formaldehyde Council, Jackson says such a lengthy NAS review would unnecessarily delay EPA’s effort to complete its long-awaited risk assessment. “The previous administrator asked [NAS] to undertake a study of formaldehyde, but it was very different in scope from the [NAS] review I envision,” Jackson says in the letter, “That study would have involved an exhaustive, ground-up review of all aspects of the scientific literature on formaldehyde exposure and toxicity and taken multiple years to complete.

“I could not support such an open-ended and lengthy study in light of its duplication of considerable analysis of the literature that EPA scientists have already done and the compelling public interest in timely regulatory decision-making based on peer reviewed science,” Jackson wrote.

Such bottom-up NAS reviews can take as long as two years to complete. Instead, Jackson says she will seek an abbreviated NAS review that is expected to take as long as an EPA Science Advisory Board (SAB) peer review. “By initiating an expedited [NAS] review focused on key issues raised by the EPA draft assessment, we will meet the agency’s exacting standards for peer review without delay,” Jackson says in the letter.

Jackson says in the letter that reforms to the Integrated Risk Information System (IRIS) she implemented early in her tenure, which EPA has cited as a reason against pursuing the full NAS study requested by Vitter, nevertheless requires a peer review “for all our IRIS assessments.” *The letter is available on InsideEPA.com.*

“For high profile chemicals raising complex issues,” EPA may conduct the peer review at SAB or NAS, Jackson says. She continues, “The scientific issues raised by formaldehyde are particularly complex and important, and I believe [NAS] would be an appropriate peer review body” for its assessment.

Betsy Natz, executive director of the Formaldehyde Council, an industry group, praised Vitter for his “timely intervention” on the issue. “Overcoming the agency’s intransigence in engaging NAS on formaldehyde would have been impossible without the timely intervention of [Vitter]. In his time in Washington, [Vitter] has acted as a firm advocate in favor of sound science in the development of public policy, consistently resisting the injection of agenda-driven research into environmental regulation.”

Natz says the NAS peer review will bolster “both public safety and scientific integrity.”

Meanwhile, EPA will update its economic analysis for the House-passed Waxman-Markey bill and complete the additional analysis for any Senate cap-and-trade bill before it is debated on the Senate floor under the agreement with Voinovich. “EPA has committed to a specific list of scenarios that will be modeled along with others the next time that EPA undertakes economic computer modeling of a Senate climate bill,” EPA spokeswoman Adora Andy said in a statement to *Inside EPA*.

Voinovich’s spokeswoman said the senator “looks forward to receiving the long-awaited analysis so all can fully [understand] the potential economic implications of climate legislation now before Congress.”

The spokeswoman said EPA agreed to conduct additional analysis Voinovich requested in a Nov. 3 letter to Jackson.

These include no availability of international offsets; much slower development of nuclear power plants, biomass technology and carbon capture sequestration (CCS) technology; and decreased international emission reductions. -- *Jonathan Strong*

TOXICS

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Shop Around: Lexington Dry Cleaners goes green (*The State*)

(Columbia, South Carolina)
January 8, 2010 Friday
Shop Around: Lexington Dry Cleaners goes green
Want to be green while you dry clean? Lexington Dry Cleaners has converted its operations to a liquid silicone product considered less harmful to the environment.

GreenEarth, a silicone-based solution, is safer than the petroleum-based chemical used by most dry cleaners.

"We needed to find a product that we can do the work and not be concerned that we are polluting the environment," owner Tom Garrett said.

The majority of dry cleaners use perchlorethylene, which is heavily regulated by environmental agencies. The U.S. **Environmental Protection Agency** lists it between "probable" and "possible" as a human carcinogen and said it can affect neurological, kidney and liver functions.

Garrett said he learned about Green Earth about 10 years ago at a dry cleaning convention and has slowly been replacing his old machines. A fire several years ago set him back, but he has now fully converted all of his operations to the new product.

Mary Scalco, senior vice president of Laurel, Md.-based Drycleaning and Laundry Institute, said there has been a major push in the past five to 10 years to get dry cleaners to convert to greener cleaning methods. She estimated about 15 percent to 25 percent of dry cleaners nationwide have made a switch, but perc is still the most prevalent solvent used.

While the GreenEarth solution, which is not regulated by the **EPA,** generally is considered a safer alternative to perc, some concerns have been raised about the product. Preliminary tests showed it caused some increased cancer incidents in mice, according to published reports.

GreenEarth disputes those claims, saying the **EPA** does not recognize the product as a potential carcinogen or toxic air contaminant.

Garrett considered other alternatives, but decided GreenEarth was the best product.

The new method "does not quite have the same level of cleaning strength" as perc, he said. But, "it's certainly an acceptable level of cleaning."

The Green Earth method is safe for most materials, he said, including sequins and fur- and leather-trimmed garments - and it doesn't leave an odor.

"The clothes come back smelling clean rather than dry-cleaned," he said.

Lexington Dry Cleaners has 17 stores throughout the Midlands. Garrett said he has not raised prices for the cost of dry cleaning with the new method.

The cost of buying the dry-cleaning machines was not immediately available.

Garrett said he hopes the new method will help his business be a "small part of helping clean up the problems that are happening in our world."

Shop shorts

- A consignment shop for moms-to-be opened this week at 1055-A Sunset Blvd. in West Columbia. Mommy's Place consigns new and gently used maternity clothes and sells

specialty gifts. Info: mommysplaceconsignment.com

- Big Thursday recently opened a new store on U.S. 378 in Lexington in the Target shopping center. The stores sells South Carolina-themed products, collegiate apparel and other clothing and accessories. This is the local chain's fourth store in the Midlands. Info: bigthursday.com

Industry Says EPA Chemical Plans Could Undercut Expansive TSCA Reform (*Inside EPA*)

1/8/2010
Some industry sources are arguing that EPA's just-released chemical "action plans," intended to better regulate chemicals of concern under existing laws, could undercut environmentalists' push for more extensive reform of the Toxic Substances Control Act (TSCA).

Under the plans, unveiled Dec. 30, EPA will use its TSCA authority to regulate phthalates; long-chain perfluorinated chemicals (PFCs); and short-chain chlorinated paraffins, as well as require that new uses of polybrominated diphenyl ethers (PBDEs) be approved by the agency. Action plans for benzidine dyes and pigments and bisphenol-A are currently being developed and could be issued in early 2010, according to an agency spokesperson.

But some industry sources say the plans, if successful, could signal the need for "reform, not revolution" when Congress takes up the issue of TSCA reform. Sen. Frank Launtenberg (D-NJ) is expected to re-introduce a bill early this year that would shift the burden of proof under TSCA to industry to prove chemicals are safe, a change from the current system that requires EPA to prove substances pose an "unreasonable risk" to human health or the environment.

"If these plans, or something like them, are eventually seen as a reasonable method of assessment and control, albeit with accelerated processes or timeframes, they would be less radical than other proposed schemes," according to a summary of the plan from law firm Bergeson & Campbell. "They also indicate that however crippled some may view past TSCA implementation, reform, not revolution, may be sufficient to meet the needs of a modern chemical control law." *Relevant documents are available at InsideEPA.com.*

The plans could also inform the debate on the contentious issue of prioritization of chemicals for regulation, which was the focus of a Nov. 17 House subcommittee hearing on TSCA reform, and help facilitate a stakeholder dialogue long called for by many in industry.

“[I]n selecting these action plans, EPA has both explicit and implicit risk criteria that may help inform the debate about how many of the existing universe of 80,000 chemicals are of possible concern,” the summary says. “The specter of ‘80,000 unregulated chemicals’ provides a different political momentum than ‘100-1000 suspect chemicals’ -- which may help move any eventual discussion of amendments towards the political center and facilitate something resembling a dialogue process as proposed by various players in the current debate.”

In the plans, EPA says it focused on the four initial chemicals because of “multiple factors,” including “chemicals identified as persistent, bioaccumulative, and toxic; high production volume chemicals; chemicals in consumer products; chemicals of particular potential concern for children’s health because of reproductive or developmental toxicity; chemicals subject to review and potential action in international forums; chemicals found in human blood in biomonitoring programs; and chemicals in categories generally identified as being of potential concern in the new chemicals program.”

But the American Chemistry Council (ACC) is expressing “strong concerns” about the EPA program, particularly the plans for plastic hardener phthalates and flame retardant decaBDE. The chemical industry trade groups says in a Dec. 30 statement that the initial set of chemical plans “seem to have been selected based on little more than their current ‘high-profile’ nature.”

The action plans “include references to scientific studies that the agency believes make the case for restrictive action, but the agency should maintain their responsibility to review the weight of evidence for all scientific studies, even those that lead to a different conclusion,” Cal Dooley, ACC president and chief executive officer, said in the statement. “The chemical industry supports modernizing the way chemicals are managed in commerce, but the [action plan] process to date provides no evidence of a systematic, science-based approach to chemicals management. It is vital that this be addressed.”

Environmentalists have so far embraced the plans. In a Jan. 4 blog post, Richard Denison of the Environmental Defense Fund says the EPA program “strikes just the right balance,” and supports the move to: add chemicals to the Toxics Release Inventory (TRI) and the TSCA concern list; pursue significant new use rules (SNURs) for chemicals of concern no longer in production and pre-manufacture notices (PMN) for chemicals in commerce that are not on the TSCA inventory; and accelerate the development of “safer” alternatives to the chemicals. Denison also questions ACC’s concerns about how the chemicals were selected, pointing to the criteria laid out in the EPA plans.

Regarding the EPA actions on phthalates, ACC says that recent biomonitoring information from the Centers for Disease Control & Prevention shows that phthalate levels in people are below the safe level established by the agency. “ACC will need time to study the EPA recommended actions specific to phthalates in greater detail, but we

are encouraged by the Agency's plan to work closely with the other federal regulatory agencies," the statement says, a point also made in the Bergeson & Campbell memo. Both the Food & Drug Administration and the Consumer Products Safety Commission are conducting assessments of phthalates.

Under its action plan for phthalates, EPA says the "cumulative health risks of phthalates should be assessed to determine what actions are warranted to insure protection of children's health," an approach consistent with the recommendations in a key 2008 report from the National Academy of Sciences, according to the plan.

EPA also plans to initiate a 2010 rulemaking to add eight phthalates to the concern list under TSCA section 5 and the TRI, and will consider a 2012 rulemaking under section 6 to regulate the chemicals and a section 5 rulemaking to require makers of di-n-pentyl phthalate, or DnPP, to notify EPA before manufacturing the substance for a new use. EPA also plans to conduct a study of "green chemistry" alternatives to phthalates.

For PFCs, EPA is considering a rulemaking under section 6 to better regulate the substances, as well as evaluate the chemicals' potential risk to children and other sensitive sub-populations. The agency will also continue to support an ongoing program to phaseout perfluorooctanoic acid, or PFOA, by 2015.

For PBDEs, EPA plans to initiate a rulemaking in 2010 to add commercial PBDE mixtures to the concern list under TSCA section 5, as well as issues SNURs for the manufacture or import of articles containing pentaBDE and octaBDE. EPA will continue to support a recently announced voluntary program to phase out use of decaBDE by the end of 2013, conduct an analysis of possible alternatives, and initiate a rule to develop more information on manufacture and use of decaBDE.

For short-chain chlorinated paraffins, EPA will require companies to submit PMNs for short-, medium- and long-chain paraffins in commerce but not on the TSCA inventory, and could initiate further action under section 5 to deal with any potential risks, according to the plans. The agency is also considering action under section 6 to regulate paraffins, as well as evaluating the potential alternatives to the substances. -- *Aaron Lovell*

WATER
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Thursday, January 7, 2010, 5:02pm EST

EPA upholds permit for Cypress Creek Town Center (*Tampa Bay Business Journal*)

The U.S. Environmental Protection Agency will not restrict the development of Cypress Creek Town Center, a million-square-foot mall planned for Wesley Chapel.
The EPA made its Dec. 18 decision following a review of the environmental impact of the center planned for State Road 56 and Interstate 75 at the urging of Congresswoman Kathy Castor.
"I ask you to give every due consideration to suspending this permit and examining the very serious environmental issues at stake," Castor wrote to the EPA in September.
But the EPA's acting regional administrator, A. Stanley Meiburg, said in a letter to Castor that the agency "discussed the permit with the Corps and they have determined no additional modifications are necessary" for compliance with the Clean Water Act.
The Sierra Club continues its legal fight in federal court to overturn the wetlands permit.
The group of environmentalists filed a motion for summary judgment on Monday.
A response by the defendants, including Hi Sierra and the U.S. Army Corps of Engineers, should be filed with the court within two weeks.
If the developer, the Richard E. Jacobs Group of Ohio, is victorious, it's still unclear when construction will restart. It was halted in February of 2008 after the Army Corps suspended the permit following at least two incidents where muddy runoff from the site polluted Cypress Creek, a protected tributary to the Hillsborough River.
The Army Corps determined human error, not design, and heavy rainfall caused the problems.

JANUARY 7, 2010, 11:16 P.M. ET

EPA Gives Shell Preliminary Approval To Drill In Chukchi Sea (*Wall Street Journal*)

By Siobhan Hughes
Of DOW JONES NEWSWIRES

WASHINGTON (Dow Jones)--The U.S. Environmental Protection Agency gave preliminary approval to Royal Dutch Shell (RDSA) to drill exploratory wells off the coast of Alaska, the company said Thursday, one of the last remaining hurdles facing the company's plans to begin drilling this summer.
The company said the EPA's decision to issue a draft air permit will start the clock on a series of events that will determine whether exploration can begin in 2010. The EPA still must finalize the air permit, which is also expected to face legal challenges. The U.S. Interior Department last month approved Shell's plan to drill three exploratory wells.
"While today's announcement is good news, the length of the public comment period combined with likely appeals still pushes the boundaries of our ability to drill in 2010," Shell said in a statement.

"Obviously, the windows in which we have to operate are limited, and a decision to move forward is an extremely expensive one. We will continue to monitor our options in the days ahead as we get closer to making that critical decision."

Shell won the right to drill in the area in 2008, when it spent $2.1 billion on leases to drill in the Chukchi Sea. The Interior Department's Minerals Management Service raised $2.7 billion in total in the auction. It was the biggest award of leases off the coast of Alaska on record, based on the number of leases offered and the area covered, and the first in the Chukchi Sea since 1991.

Environmentalists are likely to be disappointed. Last month, Oceana, an advocacy group, warned about the risk of an oil spill, noise, and other pollution stemming from the industrialization of the waters. The group said that not enough is known about the Chukchi Sea or the potential impacts of drilling.

-By Siobhan Hughes, Dow Jones Newswires; 202-862-6654; Siobhan.Hughes@dowjones.com

EPA Approval Of Mountaintop Mine Sets Precedent For Pending Permits (*Inside EPA*)

1/8/2010
EPA's agreement to approve a Clean Water Act (CWA) permit for a large mountaintop mining project in West Virginia after the agency negotiated a slew of additional site-specific requirements for the mine could form a model for other mining companies to cut similar deals with the agency.

Although the 12-page agreement between Patriot Coal and EPA features dozens of requirements specific to the unique geographic, stream and soil characteristics of the site in question, an EPA source says the agreement nonetheless highlights the principles EPA will seek to achieve in future agreements. *The agreement is available on InsideEPA.com.*

"Our expectation is that solutions like this will have to be specific to the circumstances of each situation. But EPA has been very clear on the nature of concerns that all mining will need to address," the source says, outlining criteria that include "the nature and extent of environmental impacts to streams, wetlands and other waters on the site" and "the cumulative adverse environmental impacts of past, present and reasonably foreseeable future mining assessed on a watershed scale."

The source predicts “we will see some mining companies approach EPA more constructively” now that Patriot Coal has cut its deal, adding that Patriot Coal’s “willingness to work with EPA constructively” to address the environmental impacts of the project is an “important precedent.”

The EPA source cautions, however, that it may be more difficult to reach similar deals for other projects where the environmental impacts are greater, such as Arch Coal’s Spruce No. 1 mine -- one of the largest mountaintop mining projects in history.

EPA announced Jan. 5 it now “supports” a CWA permit for Patriot Coal’s Hobet 45 mine, leaving the Army Corps of Engineers poised to issue the permit. The concessions EPA obtained will roughly cut in half the amount of stream length impacted by the project. The plan also requires rigorous water quality monitoring on the site.

EPA Administrator Lisa Jackson said the approval was an example of the agency’s work “to bring clarity to this process.” Jackson recently met with powerful West Virginia Sen. Robert Byrd (D) who requested EPA provide clear rules for its “enhanced review” of scores of mountaintop mining projects.

In the controversial practice of mountaintop mining, operators blast the tops off of mountains with heavy explosives to get at coal seams underneath. The practice has prompted considerable concern from environmentalists and others because the waste rock is then dumped in so-called valley fills, obliterating streams and harming water quality. Local communities surrounding valley fills have also faced property damage due to the practice.

The Hobet 45 mine agreement has drawn praise from Byrd, who said it creates “a template for how coal operators and regulators can work together.” But other West Virginia lawmakers were more cautious in their assessment. For instance, Rep. Shelley Moore Capito (R) said that while the approval was an “important step forward, it is still critical that all parties continue to seek long-term clarity.”

A mining industry official decried the additional requirements as too costly, while environmentalists blasted the agreement because it would still allow the mine to proceed.

“The Obama administration rings in the new year by allowing coal companies to bury more miles of streams,” Joan Mulhern, senior legislative counsel for Earthjustice, said in a statement. “The administration claims to be making progress on mountaintop removal, but in reality they are still following the flawed policies put in place by the Bush administration.”

In examining proposed mountaintop mining permits, EPA weighs a number of general criteria, the EPA source says. These include “the nature and extent of environmental impacts to streams, wetlands and other waters on the site; the cumulative adverse environmental impacts of past, present and reasonably foreseeable future mining

assessed on a watershed scale; the potential effects of the proposed mining on downstream water quality; the effectiveness of proposed mitigation to compensate for anticipated environmental impacts; [and] the steps being taken to avoid and minimize adverse environmental and water quality impacts."

Some of the concessions EPA achieved for the Hobet mine appear to match the criteria, although the criteria are general and broad. For instance, regarding the impacts to streams and other waters on the site, the additional requirements note how the mine will impact specific streams downstream of the mine -- matching the criteria regarding the extent of impacts on waters on site and downstream. And if monitoring detects conductivity above a numeric level, the company will have to implement more effective mitigation efforts -- regarding the criterion on proposed mitigation.

But the EPA source cautions that it may be more difficult to reach similar deals for other projects where the environmental impacts are greater, such as Arch Coal's Spruce No. 1 mine, for which the agency announced Jan. 5 that is continuing discussions.

"The water quality, environmental, and human health issues [for other mountaintop mines] are very significant -- and we'll need to work hard with companies and the Corps to see significant improvements before additional permits can be issued," the source says.

Reaching an agreement on the Spruce mine may not be achievable like it was for the Hobet 45 mine, the source says. "The extension for Spruce should not be interpreted that we expect the environmental problems associated with this very large mountaintop removal operation can be fixed. We are prepared to work with Arch to see if improvements can be made -- but it will be very difficult to achieve the kinds environmental and water quality results with the Spruce Mine that were achieved with the Hobet 45 mine."

Industry Cites Coal Ash Rule In Bid To Delay Study On Plants' Discharges (*Inside EPA*)

1/8/2010
Power companies are asking EPA to delay its proposed information collection request (ICR) to develop a new Clean Water Act discharge limit for the sector until the agency finalizes its planned rule to impose Resource Conservation & Recovery Act (RCRA) disposal requirements on coal ash.

In Dec. 22 comments on EPA's ICR proposal to update effluent limitations guidelines (ELGs) for the power sector under the water law, American Electric Power (AEP), the nation's largest coal-fired generator, says, "The usefulness of the information requested . . . must be assessed in light of the pending coal combustion byproducts (CCB) rule [because that rule] would have a significant impact on how coal combustion waste

streams are managed. . . . As a result, many of the answers to the questions posed by the proposed questionnaire could become obsolete within a year. EPA should finalize its decisions under the CCB rule before issuing the proposed questionnaire." *Relevant documents are available on InsideEPA.com.*

Additionally, in Dec. 28 comments, Progress Energy "strongly encourages EPA to finalize the [CCB] rule before finalizing and issuing the subsequent questionnaire."

EPA proposed the power plant ICR Oct. 29, an initial step toward revising the ELG for discharges from power plants and their waste impoundments for the first time in nearly 30 years. The proposed ICR seeks information from a broad swath of electricity generators, including coal, natural gas and nuclear fuel users (*Inside EPA*, Oct 30).

"The current regulations, which were last updated in 1982, do not adequately address the pollutants being discharged and have not kept pace with changes that have occurred in the electric power industry over the last three decades," the proposed ICR says, while adding the process to develop a new ELG "will require several years and the first steps to begin this process include an industry questionnaire."

EPA Administrator Lisa Jackson last September announced the agency would pursue a stepped-up timetable to develop the new ELG, rather than the 2012 time frame the agency originally had announced, following receipt of a notice-of-intent-to-sue letter from environmental groups over the agency's failure to update the ELG regularly.

However, the industry comments are urging EPA to delay the information collection until it puts the RCRA coal waste rule in place because that rule could drastically change how power plants manage the waste, including possibly requiring the closure of wet surface impoundments, declaring some forms of the waste as hazardous, and requiring liners and other measures to prevent leaching.

At the same time, the power industry and others are furiously lobbying to kill EPA's plans for a RCRA hazardous classification for the waste, launching a thus-far successful effort to delay EPA's high-profile proposal, which Jackson had vowed to put out before the end of 2009. But EPA Dec. 17 said it would need more time to issue the proposal, and the agency has not announced a new time frame.

The Progress Energy comments note, "While the EPA recently announced a slight delay in the publication, the [coal waste] rule will likely have a significant impact on current management practices for fly ash, bottom ash, [flue gas desulfurization] scrubber solids, etc. When the [coal ash] rule is finalized, perhaps as soon as late 2010, the information [sought in the questionnaire] could be largely obsolete and of little use for the development of revised effluent guidelines for the steam electric industry."

Meanwhile, environmentalists are beginning to fight back against the industry lobbying on the RCRA rule, including meeting with Jackson and waste chief Mathy Stanislaus Jan. 6 *(see related story).*

Activists Push EPA To Require Stringent State CWA Antidegradation Rules (Inside EPA)

1/8/2010
Activists are stepping up efforts to pressure EPA to require states to develop stringent rules to ensure water quality does not worsen because of new regulations and permits, urging the agency to reject so-called antidegradation implementation procedures in Kentucky and petitioning the agency to remove Indiana's Clean Water Act (CWA) delegated authority, in part because of the state's failure to craft such rules.

The move comes as officials in Alaska are developing antidegradation policies to avoid an impending lawsuit that could provide a first-time test of the agency's responsibility to force antidegradation standards in water act permits.

At issue are CWA requirements that regulators maintain the condition of high-quality waters even if they are in better condition than water quality standards require, and that state activities and permits ensure existing uses -- such as fishable and swimable -- are not degraded.

But the water act does not specify how this must be done, and there is relatively little case law on the subject, save for a 2008 ruling in the U.S. Court of Appeals for the 6th Circuit that partially upheld EPA's approval of Kentucky's antidegradation program but remanded portions of the agency's decision to EPA.

Last March, EPA water official Ephraim King said the agency was planning in 2009 to "take a much harder look at [antidegradation] either in the context of guidance or policy or even possibly regulatory changes." But the agency's most recent regulatory agenda does not mention any plans for an antidegradation rule. An EPA spokeswoman did not respond to requests for comment.

Following the 6th Circuit's remand of Kentucky's antidegradation rules, the state made several proposed revisions and submitted them Nov. 13 to EPA for approval. But environmentalists say the new regulation is as flawed as the original.

"Unfortunately, due to political constraints and other countervailing forces that have acted on [Kentucky Division of Water (KDOW)], the resulting work product contains many of the same defects that caused the 2004 rules to be rejected by the Court of Appeals in 2008 and that have been repeatedly identified as problem areas since at least 2001," environmentalists say in Dec. 21 comments to EPA. *Relevant documents are available on InsideEPA.com.*

The activist groups, which include Kentucky Waterways Alliance, Sierra Club Cumberland Chapter, Kentucky Resources Council and Kentuckians for the Commonwealth, say that not only must EPA reject the procedures as submitted, but

urge the agency to “move promptly to promulgate a federal water quality standard for Kentucky addressing antidegradation implementation for” high quality waters.

“EPA could approve these rules, but then we’ll be back in litigation,” an attorney involved in the case says. “But I think these rules so obviously don’t comply with the law that I don’t expect EPA to approve them.”

The CWA’s antidegradation provisions outline three “tiers” of protection. Tier 1 supports existing uses, such as for swimming or fishing. Tier 2 maintains “high quality” waters that are in better condition that water quality standards require. And Tier 3 policy protects outstanding national resource waters, where water quality cannot be changed in the long term.

In environmentalists’ comments, they say that the new procedures fail to meet CWA requirements in a slew of ways, including that “KDOW continues to deny Tier 2 protection to waters that are fully supportive of aquatic life, such as the Ohio River.”

And, the environmentalists say, the state’s “*de minimus* exemption lacks a cumulative cap and is inconsistent with case law disfavoring the use of *de minimus* exemption in situations that are not ‘genuinely *de minimis*’ or of ‘administrative necessity.’” The requirements do not ensure only *de minimus* new pollution, “and there is nothing in the record to show that the general permits will individually and cumulatively only allow *de minimus* new pollution,” the comments say.

Environmentalists also say that Kentucky “failed to provide for adequate public participation in its process for approving [publicly owned treatment works] regional facility plans, [and] the exception for new or increased loadings that have gone through the regional facility process . . . cannot be approved.”

The procedures also exempt transportation plans and municipal separate stormwater system permits, the comments say. “Furthermore,” the comments say, “the application of the antidegradation requirements of the new regulation in recently-reissued coal and construction stormwater general permits reflects how the new regulation violates” the 6th Circuit’s decision.

Meanwhile, environmental groups in Indiana are asking EPA to remove the state’s delegated authority to implement the CWA, saying that, among other shortcomings, the state has failed to adopt antidegradation rules “designed to prevent new or expanded sources of pollution from degrading Indiana’s rivers, lakes and streams.”

EPA Floats Rule Options For Reducing Stormwater From Developed Areas (*Inside EPA*)

1/8/2010

EPA is considering several options for regulating post-construction stormwater runoff, including expanding the area currently covered by municipal stormwater permits, developing national standards for stormwater control similar to those in a recent guidance for federal facilities, and developing a single set of requirements for both large and small municipal stormwater systems.

The agency announced in October its plans to develop the rule in order to address 2008 recommendations from the National Academy of Sciences, which called upon EPA to radically change its approach to stormwater regulation. The rule will “address stormwater discharges from impervious land cover and promote practices that harvest, infiltrate and evapotranspirate stormwater to reduce or prevent it from being discharged, which is critical to reducing the volume and pollutant loading to our nation’s waters,” as NAS recommended, the agency says.

The stand-alone rulemaking serves as an alternative to calls from environmentalists who had previously sought to have EPA address the issue in a recently promulgated rule to limit stormwater from construction sites.

EPA water chief Peter Silva Dec. 17 signed a *Federal Register* notice outlining the options it is considering for the rule and seeking feedback at several upcoming public “listening sessions” on specific types of controls. The notice was published in the *Federal Register* Dec. 28. *Relevant documents are available on InsideEPA.com.*

“To help make permitting more consistent and robust nationally, EPA is considering ways to strengthen the [municipal storm sewer system (MS4)] permit regulations, including establishing specific requirements for stormwater discharges from, at a minimum, new development and redevelopment; expanding the area defined as MS4s to include rapidly developing areas; and devising a single set of consistent regulations for all MS4s,” EPA explains in the *Federal Register* notice announcing the listening sessions and seeking comment.

“In addition, EPA is exploring regulatory options to directly address stormwater discharges from new development and redevelopment, including new and redeveloped sites outside the MS4 boundary, that may be contributing to waterbody impairment, through the designation of an additional category or categories of discharge under CWA section 402(p)(6).”

Developed sites, including subdivisions and commercial shopping centers, can alter the hydrology of a site and harm waterbodies that receive stormwater runoff from the sites, EPA explains in a fact sheet about the rulemaking effort. Many developed areas are contributing to waterbody impairment but are outside of currently regulated areas, the agency says.

Development causes an increase in impervious areas where water cannot infiltrate into the ground, thereby increasing the volume of stormwater runoff. “This additional

stormwater volume, as well as the introduction of pollutants such as fertilizers, sediments and deposition of vehicle emissions contributes to increased stormwater impacts," EPA says.

EPA currently regulates MS4s based on the outlines of U.S. Census-designated urbanized areas. There are 405 such areas based on the 1990 Census; the areas cover 2 percent of U.S. land and contain approximately 63 percent of the nation's population. But stormwater from development just outside these urbanized areas are not covered by EPA's MS4 rules.

"EPA would be interested in views on (1) how to identify the appropriate jurisdictional boundaries for permit coverage, including the township, county, sewer district, or others; (2) how to identify areas that should be covered based on development pressures and to protect water quality; and (3) whether EPA should consider regulating stormwater discharges from particular types or sizes of development that are not covered by an MS4 permit," the *Federal Register* notice says.

A second area of consideration is the possibility of establishing specific requirements and standards to control discharges from development, such as a national requirement for on-site stormwater control, the agency says. "EPA could establish a suite of specific options, such as on-site retention of a specific size storm event in an area, limits on the amount of effective impervious surfaces, use of site-specific calculations to determine predevelopment hydrology, and/or use of regional standards," EPA says.

EPA is specifically seeking comment on whether the standard should be different for discharges from new development versus redevelopment and, if so, how it should differ. "Are there specific circumstances in which (for example) a requirement for new development and redevelopment to maintain pre-development hydrology would not be advisable or would cause other environmental impacts?" the *Federal Register* notice says. EPA also asks how to regulate new and redevelopment outside of the MS4 regulations because the impacts from this development also harms water quality.

The Defense Department and other federal facilities are already required to retain most stormwater on-site under the 2007 energy law, which requires federal agencies to maintain or restore the pre-development hydrology of a site. And environmentalists have hoped the federal facilities standard will influence MS4 permitting. EPA recently issued a guidance to assist federal agencies in meeting the energy law's requirements, providing key flexibilities in ways to reduce runoff and easing some requirements when they are technically infeasible.

A third issue EPA is weighing is whether to develop a single set of requirements for both phase I and phase II MS4s. Both the phase I rule, which applies to MS4s serving populations of 100,000 or more, and the phase II rule, which covers smaller municipalities within urbanized areas, address similar stormwater control issues. But the phase II rule is more prescriptive and includes six minimum measures that must be included in permits. EPA is weighing whether to apply the phase II rule's minimum

measures to all MS4s or whether the agency should add other measures to a revamped MS4 rule.

EPA says it is also considering whether to require MS4s to address stormwater in existing development through retrofitting of the sewer system, drainage area or individual structures with improved stormwater control measures. The agency notes that some states already include in MS4 permits requirements to infiltrate or otherwise retain stormwater in areas of existing development. “In particular, EPA requests comment on requiring MS4s to develop a long-term retrofit implementation plan that is targeted to addressing stormwater problems in urban areas.”

And the agency is weighing whether to include other changes to MS4 regulations, such as requiring buffer zones between development and waterbodies in sensitive areas. -- *Lara Beaven*

States, Industry Call Post-Construction Rule An Illegal Land Use Control (*Inside EPA*)

1/8/2010
State and industry officials say an EPA rulemaking that will govern stormwater runoff from general development and redevelopment is beyond the agency’s Clean Water Act (CWA) authority and amounts to a land use control, not the control of discharges of pollutants, previewing a legal strategy sources say is bound to be used against the rule.

“EPA does not have the legal authority to regulate stormwater discharges from new development as set forth is this proposal without a major revision of the [CWA],” Eric Livingston, program administrator of Florida’s stormwater agency says in Dec. 28 comments.

Critics say EPA’s authority to regulate stormwater is limited to industrial sites and municipal stormwater systems, and that “post-construction” discharges do not fall into either category.

Further, an industry coalition in Dec. 29 comments says EPA’s proposal to expand the definition of municipal stormwater systems requiring permits to include “rapidly developing areas” would violate a key finding in a 2005 ruling from the U.S. Court of Appeals for the 2nd Circuit, which found in the context of CWA regulations for large factory farms that EPA could not require a permit for the potential a farm would discharge, but only for actual discharges.

The Federal Stormwater Association (FSA), which represents the automobile, rail, oil, construction, and recycling sectors, says EPA cannot determine geographic areas violate water quality “based on anticipated future discharges . . . EPA’s proposal to regulate areas that are vulnerable to future development is land use control, not the

control of discharges of pollutants into waters of the U.S." *Relevant documents are available on InsideEPA.com.*

EPA is considering several options for regulating post-construction stormwater runoff, including expanding the geographical area currently covered by municipal stormwater systems; developing national standards for stormwater control similar to those in a recent guidance for federal facilities; and designating new categories of discharges for regulation under CWA section 402(p)(6) (*see related story*).

Under the 1987 revisions to the CWA, EPA was required to study stormwater discharges besides those the CWA was requires regulation for -- industrial and large municipal systems -- and establish a comprehensive program for regulating the new categories of discharges under section 402(p)(6). The agency's initial study resulted in rules for small municipalities in urban areas and some construction sites.

Now, EPA is citing its authority under section 402(p)(6) for potentially creating new categories: "at least" post-construction limits on development and redevelopment, the agency says.

"Under section 402(p)(6), EPA is authorized to designate additional stormwater discharges to be regulated other than those already regulated, and to establish a comprehensive program to regulate them," a Dec. 17 *Federal Register* notice about the post-construction rulemaking says.

But FSA says EPA's authority is only to designate "specific sites" to require a CWA permit for stormwater discharges, not "categories of stormwater sources that may universally impact water quality."

The coalition says even if EPA could designate post-construction discharges as a category impacting water quality, the agency "has not yet designated post-construction stormwater discharges as requiring permits or provided any information or justification for any such finding."

However, EPA in its Dec. 17 notice cites a 2008 study by the National Academy of Science's National Research Council (NRC) that comprehensively reviewed EPA's stormwater program. "EPA shares the NRC committee's perspective that it is imperative that the stormwater regulations be as effective as possible in protecting water quality," EPA says.

Livingston, of Florida's stormwater agency, also criticizes EPA's push for post-construction limits, saying the agency does not posses the expertise to regulate stormwater across the entire nation because the circumstances of stormwater discharges vary so widely.

"EPA does not have the experience, technical knowledge, nor expertise to lead this effort. . . [S]uch expertise rests with the 10 to 12 states that have established

comprehensive statewide stormwater treatment regulations and by local governments which have done likewise," Livingston says.

In contrast, EPA cites the NRC study's criticism of the "inconsistency" in stormwater requirements across the nation.

Livingston suggests EPA prod states without comprehensive state stormwater programs to create them through its authority under section 319 of the CWA, under which EPA approves state plans to protect water quality from nonpoint sources of pollution.

EPA asks N.J. not to adopt sewer bill (*Greenwire*)

01/07/2010
The U.S. EPA urged the New Jersey Legislature on Tuesday to scuttle efforts to restrict the extension of new sewer lines and septic systems into environmentally sensitive areas.

Regional EPA Administrator Judith Enck asked Assembly Speaker Joseph Roberts and Senate President Richard Codey to throw out a bill that would further delay until 2011 or beyond the adoption of rules passed in July 2008. The rules were originally supposed to take effect last June, but the DEP gave counties an extension until April.

The EPA has already given New Jersey $1.6 million to help it comply with the water-quality rules, but state legislators argue that New Jersey's 21 counties need more time so engineers can finish compiling maps on existing and proposed sewer and septic systems. Only one county has managed to complete the project to date.

"Extending time frames for water quality planning is troubling. To the extent that this does that, EPA would have serious concerns and therefore would urge that this bill not be adopted," Enck said in her letter.

Jeff Tittel of the Sierra Club says most of the counties could comply with the standards by March. "This bill is not about more time. It's about killing the rules, blocking the DEP from pulling back a sewer service area and continuing sprawl," he said (Brian T. Murray, Newark *Star-Ledger*, Jan 6). **– DFM**

Coal dust, chunks polluting tourist spot by Alaska bay, lawsuit charges (*Greenwire*)

01/07/2010

A lawsuit filed by two environmental groups last week charges that Resurrection Bay is being polluted by coal dust and chunks of coal coming from 90,000-ton stockpiles waiting to be exported from Alaska.

The groups are asking the court to force Alaska Railroad and Aurora Energy Services in Seward to stop polluting or get a permit for its operations. The suit also seeks civil damages for the violation of the federal Clean Water Act.

The railroad company says it has spent more than $1 million improving its facility with measures such as sealing openings that could leak dust and installing a new transfer chute to minimize accidental spillage. Austin Williams, a lawyer with Trustees for Alaska, says residents of this tourist town still see chunks of coal fall from the conveyor belt when the coal is loaded onto ships.

The loading and storage facilities were built more than a quarter-century ago and have been under the ownership of Alaska Railroad for the past three years.

"In the three years that we have controlled the property, the Alaska Railroad and Aurora Energy Services LLC have made extensive capital and operational improvements," railroad executive Wendy Lindskoog said (Mary Pemberton, *Los Angeles Times*/AP, Jan. 6). **– DFM**

Vt. Yankee Well Tests Shows Radioactive Isotope (*Associated Press*)

Story also appeared: *ABC News, Boston Globe*

Vermont Yankee groundwater well tests positive for radioactive isotope for the first time
By DAVE GRAM
The Associated Press
MONTPELIER, Vt.
A small amount of radioactive material was found in a test of groundwater wells at the Vermont Yankee nuclear facility, the plant confirmed Thursday.
The problem at the 38-year-old reactor is similar to those cropping up at nuclear plants around the country, with the discovery of a radioactive isotope called tritium in a monitoring well.
Vermont Yankee spokesman Robert Williams said Thursday the plant confirmed a report provided a day earlier by an independent testing laboratory hired to check samples from 32 groundwater monitoring wells on the site.
Williams said it was the first time a groundwater sample at the plant had tested positive for tritium.
Both Williams and William Irwin, radiological health chief for the Vermont Department of Health, said there was no threat to the public health and safety from the level of tritium reported. They said the 17,000 picocuries of radioactivity per liter of water measured at

Vermont Yankee was 3,000 less than the 20,000 picocurie safety limit set for drinking water by the federal Environmental Protection Agency.
But Arnold Gundersen, a former nuclear industry engineer who has consulted with the Legislature on issues related to Vermont Yankee, on Thursday called the discovery of tritium on the plant site "a big deal."
"It's a sign that there's a pipe or a tank leaking somewhere" at the plant, Gundersen said. "It's highly unlikely that the highest concentration in the ground would happen to be at the monitoring well," he added.
Irwin said, "A sample is just a sample. It does not give a complete picture."
Irwin and Williams said Vermont Yankee staff will be working to find the source of the tritium leak.
The tritium monitoring program was begun in 2007 after the isotope began turning up at nuclear plants in the Midwest and at the Indian Point nuclear station on the Hudson River in New York state.
Williams said the wells were being checked for tritium every three months and that the checks would increase with the present investigation.
Also Thursday, Williams said plant officials were monitoring the oil level in a pump used to control the power level in the reactor, which had dropped low enough to set off an alarm that Gundersen likened to a dashboard warning light.
The problems cropped up as debate heated up in Montpelier over whether Vermont Yankee should be given a 20-year extension on its license, currently set to expire in 2012, when it reaches the 40-year mark.
The Vermont Legislature is the only one in the country given authority under state law to vote on whether a nuclear license extension should be granted. The question also goes before the state Public Service Board and federal Nuclear Regulatory Commission.
Vermont law requires that lawmakers make their decision before the state board does.
In his State of the State address on Tuesday, Gov. Jim Douglas urged lawmakers to support the license extension, which would then leave the question up to the other regulatory bodies.

Mercury warning needed (*The Herald*)

Rock Hill, S.C.
January 8, 2010 Friday
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Mercury warning needed;
our view
South Carolinians might want to limit their consumption of freshwater bass — even if the state is reluctant to sound that warning.

The S.C. Department of Health and Environmental Control does warn people not to eat large amounts of certain fish in more than 60 lakes and rivers in the state, such as the Congaree and Saluda. But the agency is reluctant to extend the advisories statewide without more data to verify a problem at many other waterways.

In fact, the DHEC fish advisory states that it is safe to eat “as much fish as you would like” from at least 34 lakes and rivers, including the Catawba River.

We understand that DHEC officials don't want to overstate the danger of eating contaminated fish or create a panic. Nonetheless, evidence suggests that enough fish in state lakes and rivers contain elevated amounts of mercury to warrant a statewide warning.

Mercury is a significant threat to people who regularly eat fish tainted with the metal. Mercury poisoning can cause severe damage to the brain and kidneys.

It is especially threatening to fetuses. Pregnant women who eat large amounts of certain fish can create high levels of mercury in the bloodstreams of their unborn babies, which can result in learning disabilities.

The larger the fish, the greater the hazard. Predatory fish at the top of the food chain ingest smaller fish containing mercury, and the mercury builds up in the tissue of the larger fish.

Big oceanic predators such as swordfish, albacore tuna and sharks usually contain dangerous amounts of mercury. In freshwater lakes and rivers, older, larger bass often are the top predators.

DHEC surveys found elevated mercury levels in fish at about half the lakes tested. While officials say levels at some lakes are not consistently high enough to warrant health advisories, mercury has tainted some of the biggest and oldest predatory fish.

The **Environmental Protection Agency** lists 38 states, including North Carolina, that have some form of statewide advisory on fish consumption. It seems a statewide warning, if only for largemouth bass, is in order for South Carolina.

A warning is just that — not a ban against eating fish caught in South Carolina waterways. But a warning gives people the chance to assess the risk of eating big lake fish and to make an educated decision.

It's better to err on the side of caution than to give the impression that there is no hazard in eating all the freshwater fish you want.

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