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ADMINISTRATOR JACKSON

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EPA chief recognizes Ohio for stimulus work (*Columbus Dispatch*)

Thursday, February 18, 2010 11:44 PM
By Mark Niquette
THE COLUMBUS DISPATCH

The head of the U.S. Environmental Protection Agency traveled to Columbus today to recognize Ohio for having the most "clean-water infrastructure" projects funded by federal stimulus money of any state in the nation.

The visit by Administrator Lisa Jackson was one of many events that President Barack Obama's administration is holding across the nation this week to tout the benefits of the stimulus package on the one-year anniversary of its enactment.

Ohio received $220.6 million in stimulus money for sewers and other water-pollution control projects - the fifth most of any state. But Ohio had by far the largest number of projects, with 274 in 187 communities statewide, officials said.

The state also funded 62 drinking-water projects with $58.5 million in stimulus dollars, including $5 million for a new drinking-water system for Buckeye Lake.

Officials said many of the projects would not be going forward without the stimulus funding, and that combined they are responsible for nearly 750 jobs that otherwise wouldn't be in place.

"I have heard again and again that we have to choose between a strong environment and a strong economy," Jackson said. "(The stimulus bill), your work here in Ohio, is proof that that remains a false choice."

Ohio EPA Director Chris Korleski said officials decided to spread funding around the state to help as many communities as possible rather than concentrate money in fewer, larger-scale projects.

Republicans and other critics say the $787 billion stimulus has not achieved its intended purpose of sparking lasting job creation and economic recovery.

Jackson said the combination of tax cuts, funding for state and local governments to prevent layoffs and other cuts, and focused spending helped spur economic growth from the brink of another depression last year.

mniquette@dispatch.com

EPA Adminstrator Touts Stimulus, Water Projects in Ohio (*Tonic*)

By David Bois | Thursday, February 18, 2010 2:42 PM ET

Water infrastructure is a big part of the stimulus bill enacted one year ago, and EPA Administrator Lisa P. Jackson visits Ohio to review the positive impact of public spending on clean, safe water.

This week marks the one year anniversary of the enactment of the American Recovery and Reinvestment Act of 2009, less formally referred to as the stimulus bill. A $787 billion package of tax cuts, benefits extensions, and direct spending, the financial package was enacted in the hope of putting the power of the federal financial purse to work in jump-starting economic activity at a time when nearly everyone had come to feel the pinch of the economic slowdown.

Contained in the overall bill is a line item of more than $7 billion specifically dedicated to the development and improvement of wastewater and drinking water infrastructure, and according to an EPA press release, the state of Ohio leads the nation in stimulus-funded water infrastructure project work underway. In recognition of Ohio's improvements to their water infrastructure, EPA administrator Lisa P. Jackson paid a visit to the state capitol of Columbus where she was joined by Ohio first lady Frances Strickland.

At the press conference, Jackson pointed out that:

“The recovery act has pulled our nation back from the worst economic crisis in generations and provided real relief for families and small businesses. EPA’s investments in green jobs and clean communities are growing our economy and building a new foundation for prosperity. We’re putting people to work and creating cleaner, healthier environments that are better places to buy a home or set up a business.”

Jackson cites findings that the water infrastructure spending has created or saved nearly 7,000 jobs. The overall result of the stimulus package for Ohio has been nearly 80,000 jobs saved or created, with tax cuts going to 4.5 million Ohio families. As reported by The Examiner, the employment effect on a national level has been the saving or creation of 2 million jobs.

Spalding sworn in as regional EPA chief (*Providence Journal*)

Thursday, February 18, 2010

By Peter B. Lord
Journal Environment Writer
The Providence Journal / Bob Breidenbach
PROVIDENCE — Environmental leaders in Rhode Island were treated Wednesday morning to something they have never seen before — one of their own sworn in as the regional administrator of the U.S. Environmental Protection Agency in New England. H. Curtis Spalding is now the top environmental regulator in the Northeast.

Spalding served at Save The Bay, the state's biggest environmental advocacy group, for 18 years before being tapped by President Obama for the EPA post.

For his swearing-in, he chose the newly opened Providence Career and Technical Academy because it was built to green building standards and it prepares students for green careers — both major goals, he said, for Mr. Obama and EPA Administrator Lisa Jackson.

Spalding said privately his first choice was the Save The Bay headquarters in Providence that was built to a vast array of green specifications while he was the group's director. But he said he was advised that federal ethics rules require a firm line between his old job and his new one.

U.S. Sen. Jack Reed administered the oath of office to Spalding. At his side were his wife, Patrice, and children, Hannah and Henry. Behind him stood his parents, Joseph and Susan Spalding.

In the audience, as Sen. Sheldon Whitehouse put it, was "everybody who is anybody" in Rhode Island's environmental community.

Among the crowd were former Save The Bay Executive Director Trudy Coxe; W. Michael Sullivan, director of the state Department of Environmental Management; Grover Fugate, executive director of the Coastal Resources Management Council; former Attorney General James O'Neill; and Jan Reitsma, executive director of the John H. Chafee Blackstone River Valley National Heritage Corridor

Congratulations were offered by Providence Mayor David N. Cicilline, Reed, Whitehouse, U.S. Rep. James R. Langevin, Lt. Gov. Elizabeth H. Roberts and Ira Leighton, the EPA's deputy regional administrator.

Reed credited Spalding with playing a key role in getting the big Providence River dredge project done.

Whitehouse said, "Curt knows the ropes as much as anyone. He knows the environmental community. He knows the law."

And he said that while Spalding is a good negotiator, he also knows his first priority is "protecting the public."

Spalding said he was excited to be part of the Obama administration's efforts to create a green economy. Later in the day, he took part in an event celebrating the fact that all $45 million given to Rhode Island in federal stimulus money for water and sewer work is now under contract, on the one year anniversary of the legislation that created the stimulus program.

Spalding, 50, started his career as an intern at the EPA and said he dreamed of one day becoming administrator. He has a bachelor's degree from Hobart College and a master's degree in public administration from the State University of New York.

He joined Save The Bay in 1988 and became director a few years later. He has been credited with helping grow the organization into the largest environmental advocacy group in New England and building the $7-million education center.

laboratory. Spalding now takes the train with her each day to Region One headquarters in Boston.

California's rules could hurt S.D. ethanol market (*Farm Forum*)

Published: Feb 18, 2010 1:39 pm
BY ELISSA DICKEY
Special to the Farm Forum

Fuel standards on the West Coast could be harmful to Midwest corn ethanol, officials say.

California's low-carbon fuels standards, a set of regulations aimed at combating global warming, were officially approved last month. Nationally, the standards have sparked at least one lawsuit. Regionally, officials in South Dakota and Nebraska said it could cause California to stop using Midwest corn ethanol.

But Midwest corn ethanol also got a recent boost from Washington: The Obama administration this month announced plans to increase the use of biofuels — including more ethanol from corn — and speed up work on a plan to capture carbon dioxide from coal, now the biggest source of global warming pollution.

The news from California is both good and bad, said Kristin Brekke, communications director for the Sioux Falls-based American Coalition for Ethanol.

"The good news is that after many years of using only a 5.7 percent blend of ethanol, California is now transitioning to using E10 like other states," Brekke said in an e-mail to the American News. "The bad news is that the state's low-carbon fuel standard may in the future prevent corn-based ethanol from being used in what is now its largest market."

According to the release, the notion that corn ethanol is not a low-carbon fuel comes from the idea that corn ethanol production in the United States causes land to be tilled in other parts of the world, releasing carbon that is then assigned to U.S. corn ethanol. This so-called indirect land use makes Midwest corn ethanol less desirable to California, based on the state's low-carbon fuels standards.

The Nebraska Corn Board estimates that 27 percent of Nebraska's ethanol, with a value approaching $1 billion, goes directly to California's fuel market, according to a news release.

"What California has done is over-think its goal to use low-carbon fuels and in the process rely on improper models filled with outdated data, and include a theory on indirect land use change," said Jon Holzfaster, Nebraska Corn Board farmer director from Paxton and chairman of the National Corn Growers Association's Ethanol Committee, in the release. "The result will be that Nebraska corn ethanol, and most all ethanol produced in the United States, will be shut out of an important domestic market. The economic impact will be negative for Nebraska's ethanol industry, rural communities and farmers."

Eleven states in the Northeast have essentially copied California's standards, and others might do the same, according to the release.

"This is quite unscientific, yet people have been led to believe it is true," said Kelly Brunkhorst, director of research for the Nebraska Corn Board, in the release. "At the same time we're looking at record U.S. corn crops being produced on fewer acres. The whole land use idea is out of sync with reality. It's just a theory, and a bad one at that."

Brekke said California consumes almost 1 billion gallons of ethanol annually — much of which is produced in the Midwest.

"South Dakota ethanol plants, like those in neighboring states that also ship ethanol to California, would be unfairly locked out of this important market if the low-carbon fuel standard is allowed to be set into motion with those unfair and unscientific land-use penalties in place," Brekke said.

Lisa Richardson, executive director of the South Dakota Corn Growers Association, said no other fuel has an international indirect land use component.

"We get blamed for what other countries are doing," Richardson said.

If California and other states want to implement low-carbon standards, they need to make sure they are based on sound science, Richardson said.

Brunkhorst said the lowest carbon fuel on the market — which will approach 12 billion gallons in 2010 — is corn ethanol.

"There is no other viable option available on that scale now, nor will there be next year or the year after that," she said in the release.

Obama administration officials said their new plans were based on sound scientific research that now gives a green light for coal-based electricity and corn-based fuel.

President Barack Obama told a bipartisan group of governors — including South Dakota Gov. Mike Rounds — earlier this month he was following a "non-ideological approach" to energy that included clean energy and efficiency, but also offshore drilling for oil and gas, new nuclear power plants and new technology that would allow for continued use of coal without emissions of heat-trapping gases.

Last summer, Basin Electric put its plans for a large coal-fired power plant near Selby on hold; officials said regulatory uncertainty on carbon emissions and renewable and energy-efficiency standards were among their reasons.

Part of the Washington announcement was a new rule by the Environmental Protection Agency on standards for renewable fuels. Under a 2007 energy law, the nation was to have 36 billion gallons of renewable fuels by 2022, including 21 billion gallons from "advanced biofuels." EPA Administrator Lisa P. Jackson said new scientific studies

concluded corn ethanol, when produced with energy-efficient means, could have 20 percent lower greenhouse gas emissions than gasoline.

Members of South Dakota's congressional delegation issued mixed responses earlier this month.

U.S. Sen. Tim Johnson, D-S.D., applauded the EPA's decision: "Implementing the RFS is not only good for America's energy independence, it also creates jobs and kickstarts our economy," Johnson said in a release.

U.S. Sen. John Thune, R-S.D., said the government agency's final rule includes flawed indirect land use models in an attempt to discredit the positive environmental impacts of domestically produced corn-based ethanol.

"EPA is penalizing domestic ethanol production by insisting on quantifying international indirect land use changes that may be associated with ethanol production," Thune said in a news release.

U.S. Rep. Stephanie Herseth Sandlin, D-S.D., said, "The release of the final rule on the new Renewable Fuels Standard today is a mixed bag. While it appropriately includes ethanol and biodiesel as effective and necessary fuels to meet the RFS targets, unfortunately it also includes irresponsible international indirect land use calculations."

February 18, 2010

Business Insider: Lawmakers love their Prius (*Detroit News*)

THE DETROIT NEWS

The vaunted Toyota Prius is everywhere in Washington.

EPA Administrator Lisa Jackson owns a 2008 Prius and National Highway Traffic Safety Administration chief David Strickland owns a "very babied" 2005 Prius.

One of Toyota's harshest critics, Rep. Darrell Issa, R-Calif., ranking member of House Oversight and Government Reform Committee, owns four Prius cars. Sen. John McCain, R-Ariz., bought a Prius for his daughter.

Many other senators drive the Prius, including Richard Lugar, R-Ind.

In happier times for Toyota, before the negative headlines of recalls and other issues, the company touted one of its famous owners -- even for breaking the law. Former Vice President Al Gore's son was arrested in July 2007 on drug charges after getting stopped going more than 100 mph in his blue Prius.

Perhaps his car's accelerator was stuck.

Perry challenges EPA ruling on unhealthy gasses (*Daily Texan*)

By Chris Thomas
Daily Texan Staff
Published: Thursday, February 18, 2010
Updated: Thursday, February 18, 2010
The state of Texas filed a petition with the U.S. Court of Appeals on Tuesday, challenging the Environmental Protection Agency's findings that greenhouse gases in the state are a threat to public health.

In the agency's endangerment findings, published Dec. 7, EPA Administrator Lisa P. Jackson concluded that "the current and projected concentrations of the six key well-mixed greenhouse gases — carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride — in the atmosphere threaten the public health and welfare of current and future generations."

Gov. Rick Perry filed the suit with the help of Attorney General Greg Abbott and Texas Agricultural Commissioner Todd Staples. Perry said the EPA is making generalizations and scaring the public.

"Today, the state of Texas is taking its challenge to the EPA," Perry said in a press conference held Tuesday. "This misguided plan paints a big target on the backs of Texas energy producers and the nearly 200,000 Texans that they employ."

Greenhouse gases were formally recognized as harmful to human health in the 2007 Supreme Court case Massachusetts v. EPA. In the case, the court decided the EPA had the right to control greenhouse-gas emissions.

The EPA said in a regulation proposed in September that it would require passenger cars, light-duty trucks and medium-duty passenger vehicles made between 2012 and 2016 to maintain a combined average emissions level of 250 grams of carbon dioxide per mile, which is equivalent to 35.5 miles per gallon. The proposed regulation on greenhouse gases would largely affect Texas, which currently leads the nation in carbon dioxide emissions.

Al Armendariz, EPA regional administrator for Region 6, posted a response to the suit on the agency's Web site. Region 6 includes Texas as well as Arkansas, Oklahoma, Louisiana and New Mexico.

"[Tuesday's] action is not surprising," Armendariz said. "Texas officials have repeatedly expressed opposition to the EPA's common-sense approach to begin reducing harmful greenhouse gases. Texas, which contributes up to 35 percent of the greenhouse gases emitted by industrial sources in the United States, should be leading the way in this effort. Instead, Texas officials are attempting to slow progress with unnecessary litigation."

EPA Region 6 spokesman Dave Bary said the EPA's results are scientifically proven and supported with statistics.

"It is disappointing that Perry has seen fit to argue their validity," Bary said.

Luke Metzger, director of Environment Texas, said Perry's main problem with the EPA's findings is that the Intergovernmental Panel on Climate Change, an organization Perry believes has a history of questionable findings, was used almost exclusively for the study.

Metzger said he believes that this claim is unsubstantiated.

"These complaints are bogus, legally wrong and scientifically unsound," he said. "While the EPA did rely on the IGCC to develop their findings, they also used studies by the [National Oceanic and Atmospheric Administration], NASA and the U.S. Navy."

Environment Texas is a statewide advocacy group that has aimed to promote clean, renewable energy in Texas since 2006.

"Gov. Perry should win an Olympic medal for taking the environment downhill," Metzger said. "Global warming is the greatest environmental threat facing Texas and the planet, and Gov. Perry's obstructionism puts the state at great risk."

02/19/2010

Activists Urge EPA To Elevate Relocation As Superfund Remediation Option (*Inside EPA*)

Environmentalists are urging EPA to elevate citizen relocation as a primary remedial option for Superfund cleanups, arguing that relocating residents who live on contaminated land is becoming more necessary and could help the agency achieve its goals of making environmental justice a priority and improving community engagement.

But increasing the agency's consideration of relocation as a remediation option is rife with controversy, including fears among some observers that it could create a so-called institutional precedent -- the more relocations EPA undertakes, the more communities will request it. This could be problematic because of the high upfront costs associated with relocations, and EPA may struggle to find adequate funds for a slew of future relocations.

Nevertheless, environmentalists and community advocates see an opportunity to advocate for an official elevation of relocation among EPA's Superfund remediation policy options in an ongoing "national conversation" on public health and exposure

launched in December by the Agency for Toxic Substances & Disease Registry. The agency is holding a number of work groups over the next year, working closely with EPA, to assess and evaluate risks at Superfund and other contaminated sites, and will develop recommendations for remediation improvements.

One environmentalist says that relocation of residents is seen by EPA as a “last resort” option for remediation -- compared to other options, such as redeveloping a contaminated site -- and that it should be “higher up on the list” of potential remedies to address risks posed by ongoing contamination at Superfund and other toxic sites.

Relocation has “significant implications for environmental justice,” an issue that has been a focus of EPA Administrator Lisa Jackson, the source says. Low-income and minority communities are more likely to live on contaminated cleanup sites, and boosting relocation would be one way that Jackson could further her oft-stated goal of incorporating environmental justice as a key factor in the agency’s decision making, the source adds.

Greater consideration of relocation could also boost the Obama EPA’s push for greater community engagement in its decision making, sources say. EPA’s waste office released last year its Community Engagement Initiative, through which the agency hopes to foster better community participation “in government decisions on land cleanup, emergency preparedness and response, and the management of hazardous substances and waste.”

Most relocations that do happen are the result of political pressure, the source says, and EPA needs to ensure “it has a policy driven by protecting health and being responsive to community needs that is not simply subjected to the whims of the political winds. . . . Relocation has been relegated to a last resort option, meaning that people suffer through a remedy process that could expose them to contaminants,” says the activist.

EPA’s existing policy on relocation for remediation appears to be “if you create enough public outcry and there’s pressure from politicians, then the agency will respond,” the activist claims.

One former EPA official says the policy “basically boils down to: if it’s more cost-effective to buy out and relocate the residents than to try to remediate the area with them there, then relocation makes sense.”

In 1995, EPA ran a relocation “pilot” at the Escambia Wood Treating Company Superfund Site in Pensacola, FL, which led to the agency’s “Interim Policy on the Use of Permanent Relocations as part of Superfund Remedial Actions,” developed June 30, 1999. The interim policy states that under EPA’s authority to relocate under section 101(24) of the Comprehensive Environmental Response, Compensation & Liability Act -- known as the Superfund law -- EPA may consider relocations “in situations where EPA has determined that structures must be destroyed” because they interfere with cleanup;

where “EPA has determined that structures cannot be decontaminated to a safe level;” or where EPA’s remedy would require “the imposition of unreasonable [land] use restrictions.”

But activists contend that taking a cost-containment approach undermines the very impetus for environmental cleanup: to ensure the protection of human health. And while relocation might be more expensive in the short-term, it poses long-term financial benefits, as it can make remediation cheaper and avoids the health costs often endured by residents as a result of ongoing contamination, environmentalists say.

The agency recently proposed a $3.5 million buyout and relocation for residents of Treece, KS, a town contaminated by millions of tons of lead and zinc mining waste called chat. EPA’s decision came under congressional pressure from Sen. Pat Roberts (R-KS), who added an amendment to EPA’s fiscal year 2010 appropriations law encouraging the agency “to reassess the cost-effectiveness of the buyout and relocation” of Treece.

The activist says Treece residents began pushing for relocation after EPA moved residents from the adjacent town of Picher, OK, as part of an $8 million buyout, $5 million of which came from the Superfund Trust. Similar to the Treece situation, Picher’s relocation came at the behest of federal lawmakers; Sen. James Inhofe (R-OK) asked EPA to reconsider relocation as part of a provision added to the 2007 Water Resources Development Act.

Relocation is the “only option” at other Superfund sites, such as the Bunker Hill Mine in Kellogg, ID -- where lead contamination in residents’ homes has been tested at 50,000 parts per million -- the activist says. But the communities “don’t have the political clout to generate outrage and get attention,” the source says.

Another problem with EPA’s relocation policy, according to activists, is that EPA only considers it as an option for sites on the Superfund National Priorities List and not other cleanup sites.

An EPA spokesperson did not return a request for comment by press time.

Other Superfund experts, however, contend that relocation is adequate as a last-resort option and that various barriers to relocation would make it difficult for EPA to elevate relocation as a remedial tool. The barriers include EPA’s concern of setting an institutional precedent -- that the more relocations it undertakes, the more communities will request expensive relocation plans. Burgeoning costs are also a challenge, since relocation requires significant upfront costs that cannot be spread out over a period of several years compared to more traditional cleanup plans. And relocations can stigmatize contaminated land to an extreme degree, causing nearby towns to flee out of fear.

One Superfund expert says that using relocation for remediation can bring up another contentious issue -- ensuring that residents are offered a fair price for their homes. Last year a Missouri-based newspaper reported that citizens in Picher, OK, were receiving buyout offers from EPA contractors that amounted to three-quarters of what their homes were worth, due in part to flawed appraisals.

And Sen. Roberts in a Feb. 3 statement to *Inside EPA* characterized Treece as a "unique situation where a relocation made the most sense. . . . Relocations are the option for very last resort for a good reason. They destroy communities and there is no way to ensure that everyone is completely pleased with the process." -- *Adam Lichtenheld*

02/19/2010

Unions, Economist Warn Of Job Losses From Strict EPA Cement Proposal (*Inside EPA*)

A major trade union federation and a Texas economist are backing industry attempts to soften the stringency of EPA's proposed new air toxics rule for the Portland cement sector, warning that the rule will cause American job losses during an ongoing economic downturn and echoing industry's claims that the emission limits are impossible to achieve.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is telling EPA Administrator Lisa Jackson that the agency's proposed maximum achievable control technology (MACT) to reduce mercury and other air toxics at Portland cement manufacturers will damage the industry. AFL-CIO says that domestic cement producers play a vital role in construction of infrastructure necessary for economic recovery.

Additionally, a new report unveiled Feb. 17 by Southern Methodist University energy economist Bernard Weinstein underscores the economic damage that industry claims EPA's proposal will cause. Speaking at the report's launch in Washington, DC, Weinstein said the rule would result in 15,000 job losses related to the cement sector and thousands more across the economy more broadly. *Relevant documents are available on InsideEPA.com.*

Weinstein also said the price of cement would rise due to increased compliance costs, making infrastructure projects such as those promoted by the federal stimulus package more expensive, diminishing their benefit to the economy. He said the rule could prompt domestic cement plants to move overseas, meaning imports from countries with weaker environmental protections would rise, raising the prospect that toxic emissions would increase on a global scale.

Weinstein's analysis echoes criticism from the Portland Cement Association (PCA), the industry's trade group. Speaking at the report's launch, PCA official Andrew O'Hare said that EPA's proposal would add $21 per ton to the cost of cement by 2020, risking the shutdown of numerous cement plants and a rise in imports to fill the resulting shortfall.

Speaking to *Inside EPA* at the report's launch, O'Hare said EPA needs to either make its proposed pollutant limits less stringent to reflect the natural variability in the chemical content of limestone, which is cement's base ingredient, or divide cement plants into subgroups according to their emissions and regulate the groups individually. However, these approaches require interpreting the Clean Air Act with a certain amount of latitude, something EPA recently has been reluctant to do following a string of successful legal challenges by environmentalists.

O'Hare claimed that EPA is sympathetic to the industry's predicament, but added that agency officials feel constrained by the need to interpret the air act narrowly and avoid the prospect of their regulations being struck down by the U.S. Court of Appeals for the District of Columbia Circuit.

At the same time, the AFL-CIO, which represents 57 labor unions, notes in its Jan. 27 letter to Jackson that the proposed standard cannot be met by a single U.S. cement plant. "The cement manufacturing industry and its unions are concerned that it will be impossible to satisfy the standards in the [MACT] and simultaneously remain competitive against foreign cement that does not have to comply with these standards," the letter says. "Further, concerns have been raised that the mandates in the [MACT] are not practically achievable, as no single cement plant in operation currently employs all of the technology required."

A PCA spokesman says the group is working closely with the AFL-CIO on the issue, and that the economic and technical challenges in the EPA proposal make it a "nightmare incarnate" for the cement industry at a time when "the industry is reeling from recession."

EPA last May proposed to significantly cut emissions of mercury, hydrogen chloride (HCI), total hydrocarbons and particulate matter from cement plants in its upcoming MACT, which has already been the subject of years-long litigation. EPA's original MACT did not include mercury limits for the sector, but the agency lost a court battle that requires it to include limits on mercury, which can be present in limestone. EPA is now required to finalize the new MACT by June under a settlement agreement with environmentalists.

The concern over the absence of a single plant that can meet the standard reflects broad industry opposition to EPA's recent practice of establishing MACT standards on a pollutant-by-pollutant basis following successful litigation by environmental groups challenging a number of Bush-era MACTs. Industry argues this approach creates a fictitious "Franken plant" with emission limits that no single source can ever achieve.

EPA first took this approach in a Dec. 1, 2008, proposed new source performance standard for medical waste incinerators that also includes a MACT standard. A wide range of industry groups including the PCA took issue with the pollutant-by-pollutant philosophy in comments to EPA on the incinerator rule. EPA finalized that rule last Sept. 16 and two industry groups filed a legal challenge Dec. 7.

EPA has issued no response to the letter to the unions and did not respond to press calls.

02/19/2010

Activists See Limits Of EPA Effort To Phase Out Flame Retardant Chemical (*Inside EPA*)

Environmentalists are pointing out the limitations of EPA efforts to phase out the flame retardant decabromodiphenyl ether (deca), suggesting that without an international ban on new production and strict export limits on waste products containing the chemical, agency support for an industry-backed voluntary phase-out will not do enough to limit production of -- and exposure to -- the chemical.

The International POPs Elimination Network (IPEN), a coalition of some 700 activist groups, wrote EPA Administrator Lisa Jackson Feb. 1, calling on the agency to use “the full range” of its authorities to prevent continued harm. “In particular, IPEN is concerned that as a result of the U.S. phase-out, developing countries and countries with economies in transition may become the locations of increased [deca] production, use, import, and export. In addition, developing and transition countries could become possible destinations for dumping of wastes containing [deca] and other brominated flame retardants,” the letter states.

The group also wrote the three manufacturers of the chemical participating in the phase-out -- Albemarle Corporation, Chemtura Corporation and ICL Industrial Products -- asking whether the companies intended to move their deca production overseas, and what sorts of alternatives they intended to introduce to the market. *The letters are available on InsideEPA.com.*

The activists are concerned that the companies’ December agreement to voluntarily phase out the chemical -- an agreement EPA is helping to implement in its action plan for the chemical -- did not address these issues.

Instead, deca’s three manufacturers only agreed to cease production of the chemical by 2012, and sales of existing stocks by 2013. Shortly before the announcement, Rep. Chellie Pingree (D-ME) introduced H.R. 4394, a bill banning the import or use of deca in products by the end of 2013 and barring EPA from approving substitutes that are persistent, bioaccumulative and toxic.

EPA toxics chief Steve Owens, however, endorsed the voluntary phase-out plan as “an appropriate and responsible step to protect human health and the environment.” The agency is also planning regulatory action -- as part of its chemical action plan -- to limit import of articles that contain deca to coincide with the end of the phase-out period, along with several other efforts to develop alternatives and assess the chemical’s risks.

But IPEN suggests the steps being taken by EPA and the companies are not adequate.

It asks, for example, whether EPA will support efforts to ban deca internationally, such as by supporting the addition of deca to the Stockholm Convention on Persistent Organic Pollutants (POPs). The convention is an international agreement to restrict and ban certain POPs, including pesticides and industrial chemicals, which the United States is a party to, but has not yet ratified to make it binding under U.S. law, limiting its influence in the process.

Deca has been considered by the convention before, and two related flame retardants, octabromodiphenyl ether (octa) and pentabromodiphenyl ether (penta) are listed as banned under the convention, according to an IPEN source. The source also notes an ongoing deca risk assessment that the United Kingdom’s Environment Agency is producing for the European Union. In meeting last week, UK representatives indicated there is strong evidence that deca breaks down into octa and penta in the environment, the source says. The British report also states that, “Abrasion of treated objects has been shown to be an important emission source of decaBDE in indoor environments, and this is not addressed by voluntary emission reduction programmes carried out by the industry.”

The IPEN source says there have been no indications so far as to the administration’s leaning on the issue of adding deca to the convention. The Bush administration was generally wary of international regulations on chemicals, as evidenced by its reluctance to create a legally enforceable convention on mercury, though President Bush did sign the POPs treaty.

An EPA spokeswoman says only that the “U.S. is not currently a Party” to the Stockholm convention. She notes that the U.S. chemical management law “does not directly regulate foreign activities. However, it does provide the authority to regulate imports as well as domestic production consistent with [World Trade Organization] rules, including the importation of articles containing deca, where appropriate statutory findings are made.”

In its letters to the manufacturers, IPEN asks if their alternative products will be halogenated or not, and if the companies will publicly release toxicity data about the chemicals.

In a Feb. 11 response, Albemarle writes IPEN that it has both halogenated and non-halogenated alternatives to deca, and more in development. “Our priority as a polymer solutions manufacturer is to strive to provide fire safety products which are sustainable

in all important meanings of the word," writes Dave Clary, Albemarle's chief sustainability officer. "They must keep our families and property safe from the hazards of fire and meet our customers' technical criteria. They must not be toxic, or be bioaccumulative and must meet other environmental and safety criteria as well."

Clary also writes that Albemarle does not and will not export "wastes related to deca production."

Neither of the other companies has responded to the letter yet, the IPEN source says. Requests for comment left with Chemtura and ICL Industries spokespersons were not returned.

Albemarle also addresses another concern of IPEN's, that manufacturers will simply shift production of the chemical overseas. Albemarle indicates that its only production facility is in the United States, and it does not intend to manufacture or stockpile the chemical after the phase-out deadline.

02/19/2010

Personnel Disputes Roil EPA's Rights Office, Undermining Equity Agenda (*Inside EPA*)

EPA's Office of Civil Rights (OCR) -- under order from agency Administrator Lisa Jackson to address a lengthy backlog of civil rights discrimination claims -- is embroiled in a contentious personnel dispute that some officials charge is undermining Jackson's order and the administrator's environmental justice agenda.

Jackson has made resolving hundreds of stalled discrimination complaints pending in OCR a top priority as part of her agenda to address environmental injustice, saying it will help EPA "advance its mission of protecting human health and the environment" and help the agency restore its credibility with minority and other community groups. But the personnel conflicts in the office threaten to undermine her efforts.

The latest dispute centers on OCR Director Karen Higginbotham's Feb. 3 decision to remove Susan Morris, the former OCR assistant director for affirmative employment and diversity, from her slot and place her in a new, non-supervisory slot.

Morris told Sen. Mark Warner (D-VA) in a Feb. 11 letter that she was removed from her position because of a "false accusation" from Higginbotham. She has filed a discrimination complaint with the federal Equal Employment Opportunity Commission (EEOC), which ordered EPA Jan. 29 to produce records related to Morris's complaint.

An EPA spokeswoman says "the agency has a strong policy on not tolerating discrimination and abuse in the workplace."

Higginbotham, a career EPA employee, did not reply to a request for comment, but in 2007 she told plaintiffs suing over the stalled civil rights complaints that she plans to develop new agency guidance, based on Department of Justice best practices, to address the backlog of outstanding civil rights complaints.

Morris has also filed a Jan. 28 petition for EPA's Office of Inspector General (OIG) to investigate OCR's failure to issue annual reports on the agency's equal opportunity employment practices. According to a July 2009 letter from the EEOC, OCR has failed to issue the report, called an MD-715 report, since 2006. Morris alleges in her complaint to the OIG that Higginbotham blocked the MD-715 reports year after year "under the guise of programmatic considerations."

Morris and other OCR staff have called for key lawmakers -- including Rep. James Moran (D-VA), the incoming chair of the House Appropriations Committee panel that oversees EPA, and Senate environment committee Chair Barbara Boxer (D-CA) -- to strengthen federal workforce laws and to intervene to prevent a hostile work environment.

"For many years at EPA, a group of managers have misused and abused their authority by going after employees who are not a part of their group or agenda," Morris said in her letter to Warner. She said that the practices show the managers' "disregard for the civil rights and welfare of the federal employees within the agency, as well as those who protest from communities covered under Title VI" of the Civil Rights Act, which prohibits the discriminatory use of federal funds.

Some OCR staff say the dispute echoes the contentious personnel dispute during the Clinton administration, when a jury found EPA liable for violating the civil rights of Dr. Marsha Coleman-Adebayo -- an OCR employee. In response, Congress in 2002 passed the Notification and Federal Employee Antidiscrimination and Retaliation Act (No-FEAR Act), which seeks to discourage federal managers from engaging in unlawful discrimination and retaliation.

Morris and others charge the agency's practices have not changed despite passage of the No-FEAR Act.

The latest allegations threaten to place additional pressure on Higginbotham, who civil rights activists have called to be removed in the wake of revelations stemming from an appeals court ruling that found a "consistent pattern of delay" by EPA in responding to Title VI complaints.

In *Rosemere Neighborhood Association v. EPA*, the U.S. Court of Appeals for the 9th Circuit found that the petitioner's struggle to get EPA to respond to its Title VI complaint -- alleging that Vancouver, WA, had misused EPA grant funds -- "appears, sadly and unfortunately, typical of those who appeal to OCR to remedy civil rights violations."

“EPA failed to process a single complaint from 2006 or 2007 in accordance with its regulatory deadlines. . . . This pattern of delay . . . helps convince us that this action should go forward,” the 9th Circuit said.

Agency documents obtained by *Inside EPA* showed that OCR Title VI investigations have been open for up to 15 years, despite a regulatory 180-day deadline for issuing discrimination findings. OCR has informally resolved 10 Title VI complaints since 1993 but has never exercised its Civil Rights Act authority to strip funding due to discrimination (*Inside EPA*, Oct. 23).

Jackson, who has made environmental justice a top priority for EPA, directed OCR in September “in the strongest terms, to review and reform the Title VI process so that complainants receive timely responses and decisions,” according to a statement (*Inside EPA*, Sept. 25).

Civil rights activists have welcomed Jackson’s order to speed OCR review of discrimination complaints but they have said that more is needed than Higginbotham’s vow to develop a best practices guidance. One activist said last year that there is a need for extra OCR staffing, tighter deadlines for responding to complaints and an OIG investigation of the office.

Jackson has also drawn criticism for promoting key EPA employees whose inaction was highlighted by the 9th Circuit’s ruling. In particular, Higginbotham promoted both Helena Wooden-Aguilar -- the lead investigator on the Rosemere Neighborhood Association complaint at issue in the appeals court case -- as well as her former supervisor, Yasmin Yorker (*Inside EPA*, Dec. 4).

Yorker was initially slated to be a special assistant to Higginbotham but documents obtained by *Inside EPA* show she has again been promoted and placed in the “Senior Executive Service” program to groom her for a senior position at the Department of Energy.

In addition to Morris’ actions, a group of five OCR staffers has written to Warner, Sen. James Webb (D-VA) and other lawmakers requesting congressional assistance in rectifying what the staffers charge is a bitterly hostile work environment under Higginbotham and EPA deputy chief of staff Ray Spears. Spears did not reply to a request for comment.

“Under the leadership of [Higginbotham and Spears], we have been subjected to prevarications, underhanded tactics, retaliation, favoritism, nepotism, unethical behavior [and] a hostile work environment,” the letter from the five OCR staffers to Webb says. The five staffers say they wrote the lawmakers after Morris was removed from her position by Higginbotham. “Until last week, we felt protected and supported by our supervisor and mentor, [Morris].”

The letters say many of the conflicts within OCR carry racial overtones. “In spite of Ms. Morris’ own continuous battle (as the only white female in OCR), she protected us from Ms. Higginbotham’s wrath,” the letter says.

Morris’ letter says Higginbotham’s and Spears’ “bias, abuse of authority and power, intimidation and discrimination (particularly against non-African Americans and complainants) is well known throughout the agency.”

Webb’s office did not reply to a request for comment, while a spokesman for Warner said his office had not yet received the letter. -- *Jonathan Strong*

2/19/2010

Agency Eyes SAB Peer Review Of Draft Arsenic Study, Emboldening Industry (*Inside EPA*)

EPA appears close to granting a request from industry and agency offices to allow its Science Advisory Board (SAB) to review controversial revisions to its draft report on the cancer risks posed by arsenic -- prompting industry to ramp up its efforts to ensure the review panel scales back an EPA report that they say could result in costly new regulatory requirements.

Should EPA grant the request, it will mark the second time in the past few months that the agency will have allowed additional review of a controversial risk assessment -- after agency Administrator Lisa Jackson agreed last December to an industry request to review EPA’s upcoming assessment of formaldehyde.

In particular, industry officials say they will lobby to broaden the scope of the peer review -- by seeking an opportunity to formally comment on the panel’s charge questions -- to ensure panelists consider core scientific issues that they say were precluded from consideration when SAB reviewed an earlier version of the study in 2005.

Industry officials also hope to broaden the charge to present emerging research that may show an exposure threshold below which the metal is largely harmless, undercutting the agency’s draft findings that there is no safe exposure level.

One industry source fears that EPA’s Office of Research & Development (ORD), which crafted the draft arsenic cancer study, may write narrow charge questions for the SAB peer review that “preclude creative responses” from SAB. “If all we will now have are very specific tactical questions designed by ORD to elicit supportive responses on their work -- and not a broader examination of emerging science and the need for ORD transparency -- we will have lost an opportunity,” the source says.

A coalition of 17 industry groups are scheduled to meet with ORD chief Paul Anastas on Feb. 26 about the matter.

Industry's tactic of seeking public comment on peer review panels' charge questions could prove a model for industry groups searching for new methods to challenge pending assessments on the risks posed by climate change, chemicals' toxicity and other issues in light of federal courts' long-standing deference to EPA's scientific findings.

At issue is EPA's draft risk study for inorganic arsenic that includes a cancer slope factor, which is a measure of a substance's cancer risk from lifetime exposure, that is about 17 times steeper than EPA's current cancer slope factor for arsenic in its Integrated Risk Information System database.

The draft study includes revisions to an earlier draft that SAB reviewed in 2005 which backed agency findings that there is no safe exposure level to the inorganic form of the metal but that low doses of exposure to the organic form of the metal -- used in some pesticides and wood treatment chemicals -- may be safe.

Industry officials from the chemical, water and other sectors, as well as some EPA regions and program offices, fear that if EPA promulgates the draft hazard assessment, it will result in costly, and perhaps unattainable, regulatory standards (*Inside EPA*, June 5).

Since a draft version of the study leaked last year, industry and concerned agency offices have urged top officials to request a new round of SAB review. But they have been concerned that the agency would not seek additional review because EPA Administrator Lisa Jackson has made quickly finalizing risk studies a priority.

Last December, however, the agency agreed to an expedited National Academy of Sciences (NAS) peer review of the agency's study on the cancer risks of formaldehyde, a similarly controversial assessment, breaking an impasse over the issue that had held up President Obama's nomination of Anastas for months.

Critics of the draft arsenic cancer study saw the formaldehyde action as a positive sign for their push to secure a second SAB peer review of the study and cited a letter from Jackson announcing the deal as establishing a policy on contentious, complex assessments like those of formaldehyde and arsenic. "For high profile chemicals raising complex issues," EPA may conduct the peer review at SAB or NAS, Jackson said in the letter, "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.

Sources say that at a recent meeting with industry, an EPA official suggested the request for SAB review would be granted.

Further, one EPA source says an internal schedule shows the arsenic study slated for completion by September, which an industry source believes is consistent with the agency granting an expedited SAB peer review of the study. A second EPA source says granting the review is “under discussion” but cautions the situation is “fluid.”

EPA did not reply to a request for comment.

With the agency close to granting the SAB peer review, industry officials are now moving to shape the peer review, urging EPA to solicit public comment on the charge questions it sends SAB.

Industry officials argue EPA crafted a narrow charge for the SAB’s review of its arsenic assessment in 2005, precluding review of some of the core scientific issues they are disputing. They hope their input on the charge will force the review to analyze those issues as well as examine new research on arsenic.

The industry officials say the arsenic study falls under a category called “highly influential scientific assessments” for which EPA has set a high bar for transparency and other requirements in its manual governing peer reviews.

Industry officials are citing the manual, titled the “Peer Review Handbook” -- issued by the Bush EPA in 2006 -- to press for a broad charge. The manual says that charge questions “should be specific enough to encourage helpful comments, including constructive alternatives, but not so specific that they preclude creative responses (e.g., simply asking whether or not the reviewer agrees with the model choice or conclusion).”

The peer review manual says EPA “may” solicit public comment on charge questions. “EPA may decide to obtain stakeholder input on the charge to the peer reviewers, but EPA makes the final determination on what elements to include in the charge to ensure that it meets EPA’s needs for the peer review,” the manual says.

It also says generally that “influential” and “highly influential” scientific assessments should be subject to stricter transparency and other requirements.

The manual also says White House Office of Management & Budget guidelines “[direct] federal agencies to make the peer review plans for influential scientific information and highly influential scientific assessments publicly available for comment.” -- *Jonathan Strong*

Premiers, governors share common ground (*The Globe and Mail*)

On climate change, state leaders are just as divided as their Canadian counterparts
KONRAD YAKABUSKI

WASHINGTON — From Friday's Globe and Mail Published on Friday, Feb. 19, 2010 12:00AM EST Last updated on Friday, Feb. 19, 2010 2:56AM EST
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The Council of the Federation, the six-year-old premiers' club created when the provinces sought a common front in negotiations with Ottawa on a new equalization deal, has never melded into one voice on climate change.

With carbon-intensive Alberta and Saskatchewan feeling unfairly demonized by the oil-poor provinces, especially greener-than-thou Quebec and British Columbia, the premiers can only aspire to agree to disagree.

The first-ever joint session between the Council of the Federation and the National Governors Association in Washington this weekend will provide our discordant premiers with an opportunity to disagree among themselves with other subnational leaders who are deeply divided on climate policy.

"There are hydrocarbon provinces and hydro provinces in our country, which changes people's view with respect to energy and environment policy. The same dichotomy exists between states in the United States of America," Saskatchewan Premier Brad Wall, the council's current chair, remarked in an interview. "But there is agreement among the provinces on the importance of fair and open trade [with the United States] and the importance for both countries of avoiding non-tariff barriers."

Sensitizing governors to some of the unintended consequences for cross-border trade of climate-change initiatives at the state and national levels can't be a bad thing. As Mr. Wall explains: "To the extent that the [carbon dioxide] issue could manifest itself in that way it has the potential to impact not just energy exports from our country. It has the potential to impact agriculture or any industry that happens to have a carbon footprint."

The joint NGA-COF session tomorrow is the marquee event of the premiers' trip to Washington, which, according to Mr. Wall, is all about "relationship-building." But a meeting today with the head of the U.S. Environmental Protection Agency, Lisa Jackson, may be even more important in alerting Americans in power to Canadian concerns.

With the U.S. Congress expected to put climate-change legislation on ice at least until after this year's midterm elections, the EPA is poised to cap carbon emissions on its own. No one has much of an idea what that would mean for Canada. But the premiers want to make sure the EPA rules don't leave Canadian oil and gas exports subject to potential punitive measures at the border, or omit Canadian hydro power from the sources of electricity officially designated as renewable, thereby making them ineligible for preferential treatment under U.S. programs to boost green energy.

"It's important for us to be proactive on the issue to make sure that this is not an unnecessary barrier to trade," Mr. Wall said of the as yet undetermined EPA measures.

"Each premier is going to have a chance to raise his concerns. Those concerns will vary across the country based on our respective energy profiles."

The EPA ruled late last year that CO{-2} and five other greenhouse gases pose a danger to human health, in essence forcing itself to regulate them. That has earned Ms. Jackson, who was appointed by President Barack Obama, the ire of the U.S. right, who decry her as a liberal interventionist bent on capping freedom itself.

Big business and Republican politicians have seized on the recent scandals involving damaging e-mail exchanges between scientists and errors in a seminal report by the Intergovernmental Panel on Climate Change to buttress their cases in lawsuits aimed at overturning the EPA ruling.

Just this week, Virginia Attorney General Ken Cuccinelli accused the EPA of "acting in an arbitrary and capricious manner" and using "unreliable, unverifiable and doctored" science to justify its endangerment ruling. Texas Governor Rick Perry, whose state accounts for about a third of all industrial emissions in the U.S., charged that the "EPA's misguided plan paints a big target on the backs of Texas agriculture and energy producers."

It's not clear whether Mr. Obama, whose popularity has plummeted, will risk further antagonizing voters by encouraging Ms. Jackson in her quest, which would likely lead to higher energy prices across the board. But the premiers aren't taking any chances.

Seven provincial leaders are on the Washington trip - eight if you include acting Newfoundland premier Kathy Dunderdale. Alberta's Ed Stelmach is sending his Intergovernmental Affairs Minister, Iris Evans. Gordon Campbell, currently playing host to the world, sent his regrets.

In addition to Ms. Jackson, ambassador Gary Doer and embassy officials worked their Washington contacts to get the premiers face time with Mr. Obama's top economic adviser, Larry Summers, at the White House tomorrow, and Agriculture Secretary Tom Vilsack on Sunday. In both sessions, the provinces will present a more united front.

The 10-on-1 with Mr. Summers, the single most influential member of the West Wing after White House chief of staff Rahm Emanuel, will allow the premiers to demand that the recent deal to exempt Canada from the Buy America provisions of the U.S. stimulus package serves as a model for similar legislation in the future, starting with the jobs bills currently being negotiated in Congress.

No provincial leader will be more delighted to meet with Mr. Vilsack than rookie Manitoba Premier Greg Selinger. Hog producers in his agriculture-dependent province have been sideswiped by country-of-origin labelling requirements imposed by the Bush administration, and reinforced under Mr. Vilsack, that have sharply curtailed U.S. pork producers' appetite for Canadian product.

Governors and members of Congress from the major agricultural states, including Manitoba neighbours Minnesota and North Dakota, have voiced strong support for the U.S. rules. Even Iowa Democratic Senator Tom Harkin, whose state will lose 1,500 jobs when a major pork processing plant closes in April, has congratulated Mr. Vilsack.

"One of the things that contributed to [pork processing] jobs losses in the U.S. is lack of supply" from Canada, Mr. Selinger added. "That's the reason we need to get together to understand each other's perspective."

EDITORIAL / COMMENTARY / OP-ED / LETTERS

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February 19, 2010 Friday
Regional Edition
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Maryland

The Cool-Earth Society (*Washington Post*)

By Eugene Robinson

We're the nation that put a man on the moon, so we can't be stupid. We're just pretending, right? We're not really taking seriously the "argument" that the big snowstorms that have hit the Northeast in recent weeks constitute evidence -- or even proof -- that climate change is some kind of hoax.

That would be unbelievably dumb. Yet there are elected officials in Washington who apparently believe such nonsense. Sen. Jim Inhofe (R-Okla.) had his family build an igloo near the Capitol and label it "Al Gore's New Home." Sen. Jim DeMint (R-S.C.) boasted on Twitter that the snows would continue "until Al Gore cries uncle." Talking heads are seriously debating whether the record snowstorms doom the prospects for comprehensive legislation to deal with energy policy and **climate change,** which is one of President Obama's top priorities.

It is true that Washington is slogging through its snowiest winter on record. Before I could bring in the newspaper on Thursday morning, I had to dress for a mountain-climbing expedition because my front yard resembles a small glacier. My commute to the office normally takes 20 minutes; it took more than an hour, as I fought my way through streets whose outside lanes have been encroached by huge snowbanks.

But that was nothing compared with Tuesday morning, when I awoke to find that a snowplow had blocked my car into the driveway with a two-foot berm of ice. I had an early appointment, so I had to shovel my way out -- before coffee. I'm afraid that the first thing my neighbors heard that morning was some unneighborly language.

Still, even this unpleasant experience didn't make me crazy enough to entertain the notion that a snowstorm or two -- in a city where it snows every year -- could somehow disprove all the scientific evidence for **climate change.**

Nor did it even cross my mind that our Snowmageddon, inconvenient though it might be, could meaningfully alter the political debate over climate legislation. That would be idiotic. As comedian Stephen Colbert pointed out, it would be like looking outside at night, seeing the darkness and concluding that "the sun has been destroyed."

As even Sens. Inhofe and DeMint surely are aware, the Earth is really, really big. (And it's not flat. It's shaped like a ball. Honest.) It's so big that it can be cold here and warm elsewhere -- and this is the key concept -- at the same time. Even if it were unusually cold throughout the continental United States, that still represents less than 2 percent of the Earth's surface.

Those who want to use our harsh winter to "disprove" the theory that the planet's atmosphere is warming should realize that anecdotal evidence always cuts both ways. Before the Winter Olympics in Vancouver, crews were using earth-movers and aircraft to deposit snow on the ski runs -- the winter had been unusually warm. Preliminary data from climate scientists indicate that January, in terms of global temperatures, was actually hotter than usual. Revelers participating in Rio de Janeiro's annual carnival, which ended Tuesday, sweltered in atypical heat, with temperatures above 100 degrees. Fortunately, the custom during carnival is not to wear much in the way of clothing.

It has been a bad few months, to say the least, for those brave enough to still call themselves "climate scientists." First, some e-mails were unearthed that showed some leading researchers to be petty, vindictive and perhaps willing to ignore data that didn't fit their theories. Then it was learned that an official U.N. document on **climate change** overstated the rate at which Himalayan glaciers are believed to be melting. As other examples of sloppiness or imprecision emerged, the winter turned harsh. Critics piled on, sensing that the moment had arrived to kill any serious global effort to address humanity's impact on the temperature of the biosphere.

But here's what those bad few months can't change: After decades of study, scientists around the world have reached the conclusion that the Earth is warming and that humankind is responsible. The past decade was the warmest on record. Among the anticipated effects of **climate change** are increased precipitation -- not just rain, but also snow -- and bigger storms. What we've seen this winter tends to prove, not disprove, the scientific consensus that warming is real.

But there is one unanswered question that I want climate scientists to address: Please tell me when the Robinson Glacier outside my house is going to melt.

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Turning NASA into a Global Alarmism and Scares Administration (*Washington Times*)

February 19, 2010 Friday
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Turning NASA into a Global Alarmism and Scares Administration;
No more astronauts and audacity, a lot more politics
By Margaret Hemenway SPECIAL TO THE WASHINGTON TIMES

President Obama has announced a major shift at NASA - canceling President George W. Bush's 2004 plan to return astronauts to the moon and then move on to Mars. Instead, the Democratic administration is focusing the space program on climate research and unmanned missions. The president's budget gives the National Aeronautics and Space Administration a hefty $6 billion budget increase over the next five years, with nearly $2.5 billion dedicated to research on global climate change.

It is evident that while manned spaceflight has moved to the back burner (protesters at the Johnson Space Center put it more crudely - "Obama lied; NASA died") the winners in the new NASA budget are the **climate-change** theoreticians.

They have long been ascendant inside the agency. When the 2007 Nobel Peace Prize was awarded in Oslo to Al Gore and the United Nations Intergovernmental Panel on **Climate Change,** NASA's hand in the IPCC's work was revealed.

Hundreds of NASA scientists contributed to the U.N. effort, the culmination of two decades of work. NASA satellite measurements enabled the IPCC's "strongest conclusions thus far," according to the chief scientist at the Joint Propulsion Laboratory in Pasadena, Calif., who was further quoted: "NASA's role extends far beyond space-based measurements into the research to build our understanding of **climate change,** enabling the critical work of the IPCC. ... By collecting together the current scientific thinking on **climate change,** the IPCC showed the world the value of the type of science we are doing at NASA."

NASA scientist James E. Hansen, one of Mr. Gore's closest allies in promoting fears of man-made **global warming,** was deemed by the London Telegraph as "more responsible than any other for the alarm over **global warming**" - setting "the whole scare in train back in 1988 with testimony to a U.S. Senate committee chaired by Al Gore."

Mr. Hansen has since been publicly rebuked by a former supervisor, retired senior NASA atmospheric scientist John Theon, who says Mr. Hansen "embarrassed NASA" with alarmist claims. The charge rings all the more true as the IPCC reels from disclosures that scientists involved hid and manipulated data, tried to stop scientists who disagreed from publishing in peer-reviewed journals and allowed alarmist mistakes

into the scientific document.

But Mr. Hansen has gone far beyond alarmism into activism, calling for trials of oil company executives for "crimes against humanity" and flying to England in 2008 to testify in a trial of Greenpeace eco-vandals. Mr. Hansen claimed Greenpeace's vandals were protecting property around the world by destroying property that caused pollution in England. He was arrested in June 2009 protesting at a West Virginia coal-processing plant.

It is activism, not science, that the Obama administration's vast new funding will encourage. Atmospheric scientist Joanne Simpson, formerly with NASA and the first woman to earn a doctorate in meteorology, joined the growing ranks of warming doubters: "Since I am no longer affiliated with any organization nor receiving any funding, I can speak quite frankly. ... As a scientist, I remain skeptical. ... The main basis of the claim that man's release of greenhouse gases is the cause of the warming is based almost entirely upon climate models. We all know the frailty of models concerning the air-surface system."

Could Ms. Simpson not have aired such views while in federal service? Richard S. Lindzen, professor of atmospheric science at the Massachusetts Institute of Technology, suggests the answer is no: "Scientists who dissent from the alarmism have seen their funds disappear, their work derided, and themselves labeled as industry stooges."

When scientists can no longer speak their minds, that's when an agency crosses the line from disinterested science to political activism.

Former astronauts are also rebuking Mr. Hansen. Astronaut-geologist Jack Schmitt (Apollo 17) proclaimed that "the '**global warming** scare' is used as a political tool to increase government control over American lives, incomes and decision-making. It has no place in the [Geological Society of America's] activities." Another astronaut, physicist Walter Cunningham (Apollo 7) chastised Mr. Hansen as a "political activist who spreads fear even when NASA's own data contradict him.

"NASA should be at the forefront in the collection of scientific evidence and debunking the current hysteria over human-caused, or Anthropogenic **Global Warming** (AGW). Unfortunately, it is becoming just another agency caught up in the politics of **global warming,** or worse, politicized science," Mr. Cunningham wrote in 2008.

Mr. Gore once compared **global-warming** skeptics to people who "believe the moon landing was actually staged in a movie lot in Arizona." While some poke fun at Mr. Gore's home electricity usage (reportedly 20 times higher than that of an average U.S. household) and point out the contradiction of liberals refusing to adopt "lifestyle changes" they wish to impose on others through taxing schemes such as "cap and trade," such criticism misses the deeper problem. That is government agencies being engaged in dangerous mission creep, vast taxpayer resources being exploited to

propagate politics above science, and **global-warming** activists being rewarded with funding increases to the detriment of NASA's celebrated astronaut corps.

According to the Congressional Research Service, NASA's peak funding during the Apollo program occurred in fiscal 1966, when total funding was $4.5 billion (in current dollars), of which $3 billion went to the Apollo program. NASA doesn't lack funding for manned spaceflight - it has diverted too much funding over the years to **climate change** and other priorities outside its core mission. NASA needs to return to the original goals that captured Americans' imaginations and built the agency in the first place.

Margaret Hemenway is a former NASA official who writes from Alexandria, Va.

More errors in temperature data (*Washington Times*)

February 19, 2010 Friday
SECTION: B, EDITORIALS; Pg. 2
More errors in temperature data;
The global warming cult sees its superstitions shattered
By THE WASHINGTON TIMES
Yvo de Boer, the United Nations' top climate-change official, announced his resignation yesterday. Good riddance. The bureaucrat's departure is no surprise because his pseudo-scientific global warming religion was proved to be a hoax on his watch.

The list of problems central to the **global warming** fraud just doesn't seem to end. As if hiding and losing data, the numerous errors in the U.N. Intergovernmental Panel on **Climate Change** and the suppression of academic research that disagrees with **global warming** weren't bad enough, now comes word that basic ground-based temperature data may have been biased towards incorrectly showing temperature increases.

Joseph D'Aleo, the first director of meteorology and co-founder of the Weather Channel, and Anthony Watts, a meteorologist and founder of SurfaceStations.org, are well-known and well-respected scientists. On Jan. 29, they released a startling study showing that starting in 1990, the National Oceanic and Atmospheric Administration (NOAA) began systematically eliminating climate-measuring stations in cooler locations around the world. Eliminating stations that tended to record cooler temperatures drove up the average measured temperature. The stations eliminated were in higher latitudes and altitudes, inland areas away from the sea and more rural locations. The drop in the number of weather stations was dramatic, declining from more than 6,000 stations to fewer than 1,500.

Mr. D'Aleo and Mr. Watts provide some amazing graphs showing that the jumps in measured global temperature occurred just when the number of weather stations was cut. But there is another bias that this change to more urban stations also exacerbates. Recorded temperatures in more urban areas rise over time simply because more densely populated areas produce more heat. Combining the greater share of weather

stations in more urban areas over time with this urban heat effect also tends to increase the rate that recorded temperatures tend to rise over time.

Unfortunately, all three terrestrial global-temperature data sets (by NOAA/National Climatic Data Center, NASA Goddard Institute for Space Studies and the University of East Anglia) really rely on the same measures of surface temperatures. These three sources do not provide independent measures of how the world's temperatures have changed over time. The relatively small differences that do arise from these three institutions result from how they adjust the raw data.

The findings by Mr. D'Aleo and Mr. Watts also explain some puzzles that have bothered researchers. For example, land-based temperatures have been rising while satellite-based measures haven't shown the same increase since 1990. Their answer is that at that point in time, the elimination of weather stations produced a false measured increase in temperatures that didn't affect the satellite readings. There is no evidence (yet) that this effort was consciously designed to increase recorded temperatures, but that is beside the point. The crux of the matter is that fanatics about man-made **global warming** want to spend trillions of dollars based on conclusions from faulty data.

As the frigid winter days pass and the scandals mount, it becomes clear that claims of man-made **global warming** aren't based on scientific methods at all. The hysteria is based on fraud.

FEBRUARY 18, 2010, 6:20 P.M. ET

Talking About the Weather Used to Be Uncontroversial (*Wall Street Journal*)

Regarding your editorial "The Continuing Climate Meltdown" (Feb. 16): The data contained in the World Wildlife Fund's 2000 report were absolutely accurate. We erred only in not crediting our data source, a 1999 overview by the highly respected Amazon Environmental Research Institute, but have subsequently corrected the citation on our Web site and in other communications. The science was accurate; the citation was not. We take exception to your efforts to cast doubt on WWF's long history as a science-based organization. For nearly five decades, WWF has worked with leading universities in preparing robust, conservation research in over 100 countries, with the goal of expanding our knowledge and understanding of the planet and the species it sustains. Our advocacy efforts have always reflected the results of our research— not the other way around.
Yes, we do believe in climate change because the majority of research, conducted by thousands of scientists, tells us it is both a fact and an urgent threat to the planet. Your editorial misses the larger point. No matter how you view the science, the arguments remain compelling that we should move to a low-carbon economy. Beyond reducing risks to our planet, such action would make us less dependent on foreign oil,

more poised to create jobs in new sectors, and more likely to remain competitive in the global economy. Who could argue with that?
Carter Roberts
President & CEO
World Wildlife Fund
Washington

Traditional, objective, evidence-based science has morphed into a new "post-normal science," which is only too ready to allow malleable interpretations of inconclusive or incomplete scientific understanding with interpretations chosen to support an ideological agenda.

We were warned of such philosophical mindsets in the widely quoted statement by Stanford University climatologist Stephen Schneider, "On the one hand, as scientists we are ethically bound to the scientific method, in effect promising to tell the truth, the whole truth, and nothing but—which means that we must include all doubts, the caveats, the ifs, ands and buts. On the other hand, we are not just scientists but human beings as well. And like most people we'd like to see the world a better place, which in this context translates into our working to reduce the risk of potentially disastrous climate change. To do that we need to get some broad based support, to capture the public's imagination. That, of course, means getting loads of media coverage. So we have to offer up scary scenarios, make simplified, dramatic statements, and make little mention of any doubts we might have. This 'double ethical bind' we frequently find ourselves in cannot be solved by any formula. Each of us has to decide what the right balance is between being effective and being honest. I hope that means being both."

Another lesson would be that tens of billions of dollars of federal funding will likely get you the results you prefer. If the politically correct zeitgeist is accommodated, there will be no end of funding for research grants, favored corporate entities, and activist groups—it pays to be green.

One other lesson is that objective science cannot compete with dogma. Those who believe in climate change will likely never be won over by scientific argument. For them "the science is settled," and will remain so.

Charles G. Battig

Charlottesville, Va.

With all of the revelations about questionable research methods used by climate-change scientists, one would think that costly new government regulations based on that research would, at the very least, be put on hold. However, one would be wrong to assume such logic applies to Washington. The Obama administration still is proceeding with Environmental Protection Agency regulation of carbon emissions as a way around cap-and-trade gridlock in Congress. The current White House attitude appears to be that legislative failures of 2009 can be reversed by executive-branch fiat in 2010.

The EPA's determination to regulate carbon emissions is, in many respects, just as remarkable as the tainted data used to justify such regulation. If the EPA regulations are onerous enough, corporate America may be begging for cap-and-trade legislation from Congress.

Meanwhile, climate data suggest that the planet actually has cooled a bit since 2002. The truth is that we don't know the truth because of shameful, self-serving behavior by climate-change zealots masquerading as scientists.

Dave Palmer

Columbia, S.C.

February 19, 2010

Special Letter: White House should rethink burdening states with greenhouse gas regulation (*Detroit News*)

The Obama administration needs to rethink its policies on regulating greenhouse gas emissions -- and soon -- or risk crippling already overburdened state agencies and further stifling economic recovery.
The administration has formally published its determination that six greenhouse gases, including carbon dioxide and methane, cause or contribute to the potential endangerment of American public welfare. This finding clearly signaled that the Obama administration intends to proceed with regulating these emissions under existing provisions of the federal Clean Air Act, despite the U.S. Senate's reluctance to adopt economy-wide climate change regulation.

This follows on the heels of last spring's announcement that the Obama administration had reached an understanding with the auto industry on establishing new, aggressive mileage standards for cars and light trucks. To date, Corporate Average Fuel Economy, or CAFE, standards have always fallen under the regulatory province of the Department of Transportation and its National Highway Transportation Safety Administration. The endangerment determination sets the stage for the Environmental Protection Agency to use mileage standards as a means to regulate car and truck greenhouse gas emissions under rules expected by March.

In a parallel action, EPA has announced that once the vehicle rules go into effect, regulation of greenhouse gases emissions under the Clean Air Act will expand to include emissions from small businesses and large individual residences. While the EPA proposes to phase in regulation through state permitting, its proposed solution

known as the "Tailoring Rule" will still force state agencies to assume a massive new regulatory burden -- without any additional funding.

The national association representing state and local agencies has strongly advocated that EPA defer regulation of greenhouse gases under the Clean Air Act because the anticipated administrative burden will exceed the capacity of state agencies.

Several members of Congress, both Democratic and Republican, have floated the concept of having Congress step in and at least put a moratorium on EPA's unilateral efforts to begin broad greenhouse gas regulation. This is a wise course. Imposing new and uncertain burdens on the national economy through a regulatory agenda that the states say they are incapable of handling will not assist in creating jobs in Michigan -- or anywhere else.

Stephen C. Kohl,
environmental law attorney,
Southfield

AIR

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Published Friday February 19, 2010

EPA praises OPS for indoor air efforts (*Omaha World Herald*)

The Omaha school district has received the highest honor the Environmental Protection Agency awards to school districts for maintaining healthy indoor air in its schools and offices.

Only 15 other school districts in the country have received the EPA's Indoor Air Quality Tools for Schools National Model of Sustained Excellence Award since its inception in 2005, EPA officials said.

Recipients of the award must have been past winners of an award for indoor air quality. The Omaha Public Schools met that mark in 2006.

Since then, the school district has taken its efforts to a higher level, EPA officials said, continuing to review operations for any potential effects on air quality and making adjustments when necessary.

Staff have measured buildings for radon, a naturally occurring gas that can cause lung cancer, and made changes to reduce levels where needed. The agency also praised the district for helping other organizations, including sharing a chemical management

program that became the state’s prototype and is used in schools across Nebraska. **— Julie Anderson**

EPA says air OK at Kansas City federal complex (*Associated Press*)

Story also appeared: *KOAM TV*

Associated Press - February 18, 2010 5:54 PM ET

KANSAS CITY, Mo. (AP) - The EPA says initial air monitoring tests at a federal complex in south Kansas City show nothing of concern.

But EPA regional spokesman Chris Whitley said Thursday that more tests will be done at the Bannister Federal Complex to rule out possible health problems from pollutants.

The Environmental Protection Agency says tests taken from below two buildings this month detected vapors from two chemicals: TCE, which is an industrial solvent and likely carcinogen, and PCE, a dry cleaning agent. But the agency says the levels of those vapors were not high enough to be a health concern.

The EPA expects to get more test results in about a month, and crews will return to monitor recently installed vapor ventilation systems at the site.

The 310-acre complex houses facilities for the General Services Administration and the Department of Energy.

Thu, 2010-02-18 12:40

Chamber of Commerce Challenges EPA's Greenhouse Gas Endangerment Finding (*Ecofactory*)

WASHINGTON, DC, February 18, 2010 (ENS) - The U.S. Chamber of Commerce Friday filed a formal petition in federal court challenging the U.S. Environmental Protection Agency's finding under the Clean Air Act that greenhouse gases endanger public health and welfare of current and future generations.

Steven Law, the Chamber's chief legal officer and general counsel, said, "The U.S. Chamber strongly supports efforts to reduce greenhouse gas emissions in the atmosphere, but we believe there's a right way and a wrong way to achieve that goal."

"The wrong way is through the EPA's endangerment finding, which triggers Clean Air Act regulation," said Law.

"Because of the huge potential impact on jobs and local economies, this is an issue that requires careful analysis of all available data and options. Unfortunately, the agency failed to do that and instead overreached. The result is a flawed administrative finding that will lead to other poorly conceived regulations further downstream."

"The right way," said Law, "is through bipartisan legislation that promotes new technologies, emphasizes efficiency, ensures affordable energy for families and businesses, and defends American jobs while returning our economy to prosperity. We also need a comprehensive international agreement that includes all CO2 emitting economies, which the Chamber has been actively working toward."

Law said the Chamber's challenge will be based on "lapses in EPA's process" in making the endangerment determination.

"The Chamber's legal challenge will focus specifically on the inadequacies of the process that EPA followed in triggering Clean Air Act regulation, and not on scientific issues related to climate change or endangerment," Law said.

The W.A. Parish power plant is fired by coal and natural gas. Located near the Brazos River, it is the largest power plant in Texas. (Photo courtesy Texas Flyer)

He said further details about the Chamber's challenge would be forthcoming in the coming weeks when the statement of issues is filed.

For at least 200 years, the burning of fossil fuels, such as coal and oil, and deforestation have caused the concentrations of heat-trapping greenhouse gases to increase in the atmosphere. Like the glass panels of a greenhouse, these gases prevent the Sun's heat from escaping to space.

On December 7, 2009, EPA Administrator Lisa Jackson announced her finding that greenhouse gases endanger the public health and welfare of the American people because they are the primary driver of climate change, which can cause "changes in air quality, increases in temperatures, changes in extreme weather events, increases in food- and water-borne pathogens, and changes in aeroallergens."

The administrator also found that the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas air pollution that endangers public health and welfare under the Clean Air Act.

EPA's endangerment finding covers emissions of six key greenhouse gases - carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

While the first three gases are produced in nature as well as by humans, the last three result only from human activities, and they are the most potent and persistent greenhouse gases.

The human activities that produce greenhouse gas emissions are:

- carbon dioxide: emitted by burning fossil fuels, deforestation
- methane: emitted by landfills, natural gas and petroleum systems, agricultural activities, coal mining, combustion of fossil fuels, wastewater treatment, and some industrial processes
- nitrous oxide: emitted by agricultural soil management, animal manure management, sewage treatment, combustion of fossil fuels, adipic acid production, and nitric acid production
- hydrofluorocarbons: manufactured chemicals that have been developed as alternatives to ozone-depleting substances for industrial, commercial, and consumer products
- perfluorocarbons: produced by primary aluminum production and semiconductor manufacture
- sulfur hexafluoride: used for insulation and current interruption in electric power transmission and distribution equipment, in the magnesium industry to protext molten magnesium from oxidation and potentially violent burning, in semiconductor manufacturing to create circuitry patterns on silicon wafers, and as a tracer gas for leak detection

President Barack Obama and Administrator Jackson both have stated that they support a legislative solution to the problem of climate change.

The House of Representatives passed climate legislation in June 2009, but the Senate is not scheduled to consider its version of the bill until spring.

However, said Jackson in December, climate change is threatening public health and welfare, and it is critical that EPA fulfill its obligation to respond to the 2007 U.S. Supreme Court ruling in Massachusetts v. Environmental Protection Agency that determined greenhouse gases do fit within the Clean Air Act definition of air pollutants.

The EPA endangerment finding does not necessarily impose any emission reduction requirements, but it clears the way for the EPA to regulate emissions of these gases under the Clean Air Act.

This is the outcome the U.S. Chamber of Commerce wants to prevent.

Law said, "We continue to call for Congress to address climate change policy through the legislative process, rather than having EPA misapply environmental statutes like the Clean Air Act or Endangered Species Act that were not created to regulate greenhouse gas emissions."

The U.S. Chamber of Commerce is the world's largest business federation representing more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

City's smog concerns may choke power plant (*Houston Chronicle*)

Pollution near Matagorda could drift to Houston
By MATTHEW TRESAUGUE
HOUSTON CHRONICLE
Feb. 18, 2010, 11:12PM
A proposed coal-fired power plant in mostly rural Matagorda County, 90 miles from the traffic-choked freeways and smokestacks of Houston, has moved to the center of the debate over the big city's air.

Some federal regulators, Houston lawmakers, and environmentalists say the proposed White Stallion Energy Center would only exacerbate the city's stubborn smog problem as tougher nationwide limits for the widespread pollutant come into play.

The U.S. Environmental Protection Agency, for one, wants Texas regulators to prove that pollution from the coal plant would not make Houston's smog worse before issuing permits. Critics also want the state to require the power company to consider new technology that might slash emissions of smog-forming pollution.

The push comes amid a review of the proposal by the State Office of Administrative Hearings, which will soon recommend whether the Texas Commission on Environmental Quality should grant the plant's air permit.

The plant would be built less than 20 miles from the boundary of the eight-county Houston region that was long in violation of federal limits for smog or ozone. Rules on industrial pollution — in particular, new sources — are tighter inside such areas than outside, even though smog ignores county lines.

The TCEQ has declined to study the smog issue further, saying it would be too costly, take up to a year to complete and still not provide enough information to address the EPA's concerns.

The state agency declined to comment further because the issue is before the hearing office.

Local concerns

Texas regulators, not the EPA, decide whether to grant power plant permits. But the federal agency can intervene if it finds a problem.

In Matagorda County itself, there is a push-pull between environmental protection and jobs. Some rice farmers also have raised concerns about how much water the proposed plant will use.

In Houston, meanwhile, state Reps. Jessica Farrar, Ana Hernandez and Kristi Thibaut, all Democrats, asked the EPA last week to block the coal plant's permits until the TCEQ studies emissions that would drift toward Houston and requires stricter pollution controls than proposed.

“Our concern is public health,” Hernandez said. “I think the impact on Harris County should be fully accessed before any permits are issued.”

Houston, once the nation's smog capital, met the federal ozone limit for the first time last year. But the region will need to make deeper cuts, because the EPA has proposed a stricter smog standard.

The allowable smog level will be between 60 and 70 parts ozone per billion parts air, down from the 84 parts per billion, set in 1997, that Houston met last year.

The EPA says the tighter standard reflects research showing that smog poses greater health risks than previously thought. Ozone is the main ingredient in smog, and chronic exposure can trigger asthma attacks, chest pains and premature death.

Smog is created when a mixture of chemicals emitted mostly by vehicles, industrial plants and refineries reacts with sunlight.

Not the cleanest

If built, the White Stallion plant would be capable of generating 1,320 megawatts, enough to power about 650,000 homes.

The company proposing it, which didn't respond to requests for comment, says on its Web site the plant's circulating fluidized bed technology enables it to burn coal and petroleum coke cleanly, meeting rigid environmental standards. The technology burns coal at lower temperatures and uses limestone to capture many emissions that older plants don't.

Other proposed coal plants in Texas, however, would emit smog-forming pollution at a lower rate than the White Stallion facility, which would pump more than 4,000 tons of nitrogen oxides into the air each year — as much as 4.8 million cars — and increase Houston's ozone level by 2 parts per billion, according to environmental groups.

“It's a significant problem, especially since the EPA is tightening the standard” for smog, said Ryan Rittenhouse, a Texas-based analyst with the advocacy group Public Citizen. “It makes no sense to permit this coal plant on Houston's doorstep.”

matthew.tresaugue@chron.com

Utah legislators ask EPA to stop regulating carbon dioxide emissions (*FOX 13 Now*)

The resolution's sponsor admits he has a personal interest in discouraging EPA regulations on carbon dioxide
David Wells, Senior Web Producer
FOX 13 News
12:42 PM MST, February 18, 2010
SALT LAKE CITY
Rep. Kerry Gibson of the Utah legislature is sponsoring a resolution asking the Environmental Protection Agency to cease policies, programs and regulations related to carbon dioxide emissions. Last week, scientists from the University of Utah, Brigham Young University and New York University held a press conference in opposition to House Joint Resolution 12. The resolution has been a controversial one among the academic community and has gained the attention of international media. Gibson says regulating carbon dioxide emissions would be harmful to Utah's economy.

"We're concerned, from a state standpoint, as well as industry and agriculture and several other groups, that a rush to action on limiting [carbon dioxide] emissions would be detrimental to our overall economy," Gibson told FOX 13 News.

Gibson admits the resolution is a personal one; he owns a farm with hundreds of carbon dioxide-emitting cattle. Gibson is concerned the EPA will tax owners of businesses responsible for carbon dioxide emissions. H.J.R. 12 holds no legal weight, but lawmakers who support the resolution hope it will send a strong message to leaders in Washington. The resolution passed the Utah State House of Representatives and will be heard by the Senate Natural Resources, Agriculture, and Environment Committee on Friday morning.

Texas Dispute Highlights Siting Concerns With EPA Lead Monitoring Plan (*Inside EPA*)

EPA and Texas are trying to resolve a dispute over how to site ambient air quality monitors targeting large industrial sources of lead, highlighting a number of key issues that EPA's proposed revisions to federal criteria for siting lead monitors fails to address, including whether erecting fences around a facility should affect monitor placement.

The agency took comment through Feb. 16 on its proposal to revise its monitoring requirements for the lead national ambient air quality standard (NAAQS). EPA is proposing to require 140 new monitors to determine compliance with the standard, tightened by the Bush EPA in 2008. But the proposal is silent on key issues about siting monitors, which could affect where they are placed and therefore what readings the monitors give on local lead emission levels.

EPA uses data from its monitors to ensure compliance with the standard, and uncertainty over where and how to site the monitors could lead to inaccurate data on whether an area is in attainment with the NAAQS, sources say.

In Texas, state environmental officials are wrangling with EPA over how to interpret monitor-siting criteria for an Exide Technologies battery recycling plant in Frisco, TX. The state and EPA are attempting to negotiate a resolution, but one municipal legal source says it reflects a widespread problem over uncertainty on siting monitors.

One of the key objectives of the air quality monitoring system is to assess how individual significant sources' affect ambient pollution levels. EPA's Office of Air Quality Planning & Standards sets the criteria to site monitors, and state and local agencies administer the monitoring program. The dispute in Texas was sparked over the building of a new fence at the Exide plant, sparking differing opinions on whether an existing lead monitor must be relocated.

Texas Commission on Environmental Quality (TCEQ) officials say the monitor must be moved further from the plant in order to be accessible by the public, but EPA says the monitor can stay at its current location, according to the municipal legal source. The dispute over the interpretation of EPA's policy for siting source-oriented monitors reflects a "widespread" issue affecting a number of other industrial sectors, including petrochemical industries, a significant industry in Texas and other EPA Region VI states, according to the source.

For example, the source says, the question often arises of whether an industrial source can "buy up the problem" of localized NAAQS nonattainment by purchasing a significant buffer area around the facility and therefore argue that the monitors on the facility's land should not be considered in attainment decisions. If the monitors were not considered, it would then be possible that lead emissions in the area would be found to be within EPA's limit.

"And truthfully there are arguments on both sides of that, but the city's position is and my personal position is if the air itself, the emissions coming from the facility, have the ability to impact the public then that's an ambient air standard condition," the source says, adding that any monitoring in such an area, "regardless of which side of a barbed wire fence it's on," should still be considered in attainment designations.

A TCEQ spokesperson told *Inside EPA* in a statement that TCEQ and EPA negotiations are ongoing to ensure the monitors at the Frisco plant comply with federal rules and protect public health. "We believe recent discussions have been fruitful in moving forward and we hope to have a final plan in place in upcoming weeks," the press official said.

Meanwhile, an EPA Region VI spokesman also affirms that discussions are ongoing and notes that they include municipal officials as well.

While TCEQ and EPA say that a state-specific resolution is in the works, sources note that EPA's proposed revisions to its 2008 lead NAAQS monitoring requirements do not address the issues that the Texas dispute highlights.

At press time, no groups had filed comments seeking guidance on how new fences or other facility changes should impact the siting of existing monitors, but one commenter who praised EPA's proposal did note that a monitor's location in regard to the position of the source and the area's meteorology is a critical factor. "Monitoring downwind of facilities that emit between 0.5 and 1 tons per year of lead is necessary to provide sufficient information about airborne lead levels near these facilities in order to adequately enforce the NAAQS and to protect public health with an adequate margin of safety," said Judith Zwicker of a St. Louis, MO, consulting firm. -- *Molly Davis*

02/19/2010

Senate Bill To Replace CAIR Punts Key Trading Program Issue To EPA (*Inside EPA)*

Senate legislation to replace EPA's remanded clean air interstate rule (CAIR) cap-and-trade pollution plan aims to strengthen the agency's authority to establish a trading program for nitrogen oxide (NOx) and sulfur dioxide (SO2) emissions but punts a contentious trading issue -- how to distribute emission credits -- back to EPA.

The bill's lack of specifics on how EPA should craft key elements of its CAIR replacement could reignite debates over issues that stalled earlier versions of the legislation, which is designed to cut NOx, SO2 and mercury. It could also reinforce some observers' major concerns about whether EPA can craft a legally defensible cap-and-trade plan for NOx, fears elevated after a federal court remanded CAIR due to concerns about its trading system.

For example, while the bill, S. 2995, introduced Feb. 4 would authorize EPA to establish a NOx and SO2 trading program, it leaves the agency to determine whether to distribute emissions credits based on either a facility's fuel input or energy output. Facilities can use credits to comply with the bill's caps rather than install expensive pollution control technology.

CAIR's "fuel factors" assigned a weight to various types of power plants based on the type of fuel combusted -- a variation on the input-based approach, which sources say benefits higher-emission electricity generation. In the U.S. Court of Appeals for the District of Columbia Circuit's 2008 remand of CAIR, the court found the fuel factors unlawful under the Clean Air Act, but recently ruled that EPA can keep the factors in place until replacing the remanded rule.

S. 2995 fails to specify whether the CAIR replacement trading program should use an input or output-based approach and punts the issue back to EPA. That could be problematic for whatever program the agency devises, because if EPA again uses an output-based approach it might prompt another industry lawsuit.

The bill avoids mandating either approach due to a split between its two main sponsors, output-based proponent Sen. Thomas Carper (D-DE) and input-based proponent Sen. Lamar Alexander (R-TN). One Senate source explains, “Allowing the EPA to decide the allowance structure is neutral ground for both offices.”

The bill is silent on what type of criteria EPA should use in distributing NOx credits. The D.C. Circuit in the CAIR litigation, *North Carolina v. EPA*, found fault with EPA’s fuel factors method for distributing the credits in the original rule, saying adjustment factors used to distribute credits based on the type of fuel combusted “shifted the burden of emission reductions solely in pursuit of equity among upwind states -- an improper reason” -- and found the resulting state budgets “arbitrary and capricious” under the Clean Air Act.

The court found the fuel factors violated the air act, but because the court remanded the rule the factors remain in effect. A utility company in recently decided litigation, *Florida Power & Light Group, Inc. (FPL) v. EPA*, urged the D.C. Circuit to strike the fuel factors from the remanded CAIR, but the court on Feb. 2 denied the industry petition. EPA says that past court rulings have found the factors to be unlawful but the agency has not formally revoked them, saying that FPL’s suit attempted to over-simplify the burden the agency would face in striking the provision from CAIR.

The Senate source says the new bill would give EPA significant legal certainty by prohibiting EPA from using the fuel factors faulted by the court. But the bill fails to offer an alternative distribution method, leaving lingering uncertainty about what approach EPA should use -- and whether it will face a legal challenge.

While the legislation punts the emission allocation issue back to EPA, the bill would clearly authorize the agency’s ability to establish a NOx trading program and offer key specifics on the shape of such a program.

The Senate source says the bill is designed to give EPA maximum legal certainty on its ability to do cap-and-trade for NOx. To achieve this certainty, the bill would authorize EPA to extend its existing acid rain trading program to both pollutants. The program was established under the 1990 Clean Air Act amendments and primarily targets coal-fired power plants, establishing a trading program to spur cuts in SO2 and setting emission limits for NOx.

This is in contrast to CAIR’s approach that relied on authority under Clean Air Act section 110(a)(2)(d), which generally requires EPA to ensure that state implementation plans for coming into attainment with federal air standards would not result in one state’s pollution causing another state to be in nonattainment. In remanding CAIR to

EPA, the D.C. Circuit rejected that attempt to create cap-and-trade for NOx and SO2 under section 110.

The Senate source says that the bill's reliance on existing Title IV air law trading authority means supporters "are confident the EPA can set up an allocation structure that can hold up in the courts," adding that with the proven acid rain trading authority there would be "a lot less opportunities to sue over the allocation structure."

02/19/2010

Utility MACT Could Trump Emissions Trading In EPA CAIR Replacement (*Inside EPA*)

EPA's upcoming proposal to replace its remanded clean air interstate rule (CAIR) may allow limited trading of utility emissions credits, but a separate pending maximum achievable control technology (MACT) rule for utility air toxics may trump the CAIR replacement by requiring controls that are so stringent they make trading moot, sources say.

The MACT could set strict controls on pollution to cut air toxics emissions that would have a co-benefit of cutting sulfur dioxide (SO2) emissions so much that it eviscerates any demand for SO2 emission credits under a new SO2 trading plan. However, the pending MACT may not have such an impact on trading of nitrogen oxide (NOx) credits under a CAIR replacement because air toxics utility controls do not cut NOx significantly.

Regina McCarthy, the head of EPA's air office told a Feb. 3 meeting of the Clean Air Act Advisory Committee in Arlington, VA, that the agency is committed to writing a replacement for the CAIR rule that will withstand legal scrutiny. "I am not going to make the mistakes of the past," she said. A federal court remanded CAIR after finding fault with CAIR's cap-and-trade program for reducing nitrogen oxide (NOx) and SO2 emissions.

Several sources say the safest way for the agency to achieve McCarthy's goal of issuing a legally defensible replacement is to avoid full-scale trading. That could help to address the July 11, 2008 ruling by the U.S. Court of Appeals for the D.C. Circuit that found CAIR failed to effectively account for states' contribution to air quality problems in downwind states. CAIR applied at power plants in 28 Eastern states and the District of Columbia.

But while sources expect to see limited trading as one of several options EPA will take comment on in the upcoming proposed CAIR replacement, some say the agency's maximum achievable control technology (MACT) standards for air toxics from power plants, which is expected in 2011, could effectively trump most emissions credit trading.

The rule may end up being “much ado about nothing,” if the MACT requires the installation of emissions scrubbers and bag houses, an industry observer says. Such controls could limit SO2 so much that there would be no demand for the credits, essentially making trading irrelevant, the source says.

The air toxics rule may not trump NOx trading because the selective catalytic reduction technology to reduce NOx does not have significant co-benefits for air toxics, the source says. But while there may still be demand for NOx credits, they are less expensive and provide less trading benefit than SO2 credits, the source says.

One environmentalist favors a strict MACT rule, even if it cuts SO2 and PM trading, because it would have significant health and environmental benefits. But the source notes that the CAIR replacement will still have an impact because it will have an earlier compliance deadline than the MACT and will be important to control NOx even after the MACT requirements begin.

EPA is also reviewing a new source performance standard (NSPS) for the utility sector to reconsider the standard’s limits for SO2, NOx and particulate matter in tandem with the MACT, with a focus on pollution control co-benefits between the rules (*Inside EPA*, Aug. 28). The NSPS would come in addition to the CAIR replacement, would apply nationally, and some say could be a venue for possible greenhouse gas controls.

One state source echoes the idea that a strict utility MACT could end up being more stringent than whatever program EPA proposes to replace CAIR, and that it would be less flexible than a program with trading. While the MACT may set facility-wide pollution limits, which provides more flexibility than unit-specific limits, it will not allow the flexibility of trading that may be allowed under CAIR, the source says.

EPA has previously said that although the CAIR replacement and the power plant MACT are separate rules, the agency plans to try to link them. “We would like to give utilities an integrated approach to dealing with both of these rules as we move forward,” Robert Wayland of EPA’s air office told a conference last fall.

And EPA Administrator Lisa Jackson in a Feb. 17 speech said that in April EPA will propose its new CAIR, and later this year will propose a new utility MACT for mercury. “Working together will set a strong foundation for achieving the reductions that a new MACT and CAIR rules will require,” Jackson told a meeting of the National Association of Regulatory Utility Commissioners in Washington, DC.

Observers agree that emissions trading will be at least an option in the CAIR replacement proposal, though they disagree on the best way to achieve that goal. Pending Senate legislation to replace CAIR would create caps and deadlines for a trading program, but punt key issues on the shape of a trading plan back to EPA (*see related story*).

John Walke of the Natural Resources Defense Council told a Feb. 4 American Law Institute-American Bar Association Conference in Bethesda, MD, that he expects the CAIR replacement proposal will include an option that would allow controlled interstate trading with “bells and whistles . . . that probably impose restrictions based on proximity of the source to the border or to other sources, or to concentration in an area.”

Walke said he also hopes that EPA will seek comment on options that limit the rule to intrastate trading or that require source-by-source controls. However, trading is likely to be an option in the proposal, Walke said, noting, “[T]here are significant pressures in this administration as there were in the last to support that as a policy mechanism.”

The industry observer says that trading within a state will likely be one option in the proposal, but interstate trading is still uncertain. However, if EPA wants to use a controlled form of interstate trading, it could allow a small state that does not have much of a market to band together with other states to allow limited interstate trading. Full interstate trading would be “really unwieldy” because EPA would have to model the relationship between each state, the source says.

The state source expresses hope that EPA will allow trading only as an interim measure that maximizes dollars per ton of emission reductions in the early years but eventually results in uniform effective controls for each source. States have also opposed allowing emission credits to be banked and allowing some sources to avoid controls altogether, the source says.

The source says some states would also like to see EPA allow for a second phase of the CAIR replacement rule to go into effect around 2015 that will account for air standards for pollutants such as ozone that the agency is currently reviewing. The source says a second phase is needed because the agency does not have many opportunities to require controls from the sector. “With utilities, you don’t get multiple shots. You get a limited number and maybe once every ten years you get a national rule for utilities, and you have to be able to live with this one.”

EPA planned to release the CAIR replacement in March, but sources say the rule will likely be delayed until April or May. Walke says the delay is likely due to EPA’s work on rules to reduce greenhouse gas emissions, and the industry observer says the delay could be due to the extensive modeling required for the rule. EPA’s regulatory agenda says the proposed “Clean Air Transport Rule” will be released in July. -- *Kate Winston*

02/19/2010

California Risk Review Pressures EPA To Reverse Fumigant Approval (*Inside EPA*)

California's assessment of the risks posed by the controversial fumigant methyl iodide is putting new pressure on EPA to reconsider its 2007 decision to register the chemical -- raising doubts among industry over what fumigant they will use to replace the widely used fumigant methyl bromide, an ozone depleting substance that is being phased out.

State efforts to pressure EPA may be successful as agency officials told California regulators last year that if the state's risk assessment results "alter or change" EPA's scientific analysis of the chemical's risks, the agency will reconsider its reregistration decision.

A state peer review panel Feb. 11 backed the Department of Pesticide Regulation's (DPR) strict assessment of the pesticide's risks to human health and the environment, finding that it may be difficult to limit the risks from exposure.

"Based on the data available, we know that methyl iodide is a highly toxic chemical and we expect that any anticipated scenario for agricultural or structural fumigation use of this agency would result in exposures to a large number of the public and thus would have a significant adverse impact on the public health," the peer review panel said in its report to state regulators. *The report is available on InsideEPA.com.*

The panel's report found that "in each and every instance" where the DPR findings differed from EPA's risk assessment, it was attributable to "a more insightful and scientifically rigorous approach."

Even before the release of the report, state officials and others have been seeking to use the risk assessment to pressure EPA to reconsider its reregistration decision. At a hearing earlier this month, State Sen. Dean Florez (D) urged DPR officials to press EPA to take another look at the chemical's risks and reconsider its registration at the federal level.

Florez requested DPR ask EPA officials to take "another view" of methyl iodide. He also noted that the Bush EPA approved the pesticide's use, and that lawmakers may want the "new EPA," referring to the Obama Administration, to perform its own review of the pesticide and its risks.

School District receives pair of clean-diesel buses (*Reno Gazette Journal*)

By Robert Perea • Staff Writer • February 19, 2010

The Lyon County School District has received two new clean-diesel buses from the Nevada Division of Environmental Protection (NDEP), funded by U.S. Environmental Protection Agency's American Recovery and Reinvestment Act's Clean Diesel Grant Program, to local school districts.

The NDEP delivered 17 of the new clean-diesel buses to 15 school districts in Nevada. Lyon and Nye counties were the only two districts to receive two of the buses.

The busses were delivered during a ceremony last Friday at the Getto Transportation Center in Sparks.

Lyon County School District Superintendent Caroline McIntosh said the district is grateful for the two new busses because LCSD hasn't been able to purchase new busses the last two years because of budget shortfalls.

She said Lyon County had to spend between $20-30,000 to upgrade the buses.

"That's still wonderful for two new busses," she said.

She said the buses have already been added the district's fleet, with one in service in Silver Springs and one in Yerington.

NDEP received $1,730,000 to fund the bus replacements in May 2009. Only existing model year 1991 or older buses were eligible for the replacement program and all but two counties (Clark and Carson City) had buses that qualified. The districts will replace the older buses by removing them from service and destroying the engines within 90 days of receipt of the new bus.

"Every pre-1990-model bus is estimated to emit as much as 60-times more pollution than the buses that we delivered to local school districts today. This event highlights a tremendous effort by the school districts to partner with NDEP to reduce exposure of these pollutants by our local school children," said Leo Drozdoff, NDEP Administrator.

The NDEP School Bus Replacement Program targets the reduction of diesel emissions. Diesel engines emit large amounts of nitrogen oxides, particulate matter and air toxics -- pollutants that can negatively impact human health and the environment.

The buses were purchased from U.S. based Blue Bird Corporation. Each bus holds 84 passengers.

McIntosh was joined at Friday's ceremony by LCSD Transportation Director Steve Clifford, District Board of Trustees member James Huckaby and two bus drivers.

"We are feeling so grateful," McIntosh said. "It was like two new babies coming home."

02/19/2010

EPA Readies Proposal Mandating MACT 'Hammer' After Air Rule Vacaturs (*Inside EPA*)

EPA has won White House approval to propose a key new regulatory backstop declaring that states must issue case-by-case maximum achievable control technology (MACT) limits at facilities in the event a federal court vacates an EPA sector-based MACT, a rule that could bolster EPA's stance on when the so-called MACT "hammer" applies.

The pending rule, which cleared White House Office of Management & Budget (OMB) review without change Feb. 1, aims to avoid confusion on when the MACT hammer applies following a legal loss for EPA on an air toxics rule. The hammer requires states to set individual toxics limits at facilities when there is no federal standard, but some industry and state officials have criticized the hammer requirements as a major funding and resource constraint.

EPA's rule could rile those industry and state critics of the MACT hammer process, but win tacit support from environmentalists frustrated with states' inability to implement case-by-case MACT.

EPA believes the rule is necessary because the MACT hammer process is poorly understood by states, which have been slow to implement it after courts vacate EPA MACTs, an agency source says. An existing MACT hammer rule, promulgated under section 112(j) of the Clean Air Act, does not address what states must do following vacatur of a federal MACT, causing "significant confusion among permitting authorities," the source says.

"The current rule does not address the application process for the vacatur situation: states have not known what to do. . . . Our legal council has determined that when a [MACT] standard is vacated, the 112(j) rule applies. It's as if the vacated standard was never promulgated in the first place," according to the source.

The rule could also prevent future administrations from seeking to implement creative MACT rules, as the Bush EPA attempted to, but lost in a string of legal defeats due to courts' strict interpretation of the Clean Air Act section 112. The air law states that MACT rules must impose technology-based requirements for each sector representing the average of the best 12 percent of sources, rather than the Bush EPA's less stringent approaches.

The plan to issue such a backstop was first published in EPA's fall 2009 unified agenda. "In this action, we are address[ing] the process for obtaining case-by-case MACT determinations in the case of standards vacatur," the notice says. "We are also reformatting the rule to streamline it and make it easier to understand. There has been significant confusion from permitting authorities on how this program works in the case of vacaturs."

The rule appears designed to shut down industry opposition to states using the MACT hammer in the absence of explicit EPA guidance on the applicable air toxics standard, and also may raise objections from some states who oppose the resource-intensive case-by-case requirements mandated when national standards are absent.

EPA and environmentalists, however, have long argued that case-by-case MACT issued by states should automatically apply when a national MACT is vacated, rather than remanded, by the courts.

The U.S. Court of Appeals for the District of Columbia Circuit in recent years vacated EPA MACT rules for boilers, brick and clay manufacturing facilities, clay ceramics manufacturing, polyvinyl chloride manufacturing and other facilities. Additionally, the DC Circuit vacated the Bush EPA's cap-and-trade program for power plant mercury emissions -- issued in place of a MACT -- and the Obama EPA is due to propose a MACT and issued a Jan. 14, 2009, memorandum stating that case-by-case applies for new and modified facilities.

The National Association of Clean Air Agencies, which represents state and local air officials, published model rules or suggested appropriate limits for polyvinyl chloride plants and boilers. But states have said they struggled to implement the model rules and to meet the requirements of the MACT hammer.

The pending agency proposal, in addition to clarifying that the MACT hammer applies when rules are vacated, will also ease the paperwork burden for states by combining an existing two-part application process into one, the EPA source says. EPA is promulgating strict new MACTs, setting technology standards on a pollutant-by-pollutant basis and prompting industry arguments that such an approach creates a "Franken" MACT that no single facility can meet.

Environmentalists are likely to offer tacit support for the new agency rule, because they have long expressed frustration with states' inability to implement case-by-case MACT. For example, Eric Schaeffer of the Environmental Integrity Project (EIP) told an American Bar Association conference last March that the MACT hammer was an ineffectual tool, and that EPA was wrongly ignoring the hammer provision for boilers.

"If there is a MACT hammer, in this case it's made out of paper mache," Schaeffer said at the event. EIP has not yet taken a position on EPA's soon-to-be-proposed rule.

But a Natural Resources Defense Council source says that the Clean Air Act and EPA policy are clear that in cases where a national MACT standard has been vacated, the MACT hammer applies. "I don't think it is necessary to clarify or codify" that principle. However, "industry has been vociferous in objecting to the MACT hammer falling when a MACT standard has been vacated," and EPA may therefore feel pressure to bolster its position, the source says.

The source rejects as “preposterous” the assertion by some in industry that the hammer provision should not apply in cases where a MACT has been vacated, and notes that the MACT hammer provision has never been litigated.

A cement industry source notes that EPA has little choice under the statute than to press states to use the hammer. “The way the statute is constructed, it doesn’t really give them the option” not to adopt this policy, the source says. However, the source calls the MACT hammer “a nightmare” and says widespread use of it would be “a huge revenue and resource drain for industry and, without question, the states.”

In joint comments to OMB in 2008 on EPA’s proposed information collection request to support the boiler MACT, industry groups representing the forest and paper, petroleum, and chemical sectors warned EPA not to implement the hammer in the absence of federal air toxics regulations. The groups said the hammer “would trigger several thousand mini-rulemakings across the nation to establish MACT limits boiler-by-boiler” in the absence of any “meaningful guidance on substance or coordination” for how to conduct MACT-equivalent analyses.

A boiler industry source says many states -- including New England states, North Carolina and West Virginia -- are implementing the boiler MACT hammer as EPA prepares to propose a new MACT for the sector this summer. The source adds that the pending backstop proposal will not apply to the industry, provided EPA completes its new rulemaking on time and it is not subject to legal challenge.

However, if EPA’s new backstop proves too prescriptive, there is potential for a legal challenge from industry, the source warns, noting that the new rulemaking has been kept quiet by EPA. “This administration likes to do things sort of secretly,” the source complains. -- *Stuart Parker*

02/19/2010

EPA Proposes To Repeal Bush-Era ‘Grandfathering’ NSR Rule For Particles (*Inside EPA*)

EPA is proposing to repeal a Bush-era “grandfathering” rule allowing certain Clean Air Act new source review (NSR) permits to use large particulate matter (PM10) as a “surrogate” for fine particles (PM2.5) -- a practice critics say leads to weaker pollution controls -- in the midst of an industry lawsuit over the Obama EPA’s earlier stay of the rule.

The Feb. 4 proposed repeal of the grandfathering policy would also end early the PM10 surrogacy policy for states with EPA-approved state implementation plans (SIPs) to implement NSR and prevention of significant deterioration permits. The proposal is one of a number of recent efforts by EPA to review the last administration’s NSR policies, and includes recent proposed stays and reconsideration of other controversial Bush-era

NSR rules, including a rule allowing NSR exemptions for “fugitive” emissions. *Relevant documents are available on InsideEPA.com.*

Critics of the surrogacy policy say that it does not require a sufficiently accurate assessment in permit applications of true PM2.5 emissions, which are widely thought to be the most harmful type of particulate. EPA says that the policy is no longer “substantially justified” now that issues that led to the policy’s creation have been resolved.

The grandfathering rule, issued in May 2008, allowed facilities to meet permitting requirements for PM10 in lieu of PM2.5 if they had applied for a permit before July 15, 2008, and had not yet received that permit. The Bush EPA also issued a separate rule repealing the PM10 surrogacy policy, which EPA had allowed since 1997 when it first implemented PM2.5 air quality standards because modeling for PM2.5 had not yet matured.

The rule impacts about 21 permits for new or modified facilities in sectors including oil refining, chemical manufacturing, natural gas transport, paper milling and automobile manufacturing, according to EPA’s proposal. The agency also notes that at least two grandfathered projects won final permits before EPA stayed the grandfathering rule and that the agency will not seek to retroactively apply the withdrawal to those permits.

The rule also ends early a three-year transition period for SIP-approved states that would have continued through 2011, allowing states to continue using the PM10 surrogacy policy until they revised their SIPs and EPA approved them.

The Natural Resources Defense Council (NRDC) challenged the rule by urging the Bush EPA to reconsider it, but NRDC’s effort was without success. The group subsequently refiled its request with the Obama EPA, which decided to reverse course and stay the rule until it could be repealed. EPA stayed the rule for three months last April. In July the agency proposed to extend the stay until May 2010 and finalized that proposal Sept. 22.

But industry groups led by the Utility Air Regulatory Group (UARG) are challenging the stay as unlawful, filing a Sept. 22 lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit.

Meanwhile, EPA is taking several other actions to stay or review NSR policies established by the Bush EPA, including sending a proposed rule on reconsideration of the agency’s “aggregation” NSR rule to the White House Office of Management & Budget for review Feb. 4, according to the White House’s Web site. The rule allows some emissions from individual projects at a single facility to be counted separately to avoid NSR permitting requirements to install stringent new emissions controls that are normally triggered when a 40 ton-per-year emissions threshold is exceeded. EPA has already stayed the implementation date of the rule until May 18.

Also Feb. 4, EPA issued a proposal to stay another Bush EPA rule allowing NSR exemptions for “fugitive” emissions -- which are those that escape inadvertently from industrial facilities -- for an additional 18 months. EPA already stayed the rule for three months but that stay expires March 30.

EPA in yet another recent NSR decision denied another petition from NRDC and Sierra Club asking that the agency reconsider and stay parts of Wisconsin’s SIP implementing other controversial NSR changes. The environmentalists charged that Wisconsin did not allow the public to comment on the SIP changes and that they interfere with “reasonable further progress” toward meeting national ambient air quality standards. They also claimed that the SIP allows unlawful backsliding, or possible air quality degradation, in non-attainment areas.

But in a Jan. 19 finding, EPA said the groups’ objections failed to meet statutory requirements for agency reconsideration. EPA also denied NRDC’s request for a stay of its final rule approving the Wisconsin SIP.

BUDGET

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02/19/2010

EPA Includes Plans For Utility Sustainability Guidance In FY11 Budget (*Inside EPA*)

EPA has included plans in its just-released fiscal year 2011 budget request to create sustainability requirements for drinking water and wastewater utilities receiving state revolving fund (SRF) loans for infrastructure maintenance, repair and upgrades, though some are concerned about the plan’s fairness.

The agency will “produce new guidance to improve state capacity development programs,” and will “develop information to promote voluntary restructuring of unsustainable water systems,” EPA says in its congressional justification documents for the FY11 request. “Finally, EPA will work with states to better target drinking water infrastructure dollars toward rule compliance and system sustainability, and will partner with other Federal funding authorities to support these efforts.”

Last year President Obama included language in his FY10 budget request requiring the agency to work with state and local partners to develop a sustainability policy that includes “pricing for future infrastructure funding through the SRFs to encourage conservation and provide adequate long-term funding for the future gap of needs,” EPA

wastewater chief James Hanlon told National Association of Clean Water Agencies (NACWA) law conference Nov. 11 in Washington, DC.

Thus far, the agency has held a series of conference calls with stakeholders, including NACWA and drinking water utilities to cull advice on sustainability provisions, and Hanlon said in November that the agency was discussing with the White House Office of Management & Budget how to include direction in the FY11 budget.

The language in the FY11 budget proposal is less specific than some sources predicted. One rural water source had expected the proposal to include requirements that when a utility applies for SRF money, it must declare or show some level of sustainability, which EPA or state officials would then consider as part of their reviews of SRF applications. Those elements, the source said in November, would be drawn from a previous report issued by EPA and industry stakeholders on how to run an efficient, effective utility. The agency released *Effective Utility Management: A Primer for Water and Wastewater Utilities* in June 2008. The document includes “Ten Attributes of Effectively Managed Water Sector Utilities,” meant to be “concise reference points for utility managers.”

Despite plans to move the new guidance soon, many sources involved in original negotiations with EPA say they have heard little since October. An EPA spokeswoman declined to comment on the plan.

CLIMATE CHANGE /GLOBAL WARMING

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February 19, 2010 Friday
Home Edition
National Desk; Part A; Pg. 11

Projects' emissions may be weighed (*Los Angeles Times*)

By Jim Tankersley
WASHINGTON
The Obama administration proposed rules Thursday that could affect construction of coal-fired power plants and other government-approved projects that produce large amounts of greenhouse gases.

The guidelines for the first time set uniform standards on how federal agencies consider the causes and effects of climate change during their environmental analyses. They would require study of the greenhouse gas emissions of any project expected to emit at least 25,000 metric tons of carbon dioxide a year -- roughly 4,600 cars' worth.

The types of projects that could be affected include large-scale landfills, coal-fired power plants and coal mines that give off methane.

The guidelines instruct federal agencies to "consider opportunities to reduce [greenhouse gas] emissions caused by proposed federal actions" and "use the NEPA [National Environmental Policy Act] process to reduce vulnerability to climate change impacts."

Such analysis would not necessarily affect a project's fate. White House officials said the rules were not meant to regulate greenhouse gas emissions. But after analysis, officials could decide whether a reduction in emissions was needed.

For those cases, the guidelines offer several suggestions, which could increase a project's upfront costs, such as installing carbon capture and sequestration technology on a coal plant or capturing methane as it escapes from a mine.

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Natural gas could help cut emissions (*Washington Post*)

February 19, 2010 Friday
Suburban Edition
A-SECTION; Pg. A13
By Steven Pearlstein

As a rule, it is always best to adopt an attitude of enhanced skepticism whenever people tell you they have a simple solution to a complex problem.

But the more I look into it, the more I'm beginning to think there is a fairly simple way to meet President Obama's short-term pledge of reducing carbon emissions in the United States by 17 percent over the next decade.

The silver bullet: Decommission about two-thirds of the electric-generating capacity fueled by cheap and plentiful coal, and replace it with power generated from cheap and plentiful natural gas, which emits half as much carbon for each megawatt of electricity.

Until recently, this really wasn't a viable option. Not only was natural gas a lot more expensive than coal, but its price was also very volatile. Utilities therefore couldn't buy it using the kind of long-term contracts they need for the "base-load" plants that operate around the clock and provide the country with most of its electricity. Because they are easy to turn on and off, gas plants were used mostly to provide "peak load" power, during the hours when demand is highest.

Two recent developments have altered the economics of power generation and, with it, the politics of **global warming.**

Because of overbuilding in the late '90s sparked by deregulation of energy markets, there are so many gas-fired plants in the country that on average, they are used only about 25 percent of the time.

At the same time, thanks to improved drilling techniques, it is possible to extract gas from shale rock -- so much that it has increased reserves by as much as 40 percent. Indeed, there is so much shale gas, and the cost of extracting it is so low, that a few gas companies have begun to offer long-term contracts to utilities at a price that comes close to making it competitive for base-load generation. One of those is Anadarko Natural Gas, whose chief executive, Jim Hackett, tells me that more companies will follow suit once state utility regulators give their blessing.

What does this have to do with **global warming?** Last month, the Congressional Research Service released a study that found that if the utilization rate at existing gas plants were doubled, it could displace about a third of all coal-fired generation. That alone would get us more than a third of the way toward the 2020 target for reductions in carbon emissions.

Moreover, since it costs a lot less to build and operate a modern gas plant compared with a coal-fired plant, building additional gas plants could be more cost-effective than the industry's current plan to spend billions of dollars to modernize its aging coal plants to make them more efficient and environmentally friendly.

This gas-for-coal swap has been tossed around in energy policy circles for some time, but it got political traction last summer when it was embraced by environmentalists such as Robert Kennedy Jr., former senator Tim Wirth (D-Colo.) and blogger Joe Romm of the Center for American Progress.

The momentum increased last fall when Exxon, BP and other big oil companies announced major investments in shale-gas exploration. Given that cap-and-trade legislation is firmly stuck in the Capitol Hill quicksand, a modest and focused proposal to nudge electric utilities toward natural gas looks like a viable interim step toward a more comprehensive **global warming** policy.

Political reality dictates that the winners from this shift -- which include all of us -- provide compensation for the losers. But despite what you'll hear from the coal industry, the price is hardly exorbitant. Since most of the coal plants that would be shut down are more than 40 years old and are fully depreciated, utility shareholders wouldn't be entitled to much relief.

As for workers, if the government were to offer an annual payment equal to current pay for two-thirds of the nation's 87,000 coal miners, along with a similar annuity to an equal number of laid-off railroad and utility workers, a back-of-the- envelope calculation suggests a first-year cost of $8 billion, declining every year after that. You could pay for this "cash-for-coal-clunkers" program with a temporary 2 percent surtax on all electric

bills, or about $2 a month for the average household bill.

That's a small price to pay for dealing with **global warming** -- and the cost would almost certainly be less than that. Because of a stunning bit of politically convenient geology, many states that have the most to lose from declining coal production -- Pennsylvania, Ohio, Kentucky, West Virginia and Virginia -- would also be among the big winners from shale-gas development, suffering little net loss in employment, income, tax revenue or royalty payments. That doesn't mean that King Coal will go down without a fight, but this time he'll be up against not only the Sierra Club but also the Petroleum Club of Houston.

U.N. Climate Chief Quits, Deepening Sense of Disarray (*New York Times*)

February 19, 2010 Friday
Late Edition - Final
Section A; Column 0; Foreign Desk; Pg. 12
By NEIL MacFARQUHAR and JOHN M. BRODER; Neil MacFarquhar reported from the United Nations, and John M. Broder from Washington.
UNITED NATIONS
The sense of disarray in the global effort to address **climate change** deepened Thursday with the resignation of Yvo de Boer, the stolid Dutch bureaucrat who led the international **climate change** negotiations over four tumultuous years.

His departure, which takes effect on July 1, comes after a largely unsuccessful meeting in Copenhagen in December that was supposed to produce a binding international treaty but instead generated mostly acrimony and a series of unenforceable pledges by nations to reduce their **global warming** emissions.

Mr. de Boer did not directly link his decision to step down to the chaos at Copenhagen. But he was known to be frustrated and exhausted by the meeting's failures. His resignation was seen by some as a further sign that the United Nations framework, which for almost two decades has been viewed as the best approach to tackling **global warming,** may have outlived its usefulness. And it raised questions about whether any significant progress toward a global treaty would be made by December, when the next United Nations climate talks are to be held in Cancun, Mexico.

"If Yvo de Boer thought that there would be a legally binding treaty at the end of this year, I suspect he would be sticking around to take some of the credit for it," said Michael A. Levi, an expert on **climate change** at the Council on Foreign Relations. "He has put in a lot of time toward a very well-defined end."

The international climate effort has been hampered by tensions between the world's two largest emitters of greenhouse gases, the United States and China, over how to measure and report emissions. The United States, which had promised to lead global climate talks, appears nowhere near passing legislation to control its own climate-

altering pollution, and China, now the world's largest emitter of greenhouse gases, seems determined to go its own way.

At the same time, the scientific underpinnings of the global effort to address **climate change** have been under steady attack in recent months. Those who are skeptical of **global warming** science have been invigorated by a small number of errors in the landmark 2007 report from the United Nations Intergovernmental Panel on **Climate Change.** The head of that panel, Rajendra K. Pachauri, is facing criticism for those mistakes as well as accusations of conflicts of interest for taking consulting fees from business interests. (Dr. Pachauri has said that he donates all such fees to the nonprofit research institute in New Delhi that he runs.)

"We have seen a situation where the politics of **climate change** are really, really difficult among a number of key actors, and nobody, not even Mr. de Boer, was able to cut through that," said Kim Carstensen, the director of the Global Climate Initiative of the World Wildlife Fund.

Janos Pasztor, the top **climate change** adviser for the United Nations secretary general, Ban Ki-moon, said that Mr. de Boer called Mr. Ban two days ago to inform him of the decision. Mr. Pasztor rejected the idea that Mr. de Boer's resignation was linked either to the lack of an outcome at Copenhagen or to the controversy over the intergovernmental panel. But others noted that, although the international system might have been at fault for Copenhagen's failures, some rancor was inevitably directed at Mr. de Boer, as the United Nations' central representative, and it probably speeded his departure.

"It is probably the right time to get a fresh face in. It has been a pretty grueling two years from Bali to Copenhagen," said Mark Kenber, the policy director for the Climate Group, an international organization pushing for a **climate change** agreement. "A fresh face would respark the whole process."

Some critics said that the United Nations should have moved faster to find areas where agreement among the more than 190 nations gathered at Copenhagen could be reached -- rainforest preservation, for example -- and designated a smaller, more manageable forum to negotiate more intractable issues blocking the talks. And Mr. de Boer, some said, was perceived as too confrontational by some nations, and some saw him as too enthusiastic in raising expectations for an international treaty, even after it became obvious that no such treaty would be forthcoming.

"His role as much as anything else was to be a cheerleader," Mr. Kenber said. "It was probably the right thing to do; maybe he was too effusive."

The renewed debate over the science may have also contributed to the pressures on Mr. de Boer, other critics noted.

In a statement announcing his departure, Mr. de Boer expressed disappointment about

the Copenhagen talks and said that while governments could provide a framework for action on climate, the solutions must come from the businesses that produce and consume the fuels that add to **global warming.**

"Copenhagen did not provide us with a clear agreement in legal terms, but the political commitment and sense of direction toward a low-emissions world are overwhelming," said Mr. de Boer, whose formal title is executive secretary of the United Nations Framework Convention on **Climate Change.**

Even before the Copenhagen meltdown -- the American climate negotiator Todd Stern called it a "snarling, aggravated, chaotic event" -- global leaders were exploring other avenues for addressing the climate problem.

The United States last year assembled a group of 17 nations called the Major Economies Forum, which took up climate as one of its major issues and which will continue discussions in parallel to the United Nations process. The Group of 20 also put **climate change** on its agenda. France, Mexico, Norway and others are looking for ways to address discrete aspects of the issue, including financing for low-carbon development projects. And many nations, including the United States and China, are embarking on bilateral energy projects, wholly independent of the United Nations, with the goal of reducing emissions and developing nonpolluting alternatives.

"The U.N. system has significant weaknesses and it is probably important to develop ways to have dialogues in other, more narrow forums where we don't have 180 people around the table at the same time," Mr. Carstensen said.

No one was more frustrated with the Copenhagen talks than Mr. de Boer, who had traveled incessantly for four years trying to prod nations to produce a treaty on **global warming** by the end of 2009. In a statement, the United Nations said Mr. de Boer was joining KPMG, an international consulting group, as global adviser on climate and sustainability.

In an interview in Amsterdam on Thursday with The Associated Press, he said that the high point of his tenure at the United Nations was the agreement in Bali at the end of 2007 under which nations agreed to a December 2009 deadline to produce a worldwide treaty. That treaty was to have been signed at Copenhagen, which produced instead a much weaker political agreement after nearly two weeks of bitter and largely fruitless argument. Participants refused to ratify the three-page Copenhagen Accord that emerged from the meeting, agreeing only to "take note" of it.

Copenhagen emissions pact appears increasingly fragile (*Washington Post*)

February 19, 2010 Friday
Met 2 Edition

A-SECTION; Pg. A03
Maryland
Copenhagen emissions pact appears increasingly fragile;
U.N. climate chief resigns China, India have yet to formally sign off on deal

BYLINE: Juliet Eilperin and Steven Mufson
Just two months after patching together a climate deal in Copenhagen, the world's biggest emitters of greenhouse gases are trying to figure out how to keep the fragile accord together, while the United Nations, which has played a central part in 15 rounds of climate talks, seems destined for a smaller role in the future.

Nearly 100 nations, including the United States, South Africa and Brazil, have endorsed the Copenhagen Accord. But China and India have yet to formally sign off on it, and sources close to Chinese officials say they are balking at sensitive points dealing with transparency and monitoring, even as they vow to press ahead with limits on the growth of their emissions in the next decade.

Meanwhile, a domestic political stalemate in the United States could make it challenging for the Obama administration to deliver on pledges to cut emissions 17 percent below 2005 levels by 2020.

"Some countries are holding back, I think, because they question whether the very positive provisions in the accord will actually get implemented," Todd Stern, the U.S. special envoy on **climate change,** said in an interview Thursday. "My message to them is that the only way to have an impact on that is to engage, to become part of the accord and to try to make sure it does get implemented in the right way."

Pessimism about global climate talks deepened Thursday as Yvo de Boer, the United Nations' top climate official, resigned after struggling for 3 1/2 years to produce a binding legal treaty requiring the world's major emitters of greenhouse gases to slash their carbon output in the coming decades. He will step down July 1 with that goal unmet.

"It was a difficult decision to make, but I believe the time is ripe for me to take on a new challenge," said de Boer, who will join the consulting group KPMG as an adviser on climate and sustainability and also work with several universities.

Many observers saw de Boer's resignation as recognition that the U.N. role had been overtaken by the big emitting nations, which hammered out the accord at the last minute in Copenhagen.

"It's a death knell for the U.N. process," said Frank Maisano, a lobbyist on energy issues at Bracewell & Giuliani. "It's clear now that you're going to have to solve this issue through agreements with major emitters."

"What Copenhagen did in my mind was put to bed the notion that there will be a global

binding treaty that sets targets," said Kenneth Lieberthal, a senior fellow at the Brookings Institution and a China expert who has been tracking climate talks. Instead, he said, countries would try to "develop mutual trust that will enhance their willingness to do more rather than less."

Negotiators will meet again in Cancun, Mexico, at the end of the year to try to hammer out a treaty to replace the 1997 Kyoto Protocol when the first period of that climate pact expires in two years. Mexican negotiators are trying to organize a preliminary session in April. Ned Helme, president of the Center for Clean Air Policy, who met this month in Mexico with key officials, said, "There was a sense that this could be salvaged."

But the procedural and substantive questions that stymied the talks in Copenhagen remain unresolved. The agreement there was not legally binding, as some countries had hoped. Instead both industrialized and major developing nations agreed to make voluntary cuts in emissions by 2020, while richer nations vowed to give $100 billion to help poorer ones cope with **climate change.**

"It is becoming increasingly clear that a legally binding treaty is not in the cards for Cancun," said Michael Levi, a senior fellow for energy and environment at the Council on Foreign Relations. "It's not that people have problems with the direction in which they're going. People aren't quite sure what direction they're going in at all."

In India, many senior officials opposed the commitments made at Copenhagen. In Beijing, the talks reignited debate over whether China has responsibilities for the global common good that go beyond its own economic interests, Lieberthal said.

Mark Levine, co-founder of the China energy group at Lawrence Berkeley National Laboratory, said Chinese leaders and planners were debating whether to set a target of a 15 or 20 percent reduction in energy intensity by 2015, either one of which would meet Copenhagen commitments.

But on transparency and the international monitoring of projects, "I'm far less optimistic," he said. "The Chinese are inherently not transparent."

In a speech last week, Stern said statements by China, India, Brazil and South Africa "evince a desire to limit the impact of the accord." He warned that the United States does not believe that the accord's "provisions can be cherry-picked, since, like any meaningful agreement, it represents a balance -- not just financing but transparency; not just mitigation by all major economies but technology assistance and dissemination."

But some developing countries say the accord is not ambitious enough to meet its goal of limiting global temperature rise this century to 2 degrees Celsius.

02/19/2010

EPA Climate Risk Finding Facing Slew Of Legal, Administrative Challenges (*Inside EPA*)

EPA's final finding that greenhouse gases (GHGs) endanger human health and welfare faces a host of recently filed legal and administrative challenges by industry groups, lawmakers, some states and others all seeking to overturn the finding that triggers a Clean Air Act duty for the agency to develop rules to reduce GHG emissions.

Among the new challenges, several groups have filed substantive petitions for reconsideration with EPA. Peabody Energy Company Feb. 11 submitted a 238-page petition claiming that the agency erred by relying on potentially inaccurate information on global warming from the Intergovernmental Panel on Climate Change (IPCC). The state of Texas raised similar concerns it a separate Feb. 16 petition for reconsideration with EPA.

Separately, the agency is facing a large number of individual lawsuits filed with the U.S. Court of Appeals for the District of Columbia Circuit petitioning for review of the finding. Groups that have filed petitions for review include the National Mining Association (NMA), the U.S. Chamber of Commerce, the American Iron and Steel Institute (AISI), a dozen House Republicans, several states and various other industry groups.

The lawsuits seeking court review of the finding do not offer substantive criticisms, but the petitions to EPA for reconsideration outline initial arguments over the science behind the finding.

The petitions aim to capitalize on recent global warming scandals, collectively dubbed "climategate," which critics say have threatened to damage the credibility of the IPCC in the public eye. The petitioners to EPA say developments since the comment period on the finding -- including errors in IPCC reports and the release of controversial emails from a major climate center at the University of East Anglia -- raise new questions about the reliability and impartiality of the IPCC and should prompt the agency to reopen its endangerment finding.

One of the most extensive new petitions comes from Peabody Energy Company, which on Feb. 11 submitted a 238 page petition to EPA arguing in part that the agency relied "almost exclusively" on "flawed reports" of the IPCC in attributing climate change to human activity. Peabody says that, "As a result, EPA is set to begin regulating GHG emissions based on a scientific process that was conducted without basic procedural safeguards set forth in U.S. law to ensure reliability and accuracy of the scientific conclusions underlying" the finding.

The state of Texas, one of several states to file separate court challenges in the United States Court of Appeals for the District of Columbia Circuit, voices similar concerns in its Feb. 16 petition to EPA.

“Previously private e-mail exchanges among top IPCC climatologists reveal an entrenched group of activists less focused on reaching an objective scientific conclusion than on achieving their desired outcome,” Texas asserts in its petition to the agency. The document states that EPA relied primarily on outside organizations, particularly the IPCC, to draw such conclusions and that such reliance is not “legally supported.”

Citing the impact of the finding on farmers and ranchers and other Texas businesses, Texas asks for EPA to conduct a new “agency-led assessment” that fully complies with White House Office of Management & Budget rules governing federal agency processes. *Relevant documents are available on InsideEPA.com.*

Another Feb. 12 petition to EPA from the Competitive Enterprise Institute (CEI) and other groups voices similar concerns about the IPCC and argues that the new information since the close of the comment period in June of 2009 merits a fresh look at the issue by EPA. CEI days later also filed a supplemental petition.

Meanwhile, the list of groups filing legal challenges in federal court to EPA’s climate change endangerment finding continues to grow. The Chamber filed a petition for review of the finding with the D.C. Circuit Feb. 12, days after a dozen House Republicans and several industry groups filed their own challenge.

AISI also filed a Feb. 16 a petition for review of the finding with the D.C. Circuit “on the grounds that EPA’s analysis of the evidence before it and its process for reaching its findings were fundamentally inadequate,” according to an AISI statement.

NMA, which also recently filed a legal challenge, said in a Feb. 17 statement that it questions EPA’s procedures for making the finding, saying EPA “merely endorsed” existing peer reviews of climate science, rather than conducting an independent analysis of updated and existing climate change-related science.

A number of legal experts -- not just those affiliated with environmental groups -- express initial skepticism that the critics have much of a case in front of EPA or in court, citing among other factors the amount of deference courts typically give to agency decisions on scientific matters and sentiment that the errors in the IPCC reports have been overblown. One attorney calls the legal basis for the finding “pretty much open and shut.” -- *Doug Obey*

ENERGY

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Published: Friday, February 19, 2010 5:05 AM CST

Local Westlakes is Ameren UE drop-off site for CFL bulbs (*News Tribune*)

AmerenUE has announced a free program for disposing of used CFL (compact fluorescent) light bulbs.

Ameren says its customers may bring used bulbs -- even broken ones if they're in sealed plastic bags -- to one of more than 50 authorized locations in its territory. Those include Ace Hardware stores, such as the one on Missouri Boulevard in Jefferson City.

More sites will be added.

To get a list of sites where you can take these bulbs, visit, uefficiency.com, which will be updated regularly.

The Environmental Protection Agency says that CFL bulbs use less energy and last far longer than incandescent bulbs. But they contain mercury, which makes disposing of them complicated.

ENVIRONMENTAL JUSTICE

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02/19/2010

EPA Environmental Justice Advisers Criticize Enforcement Screening Tool (*Inside EPA*)

EPA's environmental justice advisers are criticizing the agency's highly anticipated screening tool to identify environmental justice communities for the purpose of targeting enforcement efforts, with the advisers saying the tool has significant limitations in aiding the allocation of future EPA resources to prioritize enforcement in equity areas.

Nevertheless, the National Environmental Justice Advisory Council (NEJAC) in a new report assessing the tool says it does have merit and outlines a number of recommendations for EPA to improve the tool. The advisers also generally back EPA's proposal to list environmental justice as a first-time enforcement priority in fiscal years 2011 to 2013, a proposal that could rely heavily on the use of the equity enforcement screening tool developed by the agency.

EPA's Office of Enforcement & Compliance Assurance (OECA) crafted the tool in 2007 to give the agency an objective means to determine which communities suffer disproportionate adverse effects from environmental degradation, which would give EPA data to better target enforcement against polluters in the areas.

A NEJAC work group reviewed the tool -- known as the Environmental Justice Strategic Enforcement Screening Tool (EJSEAT) -- and the full council at a Jan. 29 meeting in

New Orleans approved the work group's report. One council source says the report should be forwarded to the agency within the next two weeks.

The report says the equity screening tool "is more appropriate in evaluating the past than charting the way for the future. . . . When it comes to allocating future resources, however, EJSEAT by itself can only be a very coarse screen, identifying areas of concern, rather than a tool to specifically categorize a community as being 'an [environmental justice] community' or 'not an [environmental justice] community,'" according to a draft of the report dated Jan. 11. *Relevant documents are available on InsideEPA.com.*

NEJAC said the tool's focus on large facilities and air toxics, with heavy dependence on EPA's "highly selective" Toxic Release Inventory (TRI) data, is "a real limitation," according to the one source familiar with the NEJAC discussion. The source adds that NEJAC's identification of the tool's deficiencies in looking to the future are "significant," particularly for enforcement purposes.

A second source familiar with the NEJAC discussion says EJSEAT is a good screening tool but that all such tools have limits. "It's good as a sort of superficial evaluation, but as with any screening tool, you need to get information from the community on the ground to help better inform the [data] that the screening tool is raising, because it only looks at certain variables. It is more accurate in urban areas, as opposed to rural ones, so there are definite opportunities, I think, where local communities can use their own expertise" to provide better information than the tool. "But as a first cut it helps to get a picture of what's going on in terms of impacts on low-income communities," the source says.

One environmental justice advocate agrees with the NEJAC analysis on the limitations of EJSEAT, particularly that it needs to be able to "drill down" to more closely look at city- and neighborhood-level data, but adds that the tool is a good "organizing strategy . . . that puts the enforcement office on a path to a closer analysis of what's going on, and all that is really good. It is not perfect . . . but they have to start somewhere."

NEJAC also said that the tool "omits significant sources of [environmental justice] concern, primarily impacts from facilities and land use activity that occur without [major source] air permits required under the federal programs or exempt from TRI reporting," according to the draft report.

Additionally, the draft notes that EJSEAT does not include qualitative data to address how environmental threats affect quality of life; that some of the indicators may not adequately identify highly impacted areas; that it overly relies on low birth weight as a surrogate for community health; and that it focuses on air pollution without adequately addressing other types of pollution -- all problems yet to be resolved.

The report concludes that "use of the tool should be carefully delineated" so that when it is used prospectively "it must be part of a community-specific (although consistently

employed) process to identify areas not captured by the elements of EJSEAT," and that EPA must be clear in communicating that EJSEAT is a "coarse screening tool" that can "flag areas for attention, but communities must have the opportunity to comment upon an EJSEAT score where they believe an [environmental justice] community has not been identified."

The report also notes that EPA has concurred that EJSEAT "will remain a work in progress." EPA is expected to address other key recommendations of the report -- including making significant modification of some indicators, performing a sensitivity analysis on each variable, and making EJSEAT accessible to everyone -- after it formally receives the final version. Additionally, the report says to address "a lack of clarity" about how EJSEAT will be used, "EPA should consider widely the possible uses that can be made of EJSEAT. Demonstration projects should be developed and disseminated to the public."

The first source says EPA technical staff are already making fixes to some "glitches" NEJAC found but, "We haven't gotten a response from EPA in terms of whether they will make the broader revisions."

The source notes that despite EJSEAT's limitations it "probably helps" OECA raise equity issues as an enforcement priority, as proposed by the agency last month. "Making [environmental justice] a separate enforcement priority should not diminish the importance of, or take the place of, incorporating [environmental justice] concerns in all of the national enforcement priorities," EPA says in the proposal. Rather, such a focus would signify OECA's "commitment to apply enforcement tools as an important means of protecting at-risk communities" (*Inside EPA,* Jan. 8).

OECA officials "could take this tool and run it, based on national census data and EPA data with regard to air toxics. They could easily go through and look at census tracks and identify which are the ones that appear to have the highest potential for [environmental justice] concerns," according to the source.

Such information could be useful to help OECA determine where to target enforcement efforts, or to assess whether EPA grants are being distributed equitably to equity communities, the source says.

EPA's proposed equity enforcement priority is part of EPA Administrator Lisa Jackson's unprecedented focus on the issue. Newly appointed EPA Region II Administrator Judith Enck emphasized that focus during a Jan. 29 speech to the American Bar Association, noting, "Here is what EPA will do: with serious leadership from President Obama and Administrator Lisa Jackson, EPA will be integrating environmental justice considerations into all of our work. . . . Look for more enforcement and more collaboration with local governments, community groups and tribal leaders."

Despite EJSEAT's limitations, the tool is already being cited by states in their efforts to address environmental justice. For example, a copy of the draft was submitted to

California air regulators to help in their effort to identify and protect equity communities under the state's pending greenhouse gas cap-and-trade program. -- *Dawn Reeves*

MOUNTAINTOP MINING

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02/19/2010

Bingaman Seeks Administration Input On Assurance For Mountaintop Mining (*Inside EPA*)

Sen. Jeff Bingaman (D-NM), chair of the Energy & Natural Resources Committee, plans to ask the Obama administration how to better ensure coal mining companies are financially capable of cleaning up contamination from mountaintop removal mining, following the release of a Government Accountability Office report (GAO) on the subject.

The GAO report released Feb. 16 reviewed the implementation of financial assurance requirements and long-term monitoring at coal mining sites under several different state and federal laws at the request of Bingaman and Sen. Lamar Alexander (R-TN). The report summarized options for addressing environmental problems at former mining sites. *The report is available on InsideEPA.com.*

While GAO did not provide specific recommendations, Bingaman says in a Feb. 16 press release that the GAO report reinforces his "belief that we need to take a close look at the quality of long-term monitoring and the financial assurances we require from the industry to ensure that any problems are promptly remediated."

Bingaman says he plans to ask Interior Secretary Ken Salazar "for his views on what improvements may be needed in these areas when he testifies before the [energy] committee next month on the Interior Department budget" for fiscal year 2011.

The GAO report found that several federal laws may be available under "limited circumstances to address long-term environmental problems at former mine sites" including the Clean Water Act, the Comprehensive Environmental Response Compensation and Liability Act, and the Resource Conservation & Recovery Act. But the report also said that according to EPA and other agencies with authority to implement these laws, "they have rarely or never needed to use these authorities."

PESTICIDES
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Rodent poison faces tougher new rules (*Salt Lake Tribune*)

Tragedy » Pesticide linked to death of Utah girls was championed by tobacco lobby .
By Judy Fahys
Salt Lake Tribune
Salt Lake TribuneUpdated:02/19/2010 12:23:58 AM MST
Federal regulators are now taking a hard look at imposing stricter controls on a pesticide believed to have caused two Layton girls to die -- revisiting safety restrictions they drafted and then abandoned nearly a decade ago.

In 1998, a coalition led by the tobacco industry beat back the U.S. Environmental Protection Agency's proposed regulations that, in effect, would have banned the residential use of aluminum phosphide.

The pesticide creates phosphine gas, used as a chemical weapon in World War I, and is now suspected in the poisoning deaths of 4-year-old Rebecca Toone and her 15-month-old sister, Rachel, earlier this month.

On Thursday, EPA's Marty Monell said her agency is reconsidering the use of metal phosphides around homes in light of what happened to the Toone sisters. The deaths of two other girls -- a 5-year-old in South Dakota and a 4-year-old in Texas -- have previously been blamed on the use of aluminum phosphide for residential pests.

"We've kicked into high gear," Monell said, "because this is a tragedy that, to our understanding, could and should have been avoided."

Investigators believe the pesticide was misused in its application near the Layton home and in the other suspect deaths.

The EPA's scrutiny is supported by Clark Burgess, director of Utah's pesticide office. His team continues to probe whether Bugman Lawn and Pest Inc. followed the law when it used Fumitoxin at the Toone home on Feb. 5.

"I obviously think this [pesticide] needs to be reevaluated to make sure this doesn't happen again," said Burgess, "I'm sure we all agree."

One who disagrees is Joel Seckar, a toxicologist who helped lead an agriculture industry coalition campaign that ended in 2001 with EPA giving up proposed tougher standards for phosphine pesticides.

"If people do follow the label," he said in a telephone interview Thursday, "I don't think there's going to be any problem with phosphine."

Now a consultant in North Carolina, Seckar was chief toxicologist for the R.J. Reynolds tobacco company during its successful effort to derail curbs that would, in his industry's words, "make it virtually impossible for our industry to continue to fumigate stored tobacco." Plugging the leaks in tobacco warehouses would cost the industry $50 million," tobacco companies said.

What were the coalition's main concerns?

EPA said in its December 1998 proposal that it had "identified risks that must be reduced" before the pesticides could be re-approved. They included:

» a 100-foot no-phosphine zone around homes and 500-foot no-phosphine zone around occupied structures;

» a 750-foot warning area in neighborhoods where phosphine was to be used; and

» reducing maximum allowable exposures to one-tenth of previous limits.

Said an agency fact sheet from 1999: "EPA believes that protective measures in addition to current use restrictions are needed to protect bystanders in residential and occupational settings, as well as pesticide applicators, from exposure to the highly toxic phosphine gas that is created when these pesticides are used."

The EPA was reassessing all pesticides at the time. Metal phosphides had been in use already for more than a decade and had become a powerful and effective tool that not only eliminated pests from commodities, like grain, beans, animal feed and tobacco but also left no harmful residue.

Though tobacco companies like R.J Reynolds wanted to be able to use phophine to control cigarette beetles, these other agricultural uses helped the coalition grow to around 150 members, including the American Farm Bureau Federation and even the U.S. Agriculture Department.

In the end, the EPA's proposed buffer zones were scrapped completely, and the pesticide was cleared for use outside 15 feet of homes, as it previously had been and remains now. And the EPA's plan to require warnings for neighbors up to 750 feet away were abandoned, too.

The agency also dropped the tougher exposure limits, agreeing with coalition-sponsored scientists that humans were no more vulnerable to phosphine than the rats and other rodents the chemical was tested on.

Though he called the Toone girls' deaths "obviously very terrible," he said current regulations are appropriate for phosphine-based pesticides. "I think we did everything right," he said.

Gina Solomon, a medical doctor who works for the environmental group, the Natural Resources Defense Council, has pored over thousands of pages of internal documents that have been released since the tobacco-industry settlements that began around the time of EPA's phosphine review.

"EPA started out with a really good risk evaluation," she said. But then the coalition mobilized, using former-EPA scientists and a "science-for-hire firm" to build a body of evidence that would tip the risk-benefit analysis in industry's favor.

Solomon said the coalition's tactics succeeded in large part because of the tobacco industry's experience in influencing the regulatory process.

"The story [of the Toone sisters] is horribly sad, but really it's not that surprising."

Not only are pesticides toxic chemicals but "it's predictable that accidents will happen" when they become widely available.

"Appropriate, scientifically based regulations would have prevented this," Solomon said. "EPA regulations did not force the level of precaution that there should have been."

The EPA's Monell defended her agency's actions by noting the federal law requires the agency to work with stakeholders and balance the risks of a pesticide's use against its benefits.

"At a certain point in time," she said, it was clear that the benefit of it outweighed the risk, and the risk was mitigated to at least be equated with the benefit. Obviously, that dynamic has changed."

EPA has a range of options it could take, if deemed necessary, from clarifying label instructions for aluminum phosphide to banning its use near homes.

Solomon, meanwhile, felt a familiar sense of helplessness when she heard about the Toone girls. Then felt a twinge of hope.

"You want to learn the lessons you can from the tragedies that occur," she said, "because otherwise its a useless tragedy. Whereas, when you can learn a lesson from it, then it actually becomes useful and can save lives."

Regulating a highly toxic pesticide

Pesticides that contain phosphine were to be prohibited for use with 100 feet of homes, but an industry offensive left the boundary at 15 feet. Federal regulators now are taking a second look at tougher rules.

02/19/2010

EPA Targets Pesticide Application, Seeking Novel Enforcement Approach (*Inside EPA*)

EPA's recently proposed new enforcement priority on pesticide exposures represents a novel policy shift expanding its pesticide enforcement beyond the traditional focus on pesticide manufacturers to targeted enforcement aimed at protecting farmworkers and children from pesticide exposure.
The agency's proposed new focus on pesticide enforcement is spurring some sources to suggest that EPA is targeting its enforcement at "vulnerable populations" such as children. The focus on pesticides as an enforcement priority "is definitely a policy shift," according to a legal source. A recent report on the proposed enforcement priorities from law firm Wiley Rein says pesticides "have not been proposed as an enforcement priority since 2000."

Some observers express concern that pesticide users might not know about the increased inspections that would come with an EPA enforcement priority. The legal source says that most growers are aware of the enforcement priorities, but others such as day care centers might not realize EPA is pursuing greater enforcement.

In the proposed enforcement priorities for fiscal years 2011 to 2013, EPA says it wants to target two key pesticide categories: enforcement of EPA worker protection standards aimed at protecting farm, forest, nursery and other workers from exposure to agricultural pesticides, and the use of pesticides inside and outside of day care facilities.

The legal source says state regulators, tasked with enforcing the agency's pesticide worker protection rules under delegated Federal Insecticide, Fungicide & Rodenticide Act authority, have had a difficult time enforcing worker protections and the EPA priority could "be a message to states: 'We'll help you enforce this.'"

Because farms and other growers can be large employers in a state, regulators at the state level have sometimes been loath to conduct on-site inspections to check that protective clothing is being worn and that rules regarding time period of exposure are being followed, the legal source says. "EPA can provide [states] the cover" to better enforce the rules.

EPA's proposal is drawing praise from activists who support greater protections for farmworkers and their families, as there is potential for exposure to migrant children living near treated fields or from their farmworker parents.

"Many states have very limited or no resources and infrastructure to enforce pesticide use restrictions or respond to worker and community complaints about pesticide illness and exposure," according to Jan. 19 comments submitted to EPA by a coalition of

worker groups including Farmworker Justice, Public Citizen and the AFL-CIO union. “In other states, where agriculture departments have the conflicting responsibilities of promoting the agricultural industry and enforcing pesticide laws, leniency is the rule.” EPA took comment on its proposed enforcement priorities through Jan. 19. *Relevant documents are available on InsideEPA.com.*

EPA worker protection rules include requirements for safety training, notification of pesticide applications, use of protective equipment, periods of restricted entry to treated fields, and the availability of decontamination supplies and emergency medication assistance, according to EPA’s proposed national enforcement priorities.

EPA is reviewing its protection rules, and recently released a policy paper that would expand a strict ten-fold safety factor in agency risk assessments, which was originally used to protect children from harmful exposures to chemicals, to other sensitive populations, such as occupational workers and pregnant women. The move, which has been questioned by industry, would make pesticide assessments more strict to protect human health.

In the enforcement document, EPA says, “In certain situations, federal involvement or support can provide significant benefits by addressing noncompliance from a national corporate-wide perspective, facilitating compliance efforts involving multiple states, tribes and/or regions, and enhancing public awareness on a broader, more national forum.” Federal action could include developing a strategy for “targeted inspections” based on previous violations; conduct inspections in conjunction with state and tribal authorities; and “gain deterrence through aggressive pursuit of violators throughout enforcement coupled with a media message,” according to the document.

But the new priorities will eventually require additional funding and money for next year has been cut, the legal source says. And activists have criticized EPA worker protection rules as being hard to enforce.

EPA is also proposing to target enforcement on pesticide use at day care centers, saying there is “anecdotal” evidence to suggest that banned pesticides are being used outside and inside the centers, and that there appears to be a “pattern of noncompliance” with users not properly following pesticide label directions.

“EPA is well suited to take this action as it is national in scope and addresses the administrator’s priority of protection of a vulnerable population,” EPA says. Targeting day care centers as an enforcement priority “will send a strong enforcement message to day care facility owners and operators and commercial pesticides applicators,” and can help states “develop outreach materials, target for, and inspect these facilities,” EPA says.

The legal source agrees that a few high-profile enforcement actions could send a message to day care operators, a group that may be less aware of EPA pesticide regulations, unlike most grower groups.

In Jan. 19 comments, the activist Oregon Toxics Alliance agrees that there is potential for exposure to children from inappropriate pesticide use inside and outside day care centers, but also says that exposure is possible in the days after the application of a pesticide because of volatilization and drift even when label directions are followed.

The group asks that “EPA conduct an extensive education and outreach campaign, and encourage implementation of [integrated pest management] programs in daycare facilities nationwide, mandating use of nontoxic alternatives first, and then least toxic alternatives thereafter,” according to the comments. “Furthermore, we recommend that pesticides never be applied when children are present in a daycare facility.” The group in its comments also asks that EPA address potential drift of pesticides from adjacent land onto the property of day care centers.

The pesticides industry is already opposing the agency’s proposal to target enforcement efforts on pesticide use at day care facilities, arguing that the agency fails to provide any evidence of health risk from exposure at these sites -- a key criteria for listing a priority (*Inside EPA*, Jan. 29). -- *Aaron Lovell*

SOLID WASTE

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Ill. EPA releases landfill capacity report (*Associated Press*)

Story also appeared: *State Journal-Register*

3:05 AM CST, February 19, 2010
SPRINGFIELD, Ill. (AP) — Solid waste landfill space in Illinois increased by 10 percent in 2008 over the previous year.

The Environmental Protection Agency says a new Clinton facility and several landfill expansions increased space available. Expansions occurred in Winnebago County, Rochelle and Dolton.

The EPA's annual Nonhazardous Solid Waste Management and Landfill Capacity Report included data as of Jan. 1, 2009.

Remaining space is enough for more than one billion cubic yards at 48 Illinois landfills in 2008 -- up 10 percent from 2007.

Landfills continue to get larger while the number declines. Ten years ago there were 53 landfills with about 793 million cubic yards of space.

A Dolton landfill is the only one operating in Cook County. There are 73 transfer stations

in the metropolitan area.

On the Net: www.epa.state.il.us/land

SUPERFUND
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02/19/2010

Industry Gathers Data To Refute Need For Superfund Financial Assurance (*Inside EPA*)

A wide range of industry sectors are gathering historical data on cleanup costs and companies' experiences with financial assurance requirements in preparation of formal comments to EPA that are expected to argue the agency's plan to develop first-time Superfund financial assurance rules are unnecessary because their facilities pose a low risk and existing financial assurance mechanisms are adequate.

EPA announced Feb. 4 that it was extending the comment deadline on its plan to include the chemical, electric and petroleum sectors in decades-delayed rules under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA), following industry requests for more time to compile data. Industry groups said the original 30-day comment period was insufficient to provide an adequate response to the agency's advance notice of proposed rulemaking, which was published in the Jan. 6 *Federal Register* and posed over 30 detailed questions for industry to answer. The new deadline is April 6.

"Collecting data and information from within our industry to attempt to provide meaningful responses that will be helpful to the agency will take a substantial amount of time," the American Petroleum Institute wrote in Jan. 15 comments.

Other industry groups, including the American Chemistry Council, the Society of Chemical Manufacturers & Affiliates, the American Public Power Association and the National Rural Electric Cooperative Association, made similar extension requests, citing the need to examine "historical data on CERCLA cleanup costs" and compile information from different companies "on their experiences with financial assurance requirements." *Relevant documents are available on InsideEPA.com.*

Industry's official comments are expected to fiercely oppose the rules, largely on the grounds that EPA's assessment of risk in analyzing the targeted industry sectors primarily relies on historical data and fails to consider the adequacy of current environmental regulations in reducing the need for financial assurance. Industry comments to the agency in September raised concerns about EPA's ability to craft the rules, saying that anything the agency produces is likely to be arbitrary and capricious

and laying out legal arguments that could be used in a potential future challenge to the rules.

States, while supporting the concept of the rules, have also raised concerns over how EPA will implement the regulations and how they will interact with state requirements, noting that states have limited resources.

The agency announced last summer that it plans to develop the rules -- which require companies to set aside funds to cover environmental cleanups in the event of bankruptcy -- for the hardrock mining industry, and later added chemical manufacturers, petroleum and coal producers, and electric power generators. EPA is studying whether to add the waste management, wood product manufacturing, fabricated metal product manufacturing, and electronics manufacturing industries as well as facilities engaged in the recycling of materials containing CERCLA hazardous substances.

TOXICS

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02/19/2010

Despite Growing Support, Partisan Tensions Could Sideline TSCA Reform (*Inside EPA*)

Despite intensified calls from stakeholders for Congress to quickly reform the Toxic Substances Control Act (TSCA), growing partisan tensions could derail chances for reform this Congress -- even before Sen. Frank Lautenberg (D-NJ) introduces his long-awaited bill to amend the 1976 statute.

Last year, EPA, industry and environmental groups released competing principles for TSCA reform that many observers said indicated significant agreement -- at least in broad outline -- on the need for reform, a new safety standard against which to gauge chemical risks, additional authority and resources for EPA and more transparent information for the public, although key differences still remained.

At a Feb. 4 hearing before the Senate environment committee's toxics panel, Lautenberg emphasized the nascent consensus, while vowing to reach out for bipartisan support for his bill in the coming weeks.

"Everyone, from the chemical manufacturers to businesses that use chemicals in their products, to environmental, labor and health groups, has called for reform of our chemical laws. We can't waste this opportunity. I'll be reaching out in the coming weeks to our colleagues, Democrat and Republicans alike, to support my safe chemicals bill. It's a problem that affects all of us, and we should all be committed to working on this solution," he said.

But as closely contested mid-term elections draw closer, prospects for an agreement seem to be diminishing. Sen. James Inhofe (R-OK), the environment committee's ranking member, told Lautenberg that "you could start legislating [chemical safety] levels where the science isn't there in terms of causing problems in human health."

One source says the Feb. 4 hearing highlighted "further polarization" among congressional partisans, according to Feb. 5 memo from law firm Bergeson & Campbell. And in recent weeks, partisan bloggers on both sides of the political spectrum have begun weighing in -- putting new pressure on their political representatives to take stronger stands.

"What was expressed [at the Feb. 4 hearing] may be an indication perhaps of further polarization between Republican and Democratic senators, with much less mention or acknowledgment that there was broad interest among the chemical industry and environmental groups for fundamental changes to TSCA," the law firm's memo says.

"If being for or against 'TSCA reform' becomes a fundamentally partisan issue, the prospects for significant legislation becoming law in 2010 is greatly diminished," the memo adds.

Sen. Sheldon Whitehouse (D-RI), a member of the environment committee, warned at the Feb. 4 hearing that the recent Supreme Court ruling lifting restrictions on a corporation's campaign spending could make the issue of chemical safety reform even more partisan and less subject to the public good.

"When you get to a particularly narrow issue like whether a chemical should be regulated, the corporation that produces that chemical has an enormous interest in all of it, but in the array of interests the public is concerned with at the time of an election, it's not a very big one compared to everything else that is out there," Whitehouse said.

And some Democrats at the hearing highlighted their differences with Republicans over key issues. Environment committee Chairwoman Barbara Boxer (D-CA), noted for example that unlike her Republican colleagues, she believes low doses of exposure to some substances can be harmful. "There is an argument made by some of our colleagues who don't share our views on this that they are such small levels that they don't matter," she told Linda Birnbaum, director of the National Institute of Environmental Health Sciences, who was testifying at the hearing.

"But my view is, just from what I know about life and science, is that a pregnant woman is in great danger here for her [and] the child that she's bringing into the world. And I wonder whether that child is at great danger?" Boxer added.

The heightened pessimism comes amid growing calls from many stakeholders -- including industry officials focusing on state issues -- for federal lawmakers to act.

Industry representatives in Montana, Michigan and Maryland -- all states that are represented by two Democratic senators -- have issued calls over the past few weeks for Congress to adopt “responsible” reforms as a way to bolster consumer confidence in the sector’s products and help the economy -- a message that is consistent with calls last year from the American Chemistry Council (ACC) and other groups in Washington.

For example, Keith Scott, CEO of the Baltimore County Chamber of Commerce, wrote in the *Baltimore Sun* Feb. 10 that federal standardization of chemical regulations and greater consumer confidence could be an “economic boon,” though he cautioned against overbearing federal rules.

“Responsible reform means an Environmental Protection Agency that is provided adequate human and monetary resources to make safety determinations,” according to the editorial. “It also means establishing a system of prioritization, in which the chemicals that are deemed most likely to present possible risk to consumers are addressed first, with chemical reviews conducted in an orderly fashion so that industrial activity is not stifled.”

Other groups are starting state-level affiliates of the national Coalition for Chemical Safety, a group with the backing of the ACC, state and national industry groups, and individual companies. Earlier this month, Michigan chemical companies formed the Michigan Coalition for Chemical Safety.

“The Coalition for Chemical Safety is people like you working to ensure a balanced approach to our nation’s chemical safety laws,” according to the group’s Web site.

“While this issue is often debated on a chemical by chemical basis, the Coalition for Chemical Safety believes it can only be thoroughly addressed through an overhaul of federal chemical safety law,” the site says. -- *Aaron Lovell*

02/19/2010

EPA Endocrine Program Advocate May Chair Agency’s House Funding Panel (*Inside EPA*)

Rep. James Moran (D-VA), a leading proponent of accelerating EPA’s endocrine disruptor screening program (EDSP), is likely to take a just-created vacancy for the chairmanship of the House Appropriations Committee responsible for crafting the agency’s appropriations law.

The vacancy for the chair of the appropriations panel’s interior subcommittee comes after current chair Rep. Norman Dicks (D-WA) is set to take over the chairmanship of the appropriations committee’s defense panel following the death of its chairman, Rep.

John Murtha (D-PA). Moran is next in seniority on the interior and related agencies subcommittee behind Dicks.

The interior panel has responsibility for writing the House version of EPA's budget bill. Moran's assumption of the subcommittee chairmanship could boost EPA's EDSP, because the lawmaker has in the past pushed the agency to accelerate its roll-out of the program.

For example, Moran inserted language in the Bush EPA's fiscal year 2008 appropriations bill aimed at speeding the pace of EPA's EDSP, originally mandated in federal laws passed in 1996. Moran's language directed EPA to report to Congress within six months of the bill's enactment on the program's pace of testing pesticides for their endocrine-disrupting potential under the first of the two-phased EDSP. The provision also directed EPA to outline a schedule for commencing the second tier of tests that are intended to provide data to confirm whether a chemical with endocrine-disruption potential will lead to adverse health effects.

Moran in October 2006 had criticized the Bush EPA for delays in the testing program at a hearing regarding endocrine disruptors in the Potomac River.

Endocrine disruptors are chemicals that either mimic or block the normal functioning of hormones, inducing a variety of developmental and other health effects. The chemicals have been shown to cause developmental problems in many animals, including the development of mixed-gender sex organs in aquatic species. EPA recently sent out the first round of orders for companies to conduct the first "tier" of testing under the program.

Moran also successfully sought in 2007 to direct EPA to conduct an assessment of a material, called trona, used to control emissions from power-generation boilers amid growing concerns about the material's potential health risks.

Also in 2007, Moran downplayed the ability of lawmakers to provide funding boosts for EPA's clean water and drinking water state revolving loan funds. "It's problematic to think there's going to be much in the way of a significant contribution from the federal government" when it comes to paying for the nation's future water infrastructure needs in light of other federal priorities, he said. Moran added at the time that, consequently, states will likely have to find sources of infrastructure funding to meet their wastewater needs in the future.

02./19/2010

Amid Criticisms, EPA Still Wins NAS Backing For Key Perc Risk Findings (*Inside EPA*)

A long-awaited scientific panel report may be calling for EPA to weaken some of its proposed safety standards for the dry-cleaning chemical tetrachloroethylene (perc) but key observers say the National Academy of Sciences' (NAS) report is still a big win for agency staff, validating their calls to rely on conservative linear risk methods and their classification of the chemical as a "likely" human carcinogen.

"The fact is," one informed source says, all the NAS panelists "signed off on linear modeling and its [classification as] a likely carcinogen. It just repudiates the Bush administration's efforts to stop EPA's interest in [health-protective] science. I think staff was validated in that way."

And the panel's chair, Sam Kacew, a professor at the University of Ottawa, said in an interview that the panel believes EPA "did a good, effective job" on the risk assessment. The report simply suggests ways to make a good report even better, he says. He noted that for one set of data, the panel even suggested that the agency take a more conservative approach than it had.

EPA has been working to revise its 1988 perc assessment since 1998. But it became a lightning rod during the Bush administration for several competing risk methods -- including the role of scientific uncertainty in risk analysis and whether to use a linear risk model that assumes no safe level of exposure -- which led to an additional two-year delay.

The informed source says that in 2006, the draft assessment -- based on a linear dose-response model -- had been completed and cleared for release by the White House, until the Halogenated Solvents Industry Alliance met with then-research chief George Gray.

Gray then delayed the assessment, urging staff to re-do the cancer portion of the risk assessment with a non-linear model that assumes some exposure at law doses is safe and announced that the assessment would be the first to showcase expanded uncertainty analysis, one of the research chief's personal priorities for the agency. The report lingered for two years as staff refused to perform the analysis, arguing that it was not sufficiently protective of public health. It was eventually released in 2008 with linear modeling -- and only limited uncertainty analysis.

Once released, EPA's draft assessment provided a first-time inhalation exposure standard -- or reference concentration (RfC) -- set at 0.016 milligrams per cubic meter (mg/m3), as well as first-time cancer risk standards. The draft also proposed a more stringent oral exposure standard -- or reference dose (RfD) -- from the 1988 value of 0.01 milligrams per kilogram per day to 0.004 mg/kg/day. The new -- and stricter -- safety standards would, if finalized, likely result in stricter cleanup and emissions levels for the solvent.

In its review of the agency's assessment, the panel criticized EPA's assessment, urging officials to adopt its alternative assessment that recommended inhalation safety levels for non-cancer risks that are orders of magnitude weaker than EPA's proposal. The panel generally backed EPA's finding that the chemical is a "likely" carcinogen but was divided on what cancers are most likely caused by exposure.

Despite the criticisms, the NAS panel chair says the review was consistent with the narrow charge: to evaluate the cancer and noncancer endpoints for perc and whether they derived and identified the right endpoints and values associated with it. But he noted that the committee suggested that EPA's linear approach is not as health protective as it could have been for at least one set of data EPA considered. The report says that for a dataset of female rats that developed mononuclear-cell leukemia (MCL), EPA should have considered a more conservative supralinear model.

WATER

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Water polluters get the help to change (*USA TODAY*)

February 19, 2010 Friday
FINAL EDITION
NEWS; Pg. 3A
Waterpollutersgethelptochange;
Officials take a 'cooperative' approach with Amish farmers to fight Chesapeake Bay 'dead zones'
By Brian Winter
The latest effort to clean up one of America's most polluted waterways is focusing on an unusual target: two dozen mostly Amish farmers.

Federal and state environmental officials are working with Lancaster County, Pa., farmers to stop cow manure from draining during rainstorms into a nearby stream. That stream flows into the Chesapeake Bay, which has remained highly polluted despite $6 billion spent over the past 25 years to clean it up.

It's all part of a nationwide effort being led by the Obama administration to introduce -- and then enforce -- tougher consequences for polluters.

"We think of what's happening in Lancaster County as a showcase," says John Hanger, the head of Pennsylvania's environmental protection department. "It marks a real change in how we do things."

The farmers were randomly selected from tax maps because they live in one of three

agricultural areas -- along with the Delmarva Peninsula and Shenandoah Valley -- where runoff of pollutants such as nitrogen into the bay is most dire, Hanger says.

Excess nitrogen has fueled the growth of algae that use up large amounts of oxygen when they die and decompose. As a result, the 200-mile-long estuary has vast "dead zones," where fish can't breathe and underwater grass can't grow.

That, in turn, has left the bay's famous blue crabs diminished in number and so hungry that, in some cases, they are cannibalizing one another, according to the Chesapeake Bay Foundation, an environmental group.

The algae can also contribute to health problems in humans who swim in polluted waters, including bacterial infections that can cause nausea, skin rashes and even liver disease, the group says.

Dead zones are also a problem elsewhere in the USA, including off the coasts of New York and Connecticut as well as in the Gulf of Mexico.

When federal and state inspectors visited the 24 farms in Pennsylvania last month, they found "mostly" good conditions, says John Hines, the state environmental agency's deputy secretary.

However, inspectors did see runoff carrying manure -- which is high in nitrogen -- into nearby Watson Run, Hines says. Only three of the farmers had written environmental action plans that are required by the state, he says.

Instead of immediately fining the farmers or imposing other penalties, the state is helping them fix the problems by offering technical assistance and access to federal grants and low-interest loans, Hanger says.

This "cooperative" approach stems in part from the recognition that the recession has made it harder for farmers to fix problems on their own, he says.

"It's a credit to everybody that we're doing this without going to war over it," Hanger says. "You have to start from a position of respecting the farmer and believing he wants to fix the problem."

'Cop is back on the beat'

The inspections in Pennsylvania are partly the result of more aggressive enforcement by the **Environmental Protection Agency** under President Obama, says William Baker, president of the Chesapeake Bay Foundation. He says the six states that are part of the Chesapeake Bay watershed, which is home to 17 million people, have routinely failed to enforce laws and regulations already on the books.

"The whole idea of consequences sounds really basic," Baker says. "But historically the

federal government has not required the states to take action."

The inspection in Lancaster County was "a signal that the cop is back on the beat," says J. Charles Fox, the **EPA's** point man for the Chesapeake Bay. "We just haven't done enough of this in the past."

As long ago as 1972, the **Clean Water Act** outlined a goal of making the Chesapeake "fishable and swimmable" by 1983. Similar deadlines were passed in 2000 and again in 2010, but the bay remains on a federal "impaired waters" list.

Most past programs carried no binding consequences for violators.

"It's only been in the last five to 10 years that we've found these voluntary agreements are not doing what science tells us we should do, and that we need a stronger enforcement mechanism," says Sen. Benjamin Cardin, D-Md.

Cardin introduced a bill last fall that would provide just that -- by granting **EPA** the authority to penalize non-compliant states by withholding federal funds.

Defending the bottom line

The legislation has been opposed by some industry groups including the Delmarva Poultry Industry, which says it would put local farmers at a cost disadvantage.

Other regulations aimed at cleaning up the Chesapeake have also encountered opposition, including stronger requirements starting in May for storm drainage in redeveloped urban properties.

In Maryland, Baltimore County Executive Jim Smith says a major recent renewal project in his jurisdiction "wouldn't have happened" under those rules because of higher costs.

"These arguments have been made as long as we've been trying to clean up the bay," Baker says. "But more often than not, we see regulations that create new economic engines, not economic Armageddon."

FEBRUARY 18, 2010, 6:20 P.M. ET

Congress Investigates Controversial Drilling Technique (*Wall Street Journal*)

By BEN CASSELMAN
Concerns about potential drinking-water contamination are prompting Congress to investigate hydraulic fracturing, a controversial drilling technique that has helped boost U.S. natural-gas production.

Reps. Henry Waxman (D., Calif.) and Edward Markey (D., Mass.) on Thursday sent letters to eight companies that conduct fracturing operations on behalf of gas producers. The letters requested information on the chemicals used in the process, in which millions of gallons of water, sand and chemicals are injected into the ground in order to crack open gas-bearing rocks, allowing the gas to flow to the surface.

Fracturing has been used by the oil industry for decades but has become far more common in recent years as companies discovered huge new gas fields in Texas, Pennsylvania and other states. The resulting drilling boom helped U.S. gas production surge by about 20% since 2005, but sparked concerns that chemicals from the process could seep into drinking-water supplies.

"As we use this technology in more parts of the country on a much larger scale, we must ensure that we are not creating new environmental and public health problems," Mr. Waxman, chairman of the House Energy & Commerce Committee, said in a statement.

The industry says fracturing is safe and has never been definitively linked to a case of water contamination.

"You wonder what the real purpose is here when the track record on natural-gas operations has been stellar," said Erik Milito, a spokesman for the American Petroleum Institute.

But Messrs. Waxman and Markey said a recent report commissioned by the Environmental Protection Agency had found a dozen cases of drinking water contamination that had a "possible link" to hydraulic fracturing.

The two congressmen raised particular concerns about the use of diesel fuel, which contains carcinogens. In 2003, three large oil-field-service companies, Schlumberger Ltd, Halliburton Co. and BJ Services Inc., reached a voluntary agreement with the EPA not to use diesel in certain wells.

But on Thursday, Mr. Waxman said that documents provided by BJ Services and Halliburton indicated they had continued to use diesel after the agreement was signed. BJ Chief Financial Officer Jeff Smith said Thursday that the company had "inadvertently used diesel on a couple of jobs" after the agreement but had since fixed the problem.

A Halliburton spokeswoman said the company had complied with the 2003 agreement.

The industry says that no matter what chemicals are used, wells are designed to prevent fluids from reaching drinking water supplies.

Write to Ben Casselman at ben.casselman@wsj.com

02/19/2010

EPA Official Says Air Mitigation Approach Could Aid Water Enforcement (*Inside EPA*)

Bolstered by a key court victory last year, EPA is touting its efforts to win mitigation of past violations in Clean Air Act enforcement cases and a senior EPA enforcement official says the same approach could succeed under other environmental statutes as well, including the Clean Water Act.

If successful, an informed source says the effort could help EPA win environmental mitigation instead of penalties that are sent to the Treasury, where they do not benefit the environment. Mitigation may also help the agency secure beneficial projects that it previously sought through so-called supplemental environmental projects (SEPs), which have recently been limited by legal interpretations that federal law bars agencies from supplementing their budgets outside of the appropriations process, the source says.

However, industry has long opposed efforts to require mitigation of past violations as part of the so-called injunctive relief the agency seeks, which generally requires installation of pollution controls to prevent future releases, and some sources question the agency's authority to pursue such measures.

EPA has long sought mitigation measures in air act enforcement cases, but its efforts were bolstered last May when the U.S. District Court for the Southern District of Indiana ruled in *United States of America v. Cinergy Corp. et al*. that the agency had authority to seek mitigation for past violations. The court ordered Duke Energy, which has now merged with Cinergy, to retire emission credits and shut down units that violated the air act's new source review (NSR) program.

John Fogarty, EPA's acting deputy director of civil enforcement, told a Feb. 4 American Law Institute-American Bar Association conference in Bethesda, MD, that the ruling affirmed the agency's long-held belief that it has authority under the air act to seek pollution reductions to compensate for past emissions.

And Fogarty said that while it is not formal EPA policy, he believes that the same approach could apply for other media, including water. "If you just sort of compare our general enforcement authority under the Clean Air Act and look at how the words line up against what's in the Clean Water Act, I think there's an argument. It's not an agency position, but I think there's an argument to be made for mitigation under the others as well," Fogarty told *Inside EPA*.

Fogarty did not cite the specific provisions in the air and water acts that "line up."

However, the May ruling in *Cinergy* cited an earlier order in the same case that an order requiring Cinergy to "take actions that remedy, mitigate, and offset harms caused to the

public and the environment by [its] past [Clean Air Act] violations would seem to give effect to the [Clean Air Act's] purpose 'to protect and *enhance* the quality of the Nation's air resources so as to promote the public health and welfare.'"

"This Court therefore concludes that its equitable authority . . . includes the authority to order relief aimed at redressing the harms caused by [Cinergy's] established violations of the [Clean Air Act]. In other words, this court's equitable authority is not limited to providing prospective relief only," the order continued.

The Clean Water Act's declaration of goals and policy says the law's objective "is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

EPA Office of Civil Enforcement Director Adam Kushner told *Inside EPA* at the time of the *Cinergy* ruling that the mitigation requirement went beyond EPA's usual requirement that such units install emissions controls and that the agency would be citing the case in future enforcement efforts.

Since then, the agency has touted other air cases that have included mitigation, such as a settlement with Westar Energy announced Jan. 25 includes $6 million in environmental mitigation projects -- in addition to $500 million for pollution controls and $3 million in civil penalties -- to address alleged NSR violations.

Now, Fogarty says the court ruling in *Cinergy* will boost mitigation in future cases for air and possibly other media. "We have a court that has now blessed that [theory]. . . . So this is an area you are going to see going forward, more mitigation in air cases, and I think it's a fairly good debate about whether this same principle might not also apply in some other media."

The informed source says mitigation is appealing to EPA because it attacks the very environmental problem the violated regulation was intended to address, especially compared to a monetary penalty that goes to the Treasury instead of the environment.

The source also notes that mitigation may be a way for EPA to address environmental impacts through damages, which can legitimately be recovered through enforcement, rather than seeking SEPs, which may violate the Miscellaneous Receipts Act that bars agencies from supplementing their budgets outside of the appropriations process.

In fact, Congress in 2008 passed bipartisan legislation revoking an EPA policy blocking diesel retrofits from being part of SEPs. EPA, during the Bush administration, also adopted a similar policy barring spending on brownfields projects as part of a SEPs, though it is not clear whether that policy is still in place.

Fogarty noted at the conference that the value of SEPs has gone down in recent years due to legal limitations. "They are just harder to do because of anti-augmentation laws. It's not just EPA's budget that we are looking at but there are government programs out

there that are funded that cover the same kinds of things that you saw SEPs do in years past and so that's why those numbers are down."

However, sources say questions remain about EPA's authority to seek mitigation measures. One industry source says that one court's support of mitigation does not mean that other courts will follow suit. "[O]ne should not assume, because a handful of courts have ordered mitigation (particularly under the Clean Air Act), that mitigation is generally authorized as an enforcement tool under the Clean Water Act," the source says.

For example, the U.S. Court of Appeals for the 2nd Circuit has refused to allow restoration as a way to comply with section 316(b) of the water act, so it is doubtful that court would allow mitigation as a remedy for a violation of that section of the act, the source says.

Section 316(b) governs water intake structures that cool equipment at industrial facilities, setting technology standards to prevent harm to aquatic organisms that may be sucked up in the process or hurt by the heated water that is discharged. The 2nd Circuit ruled in 2004 in the case *Entergy Corp., et al. v. Riverkeeper* that EPA's rule for new cooling water intake structures could not rely on habitat restoration measures as a viable alternative to regulatory requirements based on best available technology.

However, a second industry source argues that EPA already requires mitigation in water act enforcement cases, for example, by requiring restoration of destroyed wetlands or removal of contaminated sediment from a river.

But Fogarty's reference to the issue may be an indication that EPA plans to increase its use of such measures or require facilities to speed future efforts, for example by meeting total maximum daily load requirements more quickly than planned. The source notes that increasing use of mitigation in the water arena would fit with this administration's approach of using its existing authority in new ways to address environmental problems.

The informed source also notes that mitigation such as dredging a river to remove contaminants is often required under Superfund law, an explicitly retroactive statute, not the water law. But EPA has won some penalties to address past impacts under water law, such as a 2008 settlement with Massey Energy Company Inc. to address Clean Water Act violations at its coal mines that required the company to set aside 200 acres of riverfront land for conservation and perform projects downstream from mining operations, the source says. However, EPA has not yet explored all the opportunities for mitigation under the Clean Water Act, the source says. -- *Kate Winston*

02/19/2010

Region VI Comments May Preview EPA Approach To Antidegradation Policy (*Inside EPA*)

EPA Region VI's criticism of Louisiana's draft rules to protect prestine waters in Louisiana may provide insight on how the agency will craft upcoming regulations on implementing the so-called antidegradation provisions of the Clean Water Act (CWA), particularly issues involving so-called Tier 2 "high quality" waters and de minimus pollution provisions.

EPA recently announced plans to launch a new rulemaking to revise its water quality standards program, including updating antidegradation regulatory provisions to be more consistent with recent court rulings on the matter. CWA antidegradation provisions aim to ensure regulators maintain the condition of high-quality waters that are in better condition than water quality standards require. But the water act does not specify how this must be done, and there is relatively little case law on the subject.

Environmentalists nationwide have been urging EPA to require states to develop antidgradation rules, with activists challenging rules in a slew of states, including Alaska, Indiana and Kentucky.

In Lousiana, the state has slowed development of its antidegradation regulation until EPA provides further guidance, although the Louisiana Department of Environmental Quality (LDEQ) is reviewing comments Region VI and others submitted in October, an LDEQ source says.

Region VI's comments on LDEQ's proposed rule echo concerns environmentalists have raised over antidegradation implementation nationwide, including that LDEQ's rule does not go far enough in protecting so-called Tier 2 waters and does not provide enough analysis to support proposed de minimis exemptions to CWA permit requirements.

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 than water quality standards require. And Tier 3 policy protects outstanding national resource waters, where water quality cannot be changed in the long term.

One of the few rulings on antidegradation issues is a 2008 decision from the U.S. Court of Appeals for the 6th Circuit over Kentucky's regulations. The appellate court backed EPA's approach for determining when to protect certain waters, saying the CWA gives EPA and states broad discretion to determine which waterbodies merit increased protection from antidegradation rules. But the court nevertheless remanded the rule back to EPA, saying the agency failed to measure the individual impacts of exemptions Kentucky had provided from the antidegradation requirements, such as estimating how much pollution a waterbody can receive without harm to water quality and aquatic life.

EPA Region VI in its comments to LDEQ raises a number of concerns over the state's approach to Tier 2 protections, including that it appears the state has failed to make Tier 2 protection a default as it should be. Region VI also says the review procedures for the state's antidegradation plans need to "clarify expectations and requirements regarding water quality data needed for significance tests and determine whether ambient water quality is better than the criteria, (i.e. how much information is needed to make a decision)." *Relevant documents are available on InsideEPA.com.*

LDEQ has also not clearly indicated how to conduct Tier 2 reviews for general permits or "whether antidegradation reviews will be conducted for 401 certifications," which review the water quality impacts of federal actions, Region VI says. And LDEQ's proposed regulations do not consider where degradation is allowed when considering nonpoint sources, the comment say.

Region VI criticizes Louisiana's de minimis pollution provisions, saying they are not consistent with the 6th Circuit ruling. "The expectation now is for evidence and analysis to support and... specify how and where de minimis exemptions are documented. There is not enough information presented in these procedures to understand how these exemptions are consistent with [the law] or the results of the KY decision with regard to evidence for exemptions," the comments say.

02/19/2010

Drinking Water Utilities Seek Study Into Risks From Hydraulic Fracturing (*Inside EPA*)

A drinking water research group is launching a study into the effects that the natural gas extraction method of hydraulic fracturing has on underground drinking water supplies, in response to interest from drinking water utilities seeking a definitive answer on whether the process -- known as fracking -- poses a threat to water quality.

The research effort comes as EPA's top drinking water official says that states are doing a "good job" overseeing fracking operations and argues that there is no evidence to suggest that the practice contaminates water. The official also rejected calls to lift a prohibition on EPA regulating fracking under the Safe Drinking Water Act (SDWA).

While the EPA official said there is no evidence that fracking contaminates drinking water, some stakeholders -- including drinking water utilities -- have continuing concerns that fracking could threaten water quality.

Due to these lingering fears from drinking water utilities, the Water Research Foundation -- a not-for-profit research cooperative that conducts research on the behalf of water utilities and related interests -- has begun a comprehensive study into fracking's impacts on water, WRF's Executive Director Rob Renner told a conference of

the National Association of Regulatory Utility Commissioners (NARUC) in Washington, DC, Feb. 16.

Renner said that the study's initial phase will consist of a group of experts convening to compile existing data on fracking's impact on water quality, with a preliminary report due out in late summer, followed by a more comprehensive report once the data gaps have been identified and researched. The report is based on concerns about the potential threat to New York City's drinking water supply from fracking activities upstate.

"The big project we'll be looking at is the watershed in New York City," Renner said during a presentation at the NARUC event. "What we do is try to take a non-biased view on, is there an issue [for] . . . water quality."

Renner's indication that there is an interest on the part of drinking water utilities to determine whether fracking poses a threat to their water supplies comes in contrast to the recent comments from EPA's drinking water chief.

Steve Heare, director of EPA's drinking water protection division, told NARUC Feb. 15 that he has not seen any documentation that fracking contaminates water supplies, despite claims to the contrary by environmental groups, and he asserted that EPA is not conducting any investigations linking fracking to water contamination. He also said that he has "no information that states aren't doing a good job already" addressing fracking risks, according to press reports.

Heare also rejected calls by some lawmakers and others to lift the ban on EPA regulating fracking under SDWA. The energy law of 2005 bars EPA from regulating the natural gas drilling process of fracking under SDWA and some lawmakers who opposed the ban are now said to be considering a more narrow approach than simply revoking it, after failing to gain traction on that legislative effort. Instead, the lawmakers may seek to require industry to disclose fracking chemicals while stopping short of reinstating EPA's authority to regulate the practice under SDWA.

But Heare said even if legislation lifting the ban becomes law, it would not have a dramatic effect on regulation because states would still have the right under SDWA to use their own rules.

The process of hydraulic fracturing injects water and chemicals under high pressure into natural gas reserves to release the previously inaccessible fuel. Environmentalists and others have questioned whether the produced water, if re-injected or treated, contaminates water supplies. EPA in its fiscal year 2011 budget proposal wants $4 million to study the environmental impacts of the process.

Energy In Depth, a natural gas industry association, said in a statement that Heare's remarks "underscore the tremendous work that state regulators have done for decades, and continue to do today, to ensure the proper balance between responsible energy exploration and the safeguarding of our land, air and water."

In the statement, Lee Fuller of Energy In Depth said the comments “also align seamlessly with every single official pronouncement that EPA has ever made on hydraulic fracturing; namely, that fracturing technology is safe, it’s incredibly effective, and that it poses no risk to drinking water supplies as currently regulated.” And he said the comments undermine legislative support to revoke the SDWA ban.

Meanwhile, Pennsylvania officials are seeking to step up their authority over fracking, with Gov. Ed Rendell (D) announcing two new initiatives to address the practice on the Marcellus Shale, where natural gas drilling is intensifying, including directing the state Department of Environmental Protection to hire 68 new enforcement agents and proposing new state rules to strengthen standards for well construction. Pennsylvania has also been investigating water contamination concerns near the drilling activity.

Separately, EPA Region III announced the launch of a citizen watchdog program to report suspicious activity along the Marcellus Shale. “Eyes on Drilling” encourages people to report water pollution and waste disposal issues, Region III says. The Marcellus Shale -- thought to have the nation’s most promising new supplies of natural gas -- lies under portions of Pennsylvania, West Virginia, Ohio and New York. EPA’s initiative seeks information on “dumping and other illegal or suspicious hauling and/or disposal activities,” and provides a phone number, mailing address and e-mail to report information such as location, date and time, vehicles involved including license plates or company names, and other descriptions. It also encourages citizens to document the activities with photos or other means.

A Region III spokesman told a New York newspaper Feb. 10, “EPA wants to get a better understanding of what people are experiencing and observing as a result of these drilling activities. The information collected may also be useful in investigating industry practices. The agency is also very concerned about the proper disposal of waste products, and protecting air and water resources.”

02/19/2010

Novel EPA Stormwater Permit May Be Model For Post-Construction Limits (*Inside EPA*)

EPA Region I is crafting a series of general permits for regulating stormwater runoff in parts of the Northeast that include first-time measures requiring public- and private-sector sources to limit runoff from parking lots and other impervious surfaces after construction is complete -- measures that could be a model for permits in other areas but which critics are challenging in some cases as beyond EPA’s authority.

The region Feb. 4 published a notice in the *Federal Register* seeking comment on a draft general permit for small municipal separate storm sewer systems (MS4) in parts of Massachusetts that requires “the hydrology resulting from new development to mirror the pre-development hydrology of the site or to improve the hydrology of a redeveloped

site and reduce the discharge of stormwater." *The draft permit is available on InsideEPA.com.*

To limit post-construction runoff, the permit includes several measures to encourage low impact development and green infrastructure techniques. It also requires dischargers to monitor stormwater, which environmentalists have long said is needed to prove the effectiveness of the programs. The draft general permit also includes other measures intended to limit polluted runoff, including establishing stormwater management programs and phosphorus management plans that meet water quality standards.

While the permit covers MS4s -- municipal conveyances that carry stormwater -- it also regulates the runoff private-sector entities, such as big box stores, shopping malls and industrial facilities with large impervious surfaces equal to or greater than two acres, that are not usually regulated by such permits.

EPA expanded the scope of the permits after environmentalists succeeded in pressuring the agency to exercise its little-used water act authority -- known as residual designation authority (RDA) -- to designate the sources as contributing to water quality impairment and requiring them to seek coverage under the permit.

Under the RDA provisions of the water act, EPA or state regulators are required to seek permits if stormwater runoff is contributing to water quality impairment, violates water quality standards, or is a significant contributor of pollutants. Regulators rarely, if ever, exercised the authority until environmentalists in 2008 succeeded in forcing Vermont officials to issue permits for stormwater runoff from these sites -- and then pressured other regulators in the region.

Region I's actions will "set the stage for how this plays out in the nation," says a source with the Conservation Law Foundation, the group that won stormwater controls in Vermont and has pushed for similar action elsewhere in New England.

Winning the RDA fight was the first step in activists' efforts to clamp down on polluted stormwater runoff. They have also long sought to require limits on post-construction runoff as a way to prevent continued impairments for many waterbodies after construction or development is complete. But industry says post-construction requirements are costly, do not necessarily ensure compliance with permit requirements and are beyond EPA's authority.

"Make no mistake, the MS4 General Permit will impose significant changes on municipalities and those changes will absolutely trickle down to the regulated entities," Seth Jaffe of the law firm Foley Hoag said in a recent blog posting.

While the Region I draft permit focuses on urban areas in the Charles River watershed, the agency says it has issued a similar permit for urban areas in New Hampshire and plans similar permits for other regional watersheds, including in the southeast coastal

area of Massachusetts, the greater Merrimack River watershed, and in watersheds contributing to Long Island Sound and Narragansett Bay.

The draft permits could be a model for other regions, such as the Chesapeake Bay, where EPA is weighing whether to tighten MS4 permit limits and conditions as a way to limit nutrient runoff. Environmentalists are also pushing EPA to use an upcoming MS4 permit in Washington, DC, as a model for stringent new regulations for stormwater for the six Bay states.

EPA has also crafted guidance requiring federal facilities to limit their post-construction runoff as required by provisions in the 2007 energy law, a document that provides agencies with significant flexibilities in meeting the runoff requirements.

And the agency is also weighing a new rule governing stormwater runoff from general development and redevelopment which the agency says could “help make [MS4 and other stormwater] permitting more consistent and robust nationally.” Among the options EPA is considering are specific requirements for stormwater discharges from new development and redevelopment; expanding the area defined as MS4s to include rapidly developing areas; and establishing a single set of consistent regulations for all MS4s.

But some state stormwater officials and industry critics say the agency lacks authority to require such limits and amounts to land use control, not the control of discharges of pollutants.

“EPA does not have the legal authority to regulate stormwater discharges from new development as set forth in [a proposal for its new rule] without a major revision of the [CWA],” Eric Livingston, program administrator of Florida’s stormwater agency, told the agency in comments late last year.

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.

And an industry coalition added that 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 held that EPA could not require permits for facilities that only have the potential to discharge.

One attorney following the issue says that EPA may be able to include post-construction requirements in an MS4 permit but not in the agency’s recently issued effluent limitations guideline for the construction and development sector -- which environmentalists had sought.

The effluent guideline was for construction and development activity, which the source says cannot include post-construction activity. “Where do you see your authority to regulate runoff after that?” the source asks. “The ability to issue an effluent guideline is different than the ability to address the issue in an MS4 permit.”

Nevertheless, the source says, “I’m not sure those aren’t two separate issues.”

02/19/2010

States Eye ‘Post-Construction’ Rule To Resolve Stormwater Problems (*Inside EPA*)

State water quality officials are praising the expected broad scope of EPA’s planned “post-construction” stormwater rule, saying they hope the rule will resolve longstanding problems with the current stormwater program, while industry officials say the rule’s breadth could include a wider range of costly controls than previously thought.

EPA Dec. 17 floated several options for the post-construction rule that include modifying large segments of the current stormwater program, such as 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.

EPA officials at a meeting in January told industry officials that “every issue is on the table,” according to a participant. The breadth of the rule could also be strengthened by the recent appointment of a longtime stormwater activist, Nancy Stoner, to be water chief Peter Silva’s deputy, sources say.

Agency officials said at the January meeting that because the parts of the stormwater program are so interconnected, post-construction rules may require changes of the current program as well. EPA did not reply to a request for comment.

State officials and some academic stormwater experts are praising the broad scope the rule is expected to take because of the myriad criticisms they have about the current slate of rules that some state officials say has been “agony” to implement.

A source with the Association of State & Interstate Water Pollution Control Administrators says the current program suffers from an out-of-date definition of municipalities subject to permit requirements, weak “best management practice” requirements, no limits on the volume of stormwater flow and confusing stipulations on general permits.

State water quality officials and others hope the post-construction rule can rectify some of these longstanding problems.

In contrast, one industry source says the construction sector is ramping up the resources it will extend to the issue out of growing concern for how far the new regulations could reach.

State stormwater and industry officials have charged the post-construction rule 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. Critics said in December comments that 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 said 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.

Officials: 2015 is still target year for finishing dredging (*Glens Falls Post-Star*)

By NICK REISMAN reisman@poststar.com | Posted: Thursday, February 18, 2010 2:16 pm
SARATOGA SPRINGS -- General Electric Co. and federal officials wrapped up two days of conflicting presentations on the Hudson River dredging project with one area of agreement: The cleanup should end by 2015 as planned.

But Dave King, the Hudson River Field Office director for the Environmental Protection Agency, told a panel of experts reviewing the project's first year that the end date was not set in stone.

"It's not sacred," King said Thursday morning after wrapping up a presentation on the cleanup's productivity in 2009. "It's something that needs to be looked at, but that's the target."

He added that the perception in the community, especially in Fort Edward where the project is based, is that dredging will end in five years.

"That's the expectation out there in the public - get it done efficiently but do it in five years," King said.

The seven-member panel of independent scientists and engineers from around the country heard presentations from both officials at General Electric and the EPA at the Gideon Putnam Hotel in Saratoga Springs.

The presentations included conflicting estimations of how much was dredged, how many PCBs were removed and how many times the level of the chemical exceeded federal safety standards.

Both the company and the agency said that despite the problems, the project to remove PCB-laden river muck from the Hudson River from Fort Edward to Troy, can end within its planned time frame of six years.

Federal and state officials this week called the project's first year a success, despite the issues encountered by dredging crews.

The state Department of Environmental Conservation urged the EPA to improve off-loading operations at the staging facility in Fort Edward that processes the PCB-contaminated sediment. State officials also said faster removal of PCB oil from the river would reduce the chances of it escaping into the air.

The cleanup started on May 15 and wrapped up its first year in December. It's on hiatus for 2010 as officials compile and review reams of data. The peer review panel is expected to issue a series of recommendations for the second phase of the project later this year.

GE is paying for the cleanup after discharging polychlorinated biphenyls from its plants in Hudson Falls and Fort Edward until 1976.

"We did a lot of phase one to the best of our ability," said John Gibson, a presenter for General Electric.

Gibson said the project can be completed in five years, as long as adjustments are made to the cleanup requirements.

"We were basically struggling to meet the project's goals within the confines of the engineering standards and the quality of life standards," Gibson said.

The project was marked by several challenges, officials said, including a high river flow, unexpected spikes in polychlorinated biphenyls being dislodged and sent down river and large amounts of debris.

"Five years seems to be cast in stone but it doesn't seem to match the site conditions," said Paul Fuglevand, an engineer from Washington state.

Todd Bridges, a senior scientist for the U.S. Army Corps of Engineers, said the presentations seemed to take a "fatalistic attitude" with the problems the cleanup faced.

"This is a billion-dollar project," Bridges said. "It seems to me that there could be some information extracted from phase one that would allow GE and EPA to construct a (plan to deal with unexpected problems), rather than just say, ‘stuff's going to happen.' "

The committee of experts is set to meet again for three days May.

UPDATE 5-US House committee probes natgas drilling practice (*Reuters*)

Thu, Feb 18 2010
* Shale gas could make U.S. self-sufficient in gas by 2030
* Some in Congress want to give EPA regulatory authority
* Residents say shale gas pollutes water. Drillers deny it
* EPA says it will study environmental, health impacts (Adds EPA statement)
By Ayesha Rascoe

WASHINGTON, Feb 18 (Reuters) - U.S. lawmakers on Thursday announced an investigation of a drilling method that has allowed companies to tap abundant supplies of natural gas in shale beds but has also generated complaints about polluted drinking water.

Some Congress members want to give the Environmental Protection Agency (EPA) authority to regulate hydraulic fracturing technology.

The U.S. House Energy and Commerce Committee said it was investigating the impact of the technology on the environment and public health, and the EPA said it would start working with Congress to study the matter.

"As we use this technology in more parts of the country on a much larger scale, we must ensure that we are not creating new environmental and public health problems," said committee chairman, Representative Henry Waxman.

"This investigation will help us better understand the potential risks this technology poses to drinking water supplies and the environment, and whether Congress needs to act to minimize those risks," he said.

Hydraulic fracturing, or "fracking," injects a mixture of water, sand and chemicals into rock formations at high pressure to force out oil and natural gas. The practice is used to stimulate production in old wells, but is now also used to tap oil and gas trapped in shale beds across North America.

"There are compelling reasons to believe that hydraulic fracturing may impact ground water and surface water quality in ways that threaten human health and the environment, which demands further study," the EPA said in a statement.

"To address those concerns and strengthen our clean energy future, a budget has been proposed to fund a comprehensive scientific study of hydraulic fracturing and EPA is working with Congress to start that study as soon as possible."

The committee is seeking information from eight energy companies that use hydraulic fracturing to extract oil and natural gas from unconventional sources, including shale rock.

The companies the committee is requesting information from include Halliburton <HAL.N>, BJ Services <BJS.N> and Schlumberger <SLB.N>.

The lawmakers also asked for information from five smaller fracking companies that make up a growing share of the market: Frac Tech Services, Superior Well Services, Universal Well Services, Sanjel Corporation and Calfrac Well Services.

Fracking is essential to shale gas production, which has sharply boosted U.S. gas output.

The Energy Information Administration estimates this resource could make the United States self-sufficient in natural gas supply by 2030. But environmentalists have warned that fracking, without a national safety standard, endangers human health by contaminating ground water.

Environmental Defense Fund expert Scott Anderson said natural gas was important because it emits less greenhouse gases than coal and oil. But he said extraction technology should not hurt health or the environment.

Residents in gas-drilling areas have complained that their well water was discolored or foul-smelling and that children became sick.

Oil and gas companies say the criticisms are unfounded. They say gas drilling is done thousands of feet below ground, much deeper than most water resources, and note that officials have not linked public health problems to hydraulic fracturing.

Energy In Depth, an interest group backed by independent oil and gas operators, said it welcomed the Congressional probe. Executive Director Lee Fuller touted the industry's safety practices.

"To the extent the committee's inquiry into this process helps clear up some of the misconceptions that have come to be associated with it, it's a study we look forward to contributing to," Fuller said in a statement. (Additional reporting by Tom Doggett and Timothy Gardner; Editing by David Gregorio and Richard Chang)

DOE demolition worries agency (*Knoxville News Sentinel*)

Oak Ridge office should focus more on pollution, EPA says
By Frank Munger
Thursday, February 18, 2010
OAK RIDGE — The U.S. Environmental Protection Agency is raising questions about the cleanup priorities in Oak Ridge, suggesting there's too much focus on demolition and not enough on pollution in the environment.

In a Feb. 9 letter to the Department of Energy's Oak Ridge office, an EPA official said there's a need to be more balanced in DOE's cleanup priorities, with more attention paid to pollutants already in the soil, streams and groundwater.

"EPA is concerned that DOE … is placing too much emphasis on building demolition activities in lieu of contaminated environmental media cleanup," EPA's Franklin E. Hill wrote to John Eschenberg, DOE's cleanup manager in Oak Ridge. "Significant levels of contamination in environmental media continue to migrate uncontrolled in groundwater and surface water, and in some cases beyond the boundaries of the (Oak Ridge Reservation). This is viewed as a significant risk and should be addressed earlier than what DOE … has recently indicated."

Hill is director of the Superfund Division in EPA's Atlanta-based Region IV.

In his letter, he noted that some previously planned cleanup actions got delayed in 2003 when EPA and the state of Tennessee agreed to DOE's Accelerated Cleanup Plan. The DOE plan put high priority on the two big Oak Ridge projects: dealing with the old burial grounds in Melton Valley near Oak Ridge National Laboratory and the cleanup and closure of the former K-25 uranium-enrichment site (now known as the East Tennessee Technology Park).

Those priorities delayed work needed to address pollution issues at ORNL, Bear Creek Valley and the Y-12 National Security Complex, Hill said. While "significant progress" was made, the full cleanup of ETTP — where the demolition of the enormous K-25 building is nearing a midpoint — has been "significantly delayed," he said.

"Although completion of ETTP cleanup remains a priority to DOE and many of its stakeholders, EPA does not believe ETTP should be the sole priority for cleanup over the course of the next decade," Hill said. Doing so would delay the response as much as 20 years after the original "records of decisions" were signed for those projects, he said.

John Owsley, who heads the Tennessee Department of Environment and Conservation's oversight office in Oak Ridge, said the state sent a letter to DOE addressing many of the same issues.

Representatives of the DOE, EPA and TDEC are expected to meet within the next few weeks to discuss a multitude of issues currently under dispute, including the level of funding for Oak Ridge cleanup projects.

DOE spokesman John Shewairy declined to specifically address the regulators' concerns.

"We have a process in place to meet with our regulators to discuss the issues they have raised, and that will take place in the near future," Shewairy said. "We're not in a position to comment on these issues until we meet with them."

In his letter, Hill listed a number of priority projects that deal with contamination in the environment. Among EPA's priorities are cleanup actions dealing with soil, groundwater and surface water in multiple areas at ETTP; cleanup of soils at Y-12's Cold War scrapyard; groundwater cleanup associated with an old underground waste tank at ORNL; and assessment of groundwater contamination migrating off-site from ORNL's Melton Valley burial grounds.

Senior writer Frank Munger may be reached at 865-342-6329.

Posted on Thu, Feb. 18, 2010

EPA gets earful from those opposed to proposed water regulations(*Miami Herald*)

BY CURTIS MORGAN
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Citrus growers, cattle ranchers, sugar farmers and utility operators told federal environmental regulators Thursday that they are all for keeping rivers and lakes clean, but they don't want to go broke doing it.

They warned that could be the ripple effect from the U.S. Environmental Protection Agency's unprecedented decision to step in and tighten Florida's pollution laws. The EPA wants to set hard caps on two nutrients, nitrogen and phosphorus, largely responsible for triggering algae blooms that have fouled waters from the St. Johns River to Florida Bay.

More than 200 people packed a public hearing in West Palm Beach, the last of three the EPA scheduled around the state. Most speakers, aside from a handful of environmentalists, urged the agency to go back to the drawing board on rules they branded as flawed and costly.

Nicholas Albergo, president of a Tampa-based engineering firm with a long list of agricultural, utility and other clients, argued the proposed standards were inflexible, rife

with ``technical black holes'' and would ``create major hardships for virtually every sector of Florida's economy, as well as local governments.''

He urged three top EPA officials not to rush to adopt the rules, which are scheduled to be finalized in October. ``I guess my message is, slow down,'' he said.

Critics -- backed by a regiment of attorneys -- raised a long list of concerns, some of which they called unintended consequences of the complex regulations.

Farmers said cutting fertilizer use would reduce yields and raise crops prices. Utilities want South Florida's canal system removed from protection, and warned the rules would undermine state efforts to recycle waste water.

OVERRIDING FEAR

The overriding fear was cost. A coalition of foes -- including Associated Industries of Florida, Florida Farm Bureau, Florida Chamber of Commerce, Florida Stormwater Association, Florida Tax Watch, Sugarcane Growers Cooperative of Florida and some 60 other organizations that collectively wield considerable political clout -- has put the estimate at $50 billion, a staggering price tag for a state reeling from a collapsed housing market and high unemployment.

The EPA's economic analysis put costs at no more than $140 million a year -- only $5 million to $10 million more than rules proposed by Florida's Department of Environmental Protection.

Before the meeting, Ephraim King, director of EPA's office of science and technology in Washington, described some critics' cost estimates as unrealistic. ``They're extreme and I think they create fear,'' he said. ``I think they create the impression in the minds of many Floridians that you have to make a choice between the economy and clean water. You don't.''

The agency, in a brief presentation explaining the rules, tried to tamp down concerns, stressing that industries and communities could cut pollution in phases with as long as 15 years to hit the targets. King also said the agency would listen to feedback that could improve its proposal.

SERIOUS CONCERNS

But he stressed Florida has serious water quality concerns that undermine property values, harm recreation and tourism and put fish, wildlife and public health at risk. By the state's own measure, 16 percent of rivers, 36 percent of lakes and 25 percent of estuaries are impaired by pollution.

To settle a federal lawsuit brought by environmental groups, the EPA agreed last year to impose the regional numeric standards, saying Florida's effort was too slow and

inefficient. It's the first time the agency has tried setting nutrient standards for a state. Environmentalists applauded the effort, saying the state had coddled industrial polluters with vague rules.

``This should have been done years ago,'' said Marti Daltry, a Sierra Club member from Fort Myers, who said she has seen water quality deteriorate. ``All I know is when my water is green, something is not right.''

Panel requests data on fracturing (*Houston Chronicle*)

By TOM FOWLER
Feb. 18, 2010, 10:13PM
A congressional committee is launching an investigation of hydraulic fracturing, the technique drillers use to unlock natural gas in shale formations, asking for data from eight companies that use the technology.

The House Commerce and Energy Committee sent the letters to three oil field services giants — BJ Services, Halliburton and Schlumberger — and five smaller companies, asking for information on the chemicals used in the process and its potential impact on health and the environment.

“Hydraulic fracturing could help us unlock vast domestic natural gas reserves once thought unattainable, strengthening America's energy independence and reducing carbon emissions,” said Committee Chairman Henry Waxman, D-Calif. “As we use this technology in more parts of the country on a much larger scale, we must ensure that we are not creating new environmental and public health problems.”

Hydraulic fracturing involves drilling into a formation and injecting water mixed with sand and chemicals under high pressure. The mixture cracks open the shale while the sand holds the fractures open, allowing the natural gas to flow more freely.

The chemicals make up less than 0.5 percent by volume of the overall mix but often include hazardous substances such as acids and materials used in cleaners and antifreeze.

Drillers have used hydraulic fracturing for decades, but it has been refined and become more commonplace recently as a cost-effective way to draw large quantities of natural gas from the many shale formations throughout the country.

Industry officials say the risks have been exaggerated and that the method often called “fracing” or “fracking” has yet to be directly linked to any incidents of drinking water contamination.

Jeff Smith, chief financial officer of BJ Services, said he appreciates Congress' concern but that it may have the wrong focus.

“It's the casing and cementing of a well that's critical,” Smith said, referring to the thousands of feet of steel pipe and cement that line a gas well. “Not only does it stabilize the well bore, it isolates the gas zone from aquifers so you don't have any migration of fluids or gas.”

The Environmental Protection Agency said in a 2004 report that hydraulic fracturing did not pose a significant threat to drinking water supplies, but the agency is expected to revisit the issue this year.

The EPA has requested $4.3 million in 2011 for hydraulic fracturing research.

Also on Thursday, Waxman said past data received from Halliburton and BJ Services indicates they used diesel fuel in their fracturing fluids between 2005 and 2007, possibly violating a voluntary agreement with the EPA to stop using diesel.

Smith said BJ Services told its operations to stop using diesel but that some inadvertently used it for a few jobs, the last one in 2007. BJ reported the incidents to the EPA and took measures to prevent recurrences.

Halliburton spokeswoman Cathy Mann said in an e-mail that the agreement with the EPA only covered the use of diesel in fracturing jobs in coalbed methane formations and not other kinds of formations, such as shales.

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House panel to investigate impact of hydraulic fracturing on groundwater (*Water World*)

By Dave Michaels, The Dallas Morning News
Feb. 19--WASHINGTON -- Leaders of a powerful House committee announced Thursday that they would investigate whether gas producers in areas such as North Texas have injected diesel fuel or other toxic fluids underground that could pose a threat to drinking water sources.

The investigation escalates a clash between some congressional Democrats and gas producers over whether the federal government should regulate hydraulic fracturing, a method widely used to free natural gas from rock formations such as the Barnett Shale.

Some Democrats and several environmental groups argue that the fracturing chemicals have contaminated underground water sources in states including Pennsylvania and Colorado.

The committee sent a detailed request Thursday to major oilfield service firms BJ Services, Halliburton and Schlumberger for information, including the chemicals they use in their hydraulic-fracturing mixture. Those firms voluntarily pledged to the Environmental Protection Agency in 2003 to stop using diesel in the high-pressure mixture they shoot underground to fracture gas-bearing rock.

However, Rep. Henry Waxman, chairman of the House Energy and Commerce Committee, said BJ Services and Halliburton provided data to Congress in 2007 that showed they continued to use diesel in their fracturing mixture after they signed the agreement with the EPA.

In a memorandum, Waxman, D-Calif., wrote that the committee wanted to know whether the companies used diesel to fracture wells in areas where the wells tend to be shallower and closer to aquifers.

"This information is needed to assess whether the use of the chemicals posed a threat to drinking water supplies," Waxman and Rep. Edward Markey, D-Mass., wrote in the memo.

Diana Gabriel, a spokeswoman for Halliburton, said the committee's characterization of Halliburton's use of diesel-based fluids was "completely inaccurate." Halliburton has not used diesel fluids in wells close to water sources and has "voluntarily gone further to cease the use of diesel in its liquid gel concentrates regardless of the type of [hydraulic fracturing] job in which they are used," Gabriel wrote in an e-mail.

While hydraulic fracturing enjoys an exemption from federal regulation, companies would trigger regulation if they injected diesel fuel as part of their fracturing mix. A report last month by the Environmental Working Group said drilling firms have turned to other petroleum distillates that aren't restricted and have higher levels of cancer-causing benzene than diesel fuel.

The committee requested the same data from five smaller companies that it described as comprising a growing share of the market for drilling services. Those firms, including Frac Tech Services of Cisco, Texas, were not party to the agreement with the EPA in 2003.

Karen Lightfoot, a spokeswoman for Waxman, said she expected all of the companies would provide the data. The committee can subpoena the records if the firms don't comply.

Gas producers have warned lawmakers against introducing any new regulations that would make it more costly to drill. The companies insist hydraulic fracturing is safe and hasn't contaminated water sources, and they worry that any new regulatory activity could lead to a ban on the practice.

Jason B. Hutt, a lawyer in the environmental strategies group at Bracewell & Giuliani, said the committee's request was an attempt to "steal back the dialogue" after a top EPA regulator said this week he'd seen no cases of water contamination as a result of fracturing chemicals. The EPA has already been directed by lawmakers to conduct a peer-reviewed study of hydraulic fracturing and its impact on drinking water supplies.

"They need to wait on that [study], and in the meantime, they are sort of fear-mongering with this inquiry," Hutt said.

Bill Hicks, general counsel for Frac Tech Services, which fractures wells throughout Texas, said his company would provide as much information as possible to the committee "consistent with certain proprietary rights that we may have."

"Hydraulic fracturing is a process that has been used for more than 50 years in the United States, and we believe that it is a safe practice," Hicks said.

To see more of The Dallas Morning News, or to subscribe to the newspaper, go to http://www.dallasnews.com.

Posted on Thu, Feb. 18, 2010

EPA hears from public on water standards (*Miami Herald*)

BY CURTIS MORGAN
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Citrus growers, cattle ranchers, sugar farmers, nursery owners and utility operators -- along with a long line of their attorneys -- told federal regulators Thursday that proposed new water quality standards were too confusing and too costly.

More than 200 people packed a mid-day public hearing in West Palm Beach held by the U.S. Environmental Protection Agency on the standards, which would put a hard cap on the amount of nutrients fouling the state's rivers, steams, lakes and canals.

Nicholas Albergo, a Tampa-based engineer, told top EPA managers that the complex rule is rife with ``technical black holes'' that could create hardships for every sector of the economy, as well as local governments that might have to bankroll the cleanup.

He urged the agency to postpone and overhaul the rules, which were ordered as part of federal settlement. The standards are to go into effect in October.

``I guess my message is, slow down,'' he said.

Environmentalists applauded the step by the EPA, saying the state had lolly-gagged in setting hard numbers on nutrient pollution.

``This should have been done years ago,'' said Marti Daltry, a Sierra Club member from Fort Myers.

The meeting is the third and last one the EPA has scheduled on the standards.

House investigates hydraulic fracturing (*Associated Press*)
Story also appeared: *Newark Advocate*

ASSOCIATED PRESS • February 19, 2010

WASHINGTON -- An oil and gas drilling technique that is becoming more widespread is drawing scrutiny from lawmakers concerned that it may pose a hazard to human health by tainting drinking water and harming the environment.

Top Democrats on the House Energy and Commerce Committee sent letters Thursday to eight oil and gas companies seeking more information about chemicals used in hydraulic fracturing, also known as "fracking." The process injects vast quantities of water, sand and chemicals underground to force open channels in sand and rock formations so that oil and natural gas will flow.

Rep. Henry Waxman, D-Calif., the panel's chairman, said hydraulic fracturing could help unlock vast supplies of domestic natural gas once thought unattainable, but he added that lawmakers need to weigh the risks.

"As we use this technology in more parts of the country on a much larger scale, we must ensure that we are not creating new environmental and public health problems," Waxman said in a statement.

Rep. Edward Markey, D-Mass., who chairs an energy subcommittee, worked with Waxman last year on a landmark bill to impose limits on climate-changing greenhouse gases. Markey said natural gas can play an important role in developing so-called clean energy, but must be obtained in a way that does not harm the environment.

Fracking has been around for decades and has come under increasing scrutiny as drilling crews
flock to the Marcellus Shale, a rock bed the size of Greece that lies about 6,000 feet beneath New York, Pennsylvania, West Virginia and Ohio. The technique also is used in Colorado, Wyoming, New Mexico and other Western states.

Waxman and Markey said they hope to find more information on some of the chemicals used in the process, including benzene, toluene, ethylbenzene and xylene.

A 2004 study by the Environmental Protection Agency said there was no evidence that fracking
threatens drinking water. Critics, including a veteran engineer in the regional EPA office in Denver, argued that the report's methodology was flawed.

A provision in the 2005 energy bill that prevented the EPA from regulating fracking was called the "Halliburton loophole" by foes. Halliburton Co., an oilfield services company, pioneered hydraulic fracturing.

Houston-based Halliburton was among those receiving letters Thursday, along with several other
large hydraulic fracking companies, including BJ Services Co. and Schlumberger, both of Houston.

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