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ADMINISTRATOR JACKSON

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Robert Byrd back in form for Senate health-care vote (*Washington Post*)

By Paul Kane
Washington Post Staff Writer
Wednesday, December 23, 2009; A01

Since Robert C. Byrd arrived in the Senate in 1959, the senior senator from West Virginia has cast more than 18,500 votes.

Byrd has orchestrated and witnessed maneuvering. He has presided over the shortest session in Senate history -- not even one second long -- and presided for the longest continuous period -- more than 21 hours. He has thundered from the Senate well with rhetorical flourish.

And when success has hinged on just showing up and voting, he has done so.

This week, amid a historic blizzard, the 92-year-old senator arrived in the wee hours after midnight, and in the frigid minutes just after dawn. When an aide guided him in his wheelchair onto the chamber floor just after 7:30 a.m. Tuesday, his fellow Democrats leapt to their feet and cheered, for the third time in five days.

Their decades-long quest to reform the nation's health-care system was within reach, with 60 votes finally in hand after a weekend compromise, so long as every single Democrat voted. Byrd seemed to relish his contribution.

On Tuesday, he spent 25 minutes on the floor, making spirited small talk with fellow senators, including Thad Cochran (R-Miss.). He shouted "Aye" each time his name was called, then left the chamber to handshakes and backslaps.

Sen. Christopher J. Dodd (D-Conn.), who sits next to Byrd in the chamber, took note of his cheery attitude this week. "He looks a lot better, he seems a lot better, than a few weeks ago," Dodd said. He added that Byrd is "clearly aware" of who his colleagues are, their families and their legislative interests.

This week, Byrd has talked to senators about intricacies of northern border issues and to administration officials about America's energy needs. On Monday, in addition to rolling into the Senate chamber at 1 a.m. to vote, his wheelchair leaving streaks of slush in the hallways, he did some business on behalf of West Virginians. He met with Environmental Protection Agency chief Lisa Jackson, at her request, in his offices, to continue talks on parameters for mining permits.

But Byrd's fragile health has caused him to miss more than 40 percent of the chamber's roll calls this year. And as the debate has grown more heated, Byrd's appearances have become a flashpoint in a legislative fight split precisely on party lines.

Democrats accused Republicans of mistreating the longest-serving member of Congress in history by forcing 60-vote hurdles at awkward times that left even the most robust senators grumbling. Republicans remained unapologetic that Byrd has been forced into dark-of-night and predawn votes, alleging a Democratic rush to approve health care is forcing the nonagenarian into precarious votes.

"I've been worried about Senator Byrd living through the physical trauma of the past few weeks. It is an inevitable thought when you see him rolled into the chamber at 1 a.m.," said Sen. Arlen Specter (D-Pa.), who has served for 29 years with Byrd. "Compelling Senator Byrd to vote needlessly is a new Senate low mark."

"They have 60 votes," countered Sen. Susan Collins (R-Maine). "They can produce 60 votes whenever they want."

The issue of Byrd's health, mostly whispered about over the past two years, reached a fevered pitch when Sen. Tom Coburn (R-Okla.) delivered a Sunday speech asking for prayers that a Democrat would not make the first of three anti-filibuster votes at 1 a.m. Monday. Democrats perceived it as a prayer for tragedy, inevitably leading to chatter about Byrd's mortality.

But Byrd, who helped write the very rules that Republicans are using to draw out the process, has only one complaint: Coburn's biblical reference point.

"The Bible says love thy neighbor as thyself. I would hope that we could debate the pressing issues in front of the American public on their own merits without appealing to the Almighty for obstruction, of which there seems to be no short supply in Washington," Byrd said in a statement. His spokesman, Jesse Jacobs, said Byrd is "just fine" as he casts these votes "with vigor."

"If he was severely ill, he would not have been able to make it in here for any of the votes -- whether it was 3 p.m. or 1 a.m.," Jacobs said.

Byrd has every intention of continuing to represent the people of West Virginia, the "good Lord willing," as he has said.

Byrd spent six weeks in an undisclosed hospital this summer after being admitted for a minor infection, only to develop a more serious staph infection. In January, he surrendered the chairmanship of the Appropriations Committee, suggesting "a new day" required new leadership.

By fall Byrd appeared energized and delivered a string of floor speeches, the most poignant being a tribute to the late Edward M. Kennedy (D-Mass.), a longtime friend. In

recent days, Byrd's inspiration has come from Kennedy, who called national health reform the "cause of my life."

"This is for Ted," Byrd told staff members before a recent vote.

There's a sweet irony in Byrd's effort to boost Kennedy's legacy. Health care became Kennedy's central cause only after Byrd defeated Kennedy for the majority whip post in 1971, sending the younger Kennedy into the policy-oriented world of committee work. Early rivals, Kennedy and Byrd became legislative brothers in arms later in their careers.

Byrd retains the position of president pro tempore of the Senate, which puts him third in the presidential line of succession. He has not performed the basic duty of that job -- overseeing the chamber's debate -- in many months. But the post provides him with security detail from the Capitol Police, who drive Byrd to and from his spacious home in McLean, where a live-in nurse assists him. His wife of nearly 68 years, Erma, died in 2006, but he still wears his wedding band.

Despite the fury around him, Byrd appears to be reveling in the moment. During Monday's 1 a.m. roll call, senators were asked to vote from their desks rather than while milling about the well of the chamber. Exactly the sort of formality Byrd appreciates.

Minutes past 1 o'clock, Senate staff members moved the old wooden chair from behind his desk so an aide could wheel Byrd into place. He grabbed Dodd's hand to greet him, then Specter's. When the clerk called his name, Byrd shouted "Aye!" with his right index finger pointed in the air. He then pumped his left fist.

A few minutes later, Byrd was wheeled out, accepting more hugs and pats on the back.

New EPA cargo ship rule could cut L.A. air pollution (*Los Angeles Times*)

December 23, 2009 Wednesday
Home Edition
MAIN NEWS; Metro Desk; Part A; Pg. 10
By Louis Sahagun
Air pollution from U.S.-flagged oil tankers and cargo vessels will be reduced by about 80% under new engine and fuel standards finalized Tuesday by the U.S. Environmental Protection Agency, a move that could improve Los Angeles' air quality.

The new standards, however, will apply only to existing U.S.-flagged ships, which account for about 10% of the vessels that visit U.S. ports each year. The vast majority of the estimated 6,000 large ships that berth annually at the Los Angeles-Long Beach port complex are foreign-flagged.

Large marine vessels, which burn dirty, heavy fuel oil, are linked to about 800 premature deaths in the Southern California region each year, according to state authorities.

The standards will take effect by 2015.

Still pending are international regulations to reduce diesel emissions from large, oceangoing vessels within 200 nautical miles of U.S. and Canadian coasts. The International Maritime Organization is slated to pass its rules, expected to be similar to those of the **EPA,** in March.

"Port communities have identified diesel emissions as one of the greatest health threats facing their people -- especially their children," **EPA Administrator** Lisa P. Jackson said in a statement. "These new rules mark a step forward in cutting dangerous pollution in the air we breathe and reducing the harm to our health, our environment, and our economy."

Port officials familiar with the **EPA** announcement were not available for comment Tuesday.

The new emissions standards were prompted by a series of lawsuits brought against the **EPA** by environmental groups led by Earthjustice.

"For 10 years, we've been trying to compel the **EPA** through the courts to get this source of pollution cleaned up," Sarah Burt, an attorney with Earthjustice, said Tuesday. "Today, the **EPA** has taken a good step in the right direction."

David Pettit, a senior attorney with the Natural Resources Defense Council, agreed. "It shows the U.S. is serious about reducing the sulfur content in fuels used by large ships," he said.

By 2030, **EPA** officials said, the domestic and international strategy is expected to prevent between 12,000 and 31,000 premature deaths and 1.4 million lost workdays. The estimated annual health benefits in 2030 as a result of reduced air pollution are valued between $110 billion and $270 billion, nearly 90 times the projected cost of $3.1 billion to achieve those results.

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DEQ secretary objects to greenhouse gas findings (*2TheAdvocate*)

By GERARD SHIELDS
Advocate Washington bureau
Published: Dec 22, 2009 - Page: 1A

WASHINGTON — The state is objecting to what they say is the federal Environmental Protection Agency's attempt to regulate air pollution through administrative policy rather than going through the U.S. Congress.

Earlier in the month, the EPA announced that the public health and welfare of current and future generations were threatened by so-called greenhouse gas emissions released by sources such as vehicles. Though the EPA findings do not themselves impose any new requirements, they set the stage for regulation of emissions from larger sources such as power plants and refineries under the Clean Air Act, said state Department of Environmental Quality Secretary Hal Leggett.

Leggett said Monday the EPA efforts would have a serious impact on the economy of Louisiana with its chemical, oil and gas industries without allowing necessary public debate that would occur during the legislative process.

"This is significant policy that the EPA is trying to put forth," Leggett said. "The public has a right to be part of that policy. When you don't do that, you're taking that voice away."

Leggett sent a letter to EPA Administrator Lisa Jackson, a Louisiana native, last week outlining his concerns. Leggett wrote that the public needs a cost-benefit analysis before the decision over the pollutants can be made.

"Based on the absence of any reports, data or economic analyses, we are concerned that the EPA has not adequately evaluated the collateral impact of its recent greenhouse gas proposed rules, specifically, the impact on states and permitting authorities," Leggett wrote.

In September, the EPA set new standards for emissions coming from industrial plants facing new permitting or installing new equipment. The agency issued its more recent finding based on a U.S. Supreme Court ruling in 2007 that reversed Bush administration determinations that greenhouse gases were not harmful to public health.

Asked to respond to Leggett's letter, the EPA issued a statement Monday saying that its actions were tied to the Supreme Court ruling.

"The EPA answered the endangerment question because the U.S. Supreme Court ordered the agency to do so more than two years ago," the statement said. "EPA reached its determination because there is broad and overwhelming scientific consensus that greenhouse gas pollution endangers public health."

The greenhouse gases at issue are carbon dioxide, methane, nitrious oxide, hydrofluorocarbons, petrofluorocarbons and sulfur hexafluoride. Leggett argues that Congress should be the arbiter of the emissions. A climate change bill establishing a cap and trade process that would allow polluters to buy credits from cleaner sources

passed the House earlier this year. None of Louisiana's seven-member House delegation voted for the bill.

The bill faces larger hurdles in the Senate due to opposition from oil and gas state Democrats such as U.S. Sen. Mary Landrieu of Louisiana.

"The issue of global climate change resulting from the emissions of greenhouse gases should be addressed through comprehensive federal legislation, full public debate and American political consensus rather than through unilateral agency policy under the auspices of the EPA," Leggett wrote.

Industry leaders in Louisiana welcomed Leggett's actions. Dan Borne of the Louisiana Chemical Association, which represents close to 100 facilities, lauded Leggett for being forceful.

"The Obama administration is telling Congress and the regulated to get on board the climate change train or risk being run over by the greenhouse gas regulation bus," Borne said.

State environmentalists, though, say the climate change issue directly impacts Louisiana.

"I was disappointed that the secretary did not address the welfare concerns of the people of Louisiana," said Adam Babich, an attorney with the Tulane Environmental Law Clinic. "We're basically at ground zero as it pertains to climate change. As seas rise, it becomes harder and harder to protect southeast Louisiana."

Leggett said Monday that although his agency promotes reduction in the emissions and that the protection of health and the environment is a duty of the DEQ, economic factors must be taken into consideration. That is the difference between the DEQ and EPA, he said.

"They're in charge of protecting the environment," he said.

2/22/2009 10:59 AM

One Year Later: TVA Kingston Disaster Continues with No Regulation in Sight (*SustainableBusiness.com News*)

It's been one year and piles of coal ash still remain. Train cars full of the toxic waste move from Kingston, Tennessee to Perry County, Alabama. The few remaining residents along the Clinch and Emory Rivers say the cleanup goes on, but not much of the scenery has changed. They describe it as a moonscape, a war zone, a sad sight.

One year ago, a billion gallons of coal ash--the leftovers from coal-fired power plants that contain high levels of arsenic, selenium and other toxins--burst through a dam at the Tennessee Valley Authority's Kingston Plant. It spread across 300 acres, destroying numerous homes and poisoning the Emory and Clinch Rivers.

The nation quickly took notice. Congress convened hearings about the disaster and brought experts in to discuss the impacts that coal ash has not only in Kingston, but at similar sites across the U.S. Local newspapers wrote about coal ash ponds in other parts of the country. EPA Administrator Lisa Jackson vowed that her agency would introduce the first ever federal regulations on coal ash ponds by the end of this year. But just last week, the EPA announced they were going to delay federal coal ash regulations "due to the complexity of the analysis the agency is currently finishing."

"We're obviously disappointed that the EPA couldn't get these regulations out to the public before the end of this year," said Earthjustice attorney and coal ash expert Lisa Evans. "Power industry lobbyists have relentlessly pressured EPA, the White House, and other federal agencies to back off regulating toxic ash. Polluters are spreading baseless fears about cost and compliance. But what we know to be true is that the tragedy that happened in Tennessee is just waiting to happen again unless the EPA acts quickly and forces stronger protections."

Earthjustice has compiled a timeline of events related to the Tennessee disaster over the last year. It can be found at the link below.

In March, the EPA sent letters to every coal ash pond owner seeking information about the size, age, location and last inspection of coal ash ponds. 584 coal ash ponds were tallied, but some companies refused to turn over the information, citing "confidential business information" claims.

In June, the EPA identified 49 "high hazard" coal ash ponds, where the failure of a dam will probably cause a loss of human life. But it wasn't until members of Congress and environmental groups got involved that EPA decided to share the list of high hazard sites with the public.

"For 30 years, these coal ash ponds have gone unnoticed and unchecked," Evans added. "It's sad to think that it took a tragedy such as what happened in Tennessee to get our government to finally take notice."

Website: www.dipity.com/earthjustice/Kingston-Plat-Coal-Ash-Spill-The-First-100-Days

AP Enterprise: Feds mull regulating drugs in water (*Associated Press*)

By JEFF DONN (AP) – December 22, 2009

Federal regulators under President Barack Obama have sharply shifted course on long-standing policy toward pharmaceutical residues in the nation's drinking water, taking a critical first step toward regulating some of the contaminants while acknowledging they could threaten human health.

A burst of significant announcements in recent weeks reflects an expanded government effort to deal with pharmaceuticals as environmental pollutants:

_ For the first time, the Environmental Protection Agency has listed some pharmaceuticals as candidates for regulation in drinking water. The agency also has launched a survey to check for scores of drugs at water treatment plants across the nation.

_ The Food and Drug Administration has updated its list of waste drugs that should be flushed down the toilet, but the agency has also declared a goal of working toward the return of all unused medicines.

_ The National Toxicology Program is conducting research to clarify how human health may be harmed by drugs at low environmental levels.

The Associated Press reported last year that the drinking water of at least 51 million Americans contains minute concentrations of a multitude of drugs. Water utilities, replying to an AP questionnaire, acknowledged the presence of antibiotics, sedatives, sex hormones and dozens of other drugs in their supplies.

The news reports stirred congressional hearings and legislation, more water testing and more disclosure of test results. For example, an Illinois law goes into effect Jan. 1 banning health care institutions from flushing unused medicine into wastewater systems.

The EPA's new study will look for 200 chemical and microbial contaminants at 50 plants that treat drinking water. The list includes 125 pharmaceuticals or related chemicals. This research will help federal water officials decide if regulations are needed.

In the first move toward possible drinking-water standards, the EPA has put 13 pharmaceuticals on what it calls the Contaminant Candidate List. They are mostly sex hormones, but include the antibiotic erythromycin and three chemicals used as drugs but better known for other uses.

They join a list of 104 chemical and 12 microbial contaminants that the EPA is considering as candidates for regulation under the Safe Drinking Water Act. No pharmaceutical has ever reached the list in its 12-year history, but medicines now make up 13 percent of the target chemicals on the latest list "based on their potential adverse health effects and potential for occurrence in public water systems," the EPA said.

They take a place beside such better-known contaminants as the metal cobalt, formaldehyde, the rocket fuel ingredient perchlorate, and the disease germ E. coli.

"I think this does signal a change in the regulatory and research approaches," said Conrad Volz, a University of Pittsburgh scientist whose research raises questions about the risk of eating fish from waters contaminated with sex hormones. "What's happening is pretty amazing."

Several scientists within and outside government tied the stronger focus on human health to the Obama administration and the president's appointment of Lisa Jackson, a highly regarded former head of the New Jersey Department of Environmental Protection, to run the EPA.

"I think we are trying to be as aggressive as we can. We understand it's a major national issue. We understand it's a major public concern," said Peter Silva, the new water administrator at the EPA.

However, making the candidate list provides no assurance that a chemical will reach full-blown regulation. In fact, no chemical on the list has ever been made subject to a national water quality standard, EPA officials acknowledge. They intend to make preliminary decisions on some of the latest contaminants by mid-2012.

"They've made a lot of good first steps, so now were waiting to see those carried through," said Nneka Leiba, a researcher at the Environmental Working Group in Washington.

Water utilities and drug makers are wary of the federal moves. Difficult scientific questions remain over the possible threat posed to humans by minuscule concentrations in drinking water, where drugs are typically found in parts per billion or trillion. That's way below medical doses.

However, some researchers fear that very small daily amounts of unwanted drugs in water could do cumulative harm to people over decades, possibly in combination with other drugs or in sensitive populations like children or pregnant women.

Alan Goldhammer, a vice president of the Pharmaceutical Research and Manufacturers of America, said such trace amounts "really do not pose a human health issue."

"We do get concerned if we think that somebody is going to require that the consumers spend money and not get any health benefit," added Tom Curtis, a lobbyist for the Denver-based American Water Works Association.

The U.S. Geological Survey first began taking notice of pharmaceutical contamination several years ago. But until now the federal government has focused on the presence of pharmaceuticals in rivers and streams.

A recently released EPA study found more than 40 pharmaceuticals — everything from antibiotics to heart medicine to antidepressants — at nine publicly owned wastewater treatment plants. The drugs appeared in concentrations measured in parts per billion and trillion. Many passed right through the plants.

Linda Birnbaum, who is director of the National Institute of Environmental Health Sciences and also oversees the National Toxicology Program, said some program research is focusing on how much environmental pharmaceuticals can reach animal blood and tissues and how that might compare with humans.

Waste pharmaceuticals reach the environment when people take medicine and excrete the unmetabolized portion. Millions of pounds of waste drugs also escape into waterways from hospitals, drug plants and other factories, farms and the drains of American homes, the AP has reported.

On its new list, the FDA, which regulates medicines, says only 10 active ingredients in controlled-substance drugs need to be flushed to keep them away from children, abusers and pets.

At the same time, the agency announced it is working with partners to develop programs to return unused drugs instead of flushing them down the drain. The agency wants "to encourage their development and future use for all drugs," declared Dr. Douglas Throckmorton, deputy director of the FDA's Center for Drug Evaluation and Research. Returned drugs are usually incinerated, which destroys most active ingredients. Community drug takeback programs have increased considerably since the AP's PharmaWater reports.

The recent announcements have been striking in their speed and breadth. Just last year, Ben Grumbles, Silva's predecessor at the EPA Office of Water under President George W. Bush, said only one pharmaceutical was under consideration for the list of candidates for water standards. And it was the heart medicine nitroglycerin, better known as an explosive.

Yet some environmentalists say the government should take even bolder action. "Identifying the nature and scope of the problem is not the same thing as addressing the causes of the problem," said George Mannina, an environmental lawyer in Washington.

He said the EPA should do more to keep drugs out of the nation's water supplies and not rely on expensive filtering systems at water treatment plants.

Jon Holder, a vice president at Vestara, a seller of equipment to manage waste drugs, said the EPA should be more aggressive about enforcing hazardous waste laws that already apply to some drugs used by hospitals.

"We applaud the light that's being shined on it, but we also recognize that the simple enforcement of existing law would go a long way," he said.

On the Net:

- EPA Contaminant Candidate List: http://www.epa.gov/ogwdw000/ccl/ccl3.html
- FDA flush list: http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/EnsuringSafeUseofMedicine/SafeDisposalofMedicines/ucm186187.htm

Byrd urges transparency in mine permitting process (*Greenwire*)

(12/22/2009)
During a meeting between West Virginia Sen. Robert Byrd (D) and U.S. EPA Administrator Lisa Jackson yesterday, the senior senator asked for transparency in the agency's permitting of coal mines. He asked EPA to work "in conjunction with other regulatory agencies, the coal industry, and unions to develop a clear set of parameters for issuing mining permits," the senator's office said.

Byrd's staff described the Jackson-initiated meeting, which took place in Byrd's office, as "friendly and candid." It came as EPA takes a closer look at permits for mining projects using the process known as mountaintop removal, which might violate the federal Clean Water Act, the agency says.

Tensions in West Virginia have escalated over mining regulation, said Rep. Nick Rahall (D-W.Va.), who recently visited a Consol Energy mine where about 500 workers will lose their jobs in February after the facility's permit was suspended in federal court.

"What we're going through is a process," Rahall said. "It's much like laws and sausage, it's pretty ugly" (Associated Press, Dec. 21). **-- GN**

AIR

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DECEMBER 23, 2009

Copenhagen's delay is coal-power heyday (*Wall Street Journal)*

By LIAM DENNING
In Copenhagen, world leaders debated climate change they didn't quite believe in enough to overcome political obstacles. What does their lack of agreement portend for the U.S. electricity sector?
The short answer: more uncertainty. When and how America will handle carbon emissions will affect every power company's investment decisions and valuation.

Selling even a multilateral settlement to Americans was going to be difficult in the wake of "Climategate." Unilateral legislation ahead of mid-term elections now looks all but impossible. Meanwhile, the alternative of having the Environmental Protection Agency regulate carbon emissions as pollutants could provoke legal challenges.

Rob LaCount, a senior director at IHS Cambridge Energy Research Associates, reckons that as the window of opportunity for passing comprehensive legislation closes, a more piecemeal approach becomes likely.

The big losers from this continued uncertainty are companies with large, unregulated nuclear-power portfolios, such as Exelon and Entergy. Nuclear plants, with their zero carbon emissions, represent an option. If carbon were to become embedded in the electricity price, as coal and natural gas-fired generators factored it into their costs, the benefit would flow to the nuclear generators' bottom lines. The more that day is deferred, the less tangible those extra cash flows are.

Conversely, unregulated power producers burning coal benefit from this stay of execution. Not all benefit equally, with much depending on where they operate. In the absence of a cost for carbon, coal-fired generators selling into wholesale markets where natural-gas-fired plants set the marginal price of electricity tend to earn good profit margins.

Carbon pricing would savage such margins—that's the idea, after all. In its absence, it might be time to reappraise Allegheny Energy, the worst-performing member of the S&P Utilities index this year. As Morgan Stanley points out, its unregulated generation portfolio is mainly coal-fired, operating where gas-fired competitors set electricity prices. At 11 times 2009 earnings versus a sector average of 13.4, Allegheny appears priced for change that Copenhagen didn't deliver.

— *Liam Denning*

Duke settles air violations at southern Ind. Plant (*Associated Press*)

Story also appeared: *Washington Post*

By RICK CALLAHAN
The Associated Press
Tuesday, December 22, 2009; 3:44 PM

INDIANAPOLIS -- Duke Energy Corp. will spend about $93 million to settle clean air violations at a coal-fired power plant in southern Indiana where unauthorized changes significantly boosted air pollution, the federal government said Tuesday.

The U.S. Environmental Protection Agency said the consent decree filed in federal court in Indianapolis will end its decade-old lawsuit against Duke, a suit three Eastern states affected by pollution wafting far beyond the Louisville, Ky., area later joined.

Under the proposed settlement, the EPA said Duke Energy will spend $85 million to cut sulfur dioxide emissions at its Gallagher plant near New Albany, Ind., by nearly 35,000 tons per year. Duke said the upgrades will cost about $80 million.

The EPA said the changes will cut sulfur dioxide emissions 86 percent from last year's levels at the plant directly across the Ohio River from Louisville.

"As a result of this enforcement action, Duke will make large cuts in air pollution, which means cleaner air and better health for the millions of people living in communities downwind of this plant," said Cynthia Giles, an EPA assistant administrator for enforcement.

Charlotte, N.C.-based Duke will also pay a $1.75 million civil penalty to resolve violations of federal clean air laws and spend $6.25 million on environmental mitigation projects. Those include a total of $1 million for New York, New Jersey and Connecticut.

Those states joined the EPA's lawsuit in 2001, alleging that the 560-megawatt station worsened air pollution and acid rain damage to their lakes, forests and wildlife.

Environmentalists have called the plant, which dates to 1958, one of the nation's "dirtiest" in terms of air pollution produced per unit of electricity.

Tim Maloney of the Hoosier Environmental Council, an environmental group that joined the EPA's lawsuit, said the settlement will improve the health of people in Indiana and states downwind of the plant.

"Not only will the offending units be retired or converted to cleaner burning natural gas, the two other polluting units at the plant must also substantially reduce their emissions," Maloney said.

The lawsuit was one of several environmental enforcement actions the EPA took in 1999 across the utility industry. It alleged that Cinergy, which merged with Duke in 2006, undertook six power plant upgrades in Indiana and Ohio without obtaining new permits.

In May, a federal jury ruled that Duke violated the Clean Air Act when it failed to obtain needed permits and install modern pollution-control equipment when it made changes to two units at the Gallagher plant.

A trial to determine what steps Duke would have to take at the plant had been scheduled for January. The settlement is final following a 30-day comment period.

Jurors had agreed with federal prosecutors' contention that the changes to the two Gallagher units were not routine plant maintenance but instead "major modifications" that increased each unit's annual sulfur dioxide emissions by at least 40 tons a year.

The settlement requires Duke to either convert those units to natural gas or install equipment to remove all sulfur dioxide pollution. The utility must also install new pollution controls for sulfur dioxide at the plant's two other units.

"After more than 10 years of litigation, we are pleased to be resolving our differences with the government with respect to the Gallagher plant," said Marc Manly, Duke Energy's chief legal officer.

As part of its environmental mitigation projects, Duke said it will spend $5 million to upgrade and expand the power output of its 81-megawatt Markland Dam hydroelectric power plant near Vevay, Ind., pending state regulatory approval.

In May's verdict, the federal jury ruled in Duke's favor on the four other power plant upgrades in question - one unit at its Gibson plant near Princeton, Ind., two at its Beckjord Station in New Richmond, Ohio, and one of the Gallagher plant's units.

BNSF plan may face fight in courtroom (*Kansas City Star*)

December 23, 2009 Wednesday
OL; Pg. 2
By BRAD COOPER; bcooper@theolathenews.com
The fate of BNSF Railway's massive rail hub proposed near Gardner could be decided in a courtroom now that the project has received its federal environmental clearances.

An environmental group is vowing to take the government to court after the U.S. Army Corps of Engineers on Friday issued the permit BNSF needs to start construction of a 418-acre rail yard near Gardner.

The proposed rail hub is one of the metro area's biggest economic development

projects and is expected to create thousands of jobs.

But environmentalists contend that regulators have underestimated the project's impact on water and air quality.

A lawyer for the nonprofit Hillsdale Environmental Loss Prevention Inc. said Monday that he expected to bring a lawsuit seeking to set aside the permit.

"The decision to issue the permit and go forward with the whole project was arbitrary and capricious," Mark Dugan said.

The corps spent 2 1/2 years studying the environmental implications of the project, something BNSF noted in a statement issued Monday.

BNSF Railway spokesman Steve Forsberg said the study concluded that the project wouldn't "have a significant adverse effect on the environment."

The corps released a brief statement explaining its decision.

But environmentalists don't put a lot of faith in the corps' environmental assessment. They want a deeper and broader economic impact study.

Environmentalists say the corps didn't fully assess the cancer risk tied to the project. They argue that the corps' predictions of diesel emissions were much less than what's generated at rail projects elsewhere.

In a report last summer, the corps found that a person had a greater chance of getting cancer in a typical lifetime than from pollution from the freight center.

The report said the project would have moderate to significant adverse effects on air quality, traffic and streams but said BNSF had plans to reduce negative effects.

At that time, the corps acknowledged it didn't quantify all cancer risks because there was insufficient data to do so.

Although the **Environmental Protection Agency** has classified diesel emissions as a likely cause of cancer, it hasn't specified a threshold of exposure at which the cancer risk rises.

Regulators say they measured potential diesel emissions at the Gardner site but didn't examine the related cancer risks.

But environmentalists argued that data are available for the corps to do its own evaluation of diesel emissions. They point to California studies showing that residents living near rail yards face an increased cancer risk.

BNSF, however, contends that the science around diesel emissions is imprecise.

“Whether diesel exhaust causes some form of cancer in humans is still highly questionable, since the existing linkage is only in some species of test animals,” BNSF said in a three-page e-mail.

BNSF also targeted arguments made by critics who compare the Gardner project to rail yards in California that were studied by the California Air Resources Board.

The BNSF e-mail noted that state risk assessments of rail projects in California assume a person lives at the same location for 70 years and is outdoors 24 hours a day, 350 days a year. The person also is assumed to be doing some moderate exercise.

BNSF said the risk assessments tend to be conservative, so they err on the side of public health.

Earlier this year, the railway put the project on hold because of the economy, but if it gets $50 million in federal stimulus money, it will begin construction as soon as possible.

December 22, 2009

EPA finalizes emissions regulations for Category 3 engines (*Marine Log*)

Great Lakes and Seaway operators have been cut a few breaks in final emission standards announced by the EPA on December 18, 2009.

The final emission standards for new marine diesel engines with per-cylinder displacement at or above 30 liters (Category 3 engines) installed on U.S.-flagged vessels are equivalent to those adopted in the amendments to Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL).

The emission standards apply in two stages: near-term standards for newly-built engines will apply beginning in 2011, and long-term standards requiring an 80 percent reduction in nitrogen dioxides (NOx) will begin in 2016.

EPA is adopting changes to the diesel fuel program to allow for the production and sale of diesel fuel with up to 1,000 ppm sulfur for use in Category 3 marine vessels. The regulations generally forbid production and sale of fuels with more than 1,000 ppm sulfur for use in most U.S. waters, unless operators achieve equivalent emission reductions in other ways.

EPA is also adopting provisions to apply some emission and fuel standards to foreign-flagged and in-use vessels that are covered by MARPOL Annex VI.

The final rule provides more flexibility in complying with the fuel sulfur requirements than proposed. First, vessels may now use other methods to achieve sulfur dioxide emissions reductions equivalent to those obtained by the use of lower sulfur fuel.

Second, a fuel availability relief provision has been added for use only by vessels with diesel engines operating on the Great Lakes and Saint Lawrence Seaway. This provision allows operators to buy the lowest sulfur marine residual fuel available if fuel that meets the near-term 1.0 percent (10,000 ppm) fuel sulfur standard is not available. EPA says this provision preserves the greatest benefits of the rulemaking, while avoiding undue consequences for a narrow segment of the regulated industry.

Furthermore, EPA says it is finalizing an economic hardship relief provision for vessels with diesel engines operating on the Great Lakes and Saint Lawrence Seaway. This option provides temporary relief from the 2015 ECA-level fuel sulfur standards upon demonstration that the burden of compliance costs would cause serious economic hardship.

Finally, reflecting technical challenges to the use of lower sulfur fuels in steamships, a corresponding potential for reduced safety and a clear directive from the Congress, EPA is excluding from this final action the application of the ECA-level fuel sulfur standards in MARPOL Annex VI to existing steamships operating on the Great Lakes and Saint Lawrence Seaway.

Duke settles air violations at southern Ind. Plant (*Associated Press*)

By RICK CALLAHAN (AP)

INDIANAPOLIS — Duke Energy Corp. will spend about $93 million to settle clean air violations at a coal-fired power plant in southern Indiana where unauthorized changes significantly boosted air pollution, the federal government said Tuesday.

The U.S. Environmental Protection Agency said the consent decree filed in federal court in Indianapolis will end its decade-old lawsuit against Duke, a suit three Eastern states affected by pollution wafting far beyond the Louisville, Ky., area later joined.

Under the proposed settlement, the EPA said Duke Energy will spend $85 million to cut sulfur dioxide emissions at its Gallagher plant near New Albany, Ind., by nearly 35,000 tons per year. Duke said the upgrades will cost about $80 million.

The EPA said the changes will cut sulfur dioxide emissions 86 percent from last year's levels at the plant directly across the Ohio River from Louisville.

"As a result of this enforcement action, Duke will make large cuts in air pollution, which means cleaner air and better health for the millions of people living in communities

downwind of this plant," said Cynthia Giles, an EPA assistant administrator for enforcement.

Charlotte, N.C.-based Duke will also pay a $1.75 million civil penalty to resolve violations of federal clean air laws and spend $6.25 million on environmental mitigation projects. Those include a total of $1 million for New York, New Jersey and Connecticut.

Those states joined the EPA's lawsuit in 2001, alleging that the 560-megawatt station worsened air pollution and acid rain damage to their lakes, forests and wildlife.

Environmentalists have called the plant, which dates to 1958, one of the nation's "dirtiest" in terms of air pollution produced per unit of electricity.

Tim Maloney of the Hoosier Environmental Council, an environmental group that joined the EPA's lawsuit, said the settlement will improve the health of people in Indiana and states downwind of the plant.

"Not only will the offending units be retired or converted to cleaner burning natural gas, the two other polluting units at the plant must also substantially reduce their emissions," Maloney said.

The lawsuit was one of several environmental enforcement actions the EPA took in 1999 across the utility industry. It alleged that Cinergy, which merged with Duke in 2006, undertook six power plant upgrades in Indiana and Ohio without obtaining new permits.

In May, a federal jury ruled that Duke violated the Clean Air Act when it failed to obtain needed permits and install modern pollution-control equipment when it made changes to two units at the Gallagher plant.

A trial to determine what steps Duke would have to take at the plant had been scheduled for January. The settlement is final following a 30-day comment period.

Jurors had agreed with federal prosecutors' contention that the changes to the two Gallagher units were not routine plant maintenance but instead "major modifications" that increased each unit's annual sulfur dioxide emissions by at least 40 tons a year.

The settlement requires Duke to either convert those units to natural gas or install equipment to remove all sulfur dioxide pollution. The utility must also install new pollution controls for sulfur dioxide at the plant's two other units.

"After more than 10 years of litigation, we are pleased to be resolving our differences with the government with respect to the Gallagher plant," said Marc Manly, Duke Energy's chief legal officer.

As part of its environmental mitigation projects, Duke said it will spend $5 million to upgrade and expand the power output of its 81-megawatt Markland Dam hydroelectric power plant near Vevay, Ind., pending state regulatory approval.

In May's verdict, the federal jury ruled in Duke's favor on the four other power plant upgrades in question — one unit at its Gibson plant near Princeton, Ind., two at its Beckjord Station in New Richmond, Ohio, and one of the Gallagher plant's units.

Carbon monoxide tied to pair of Wilsonville deaths (*Shelby County Reporter*)

By Neal Wagner (Contact) | Shelby County Reporter
Published Tuesday, December 22, 2009
Two Wilsonville residents found deceased in a mobile home Dec. 14 died as a result of carbon monoxide poisoning, according to Shelby County Coroner Diana Hawkins.

Shelby County Sheriff's deputies discovered George Garner, 40, and Michelle Phillips, 35, dead in the Morris Estates mobile home park in Wilsonville at about 3:10 p.m. Dec. 14.

Though the Sheriff's Department conducted an investigation into the incident, Hawkins later ruled the deaths accidental, and said it was the result of a gas-powered generator.

As colder weather reaches the Southeast, emergency responders typically see a rise in the number of carbon monoxide deaths, according the U.S. Environmental Protection Agency.

The EPA recommends several precautions to limit exposure to dangerous levels of carbon monoxide, including keeping gas appliances properly adjusted, replacing unvented space heaters with vented units, using proper fuel in kerosene heaters and properly ventilating gas stoves.

The agency also recommends opening fireplace flues when burning a fire, ensuring wood stoves meet all EPA emission standards, having professionals inspect central heating systems each year and refraining from idling cars inside a garage.

Dangerous levels of carbon monoxide can quickly build up in enclosed areas when generators are run inside, and can linger in an area for hours after the generator has been turned off, according to the EPA.

The U.S. Consumer Product Safety Commission also recommends every residence have a carbon monoxide detector.

ASBESTOS

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Libby councilman wants $2 million from EPA for demolition (*Mesothelioma News*)

Dec 22, 2009
DC Orr, a city councilman from Libby, Montana, stated that the Environmental Protection Agency (EPA) owes his community $2 million for the demolition of some asbestos-contaminated buildings. A public health emergency was declared in Libby in June due to the prevalence of asbestos-related diseases like mesothelioma in residents who worked at and lived near the W.R. Grace vermiculite mine. The EPA placed Libby on its Superfund list for environmental cleanup several years ago.

The asbestos-contaminated buildings that were torn down were owned by the city. W.R. Grace had them demolished per the EPA's instructions. A civil suit that was settled against W.R. Grace last year for $250 million specified that the EPA had to repay Libby the $2 million with which W.R. Grace had offered to buy back the demolished building sites back in 2000.

Orr stated he was going to file a formal complaint with the Office of Inspector General for the EPA, alleging fraud that has deprived Libby residents of the rightful restoration of city-owned property. A spokesman for the EPA stated that the building demolition was ancient history, and that the agency considered the matter closed.

A spokesman from W.R. Grace stated that the company isn't involved in the property dispute with the city, as its settlement with the EPA in 2008 covered all cleanup costs, past and future, and protected it from third-party lawsuits.

The mayor of Libby isn't sure that the EPA owes the town anything for the demolished buildings, stating that the previous council had accepted some water lines in their stead.

ENERGY

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County courthouse gets star from federal EPA (*Atlanta Journal Constitution*)

The Douglas County courthouse is the only courthouse in the state to receive **Energy Star** certification from the U.S. **Environmental Protection Agency.**

For its energy conservation efforts, the courthouse at 8700 Hospital Drive in

Douglasville is among the top 25 percent of facilities in the nation, said Mark Price, county building manager.

Price said the courthouse received an energy performance rating of 88 out of 100.

CAROLYN CUNNINGHAM, FOR THE AJC

Be Green 2: EPA "Our planet, Our stuff, Our choice" Contest (KHON Channel 2 News)

Reported by: Kirk Matthews
Email: kmatthews@khon2.com
Last Update: 12/22 6:51 pm
The environmental protection agency is sponsoring a video contest entitled "Our planet, our stuff, our choice."
Cash prizes will be awarded to the winners.

This could be the perfect opportunity for someone to make a statement about their concern for the environment.

"Videos can be serious but they can also be funny. But the main thing is they take that message of re-cycling, re-using, reducing, composting and minimizing your environmental footprint or impact on the environment," said Dean Higuchi of the EPA.

The EPA is discovering that the visual medium carries tremendous impact especially with the advent of YouTube. The agency is looking for videos that raise awareness about environmental protection, particularly with regard to all our "stuff."

"To create videos that will get people to take positive environmental actions by re-cycling which is basically just taking back things like plastic bottles and aluminum cans, re-using which is sometimes re-using those plastic bottles if you can," said Higuchi.

A recycling subject comes to mind during this holiday season.

"Tree-cycling or Christmas tree re-cycling is going to be a big deal about re-cycling Christmas trees. Really, it's minimizing your footprint or what you impact the environment with."

Anyone is eligible to enter the video contest - but the agency is hopeful that young people will be especially motivated to take part. Higuchi reminds us that even now we are seeing their video endeavors highlighted on local t.v. stations.

"Yes, here in Hawaii, we've had some great video programs at the high schools. I've noticed that just by watching some of the stuff on TV. And we'd encourage those students to enter and really get the message out about protecting the environment."

Video contest winners will be announced in April, right around the anniversary of Earth Day. But the deadline will be here much sooner than that.

"The entries are due on February 16th and the winners will be chosen in April prior to Earth Day. There'll be prizes - cash prizes - in fact, first and second and third place winners. Also special winner categories for students ages up to 18," said Higuchi.

First prize is $2500 - and students are eligible for that.

To enter click here: http://www.epa.gov/waste/wycd/video.htm

FUEL

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US 23 North Closed In Pickaway County (*NBC4i.com*)

By Amanda Murphy
Published: December 23, 2009
Updated: December 23, 2009
CIRCLEVILLE, Ohio – US 23 northbound is closed north of Circleville due to an overturned semi.

According to the Pickaway County Sheriff's Office, the single-vehicle accident occurred around 4:20 a.m. Wednesday.

A semi truck carrying auto parts overturned, spilling vehicle transmissions along the roadway. The semi truck is also leaking fuel.

Fire personnel and emergency management are on the scene and the Environmental Protection Agency has been notified of the situation.

Both lanes of US 23 northbound is closed to traffic. Traffic is being detoured at US 22 to SR 56 west to SR 104 north to SR 316 east. The sheriff's office estimates the closure to last a few hours.

Minor injuries were reported from the incident.

GENERAL

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Hope Is Not Good Enough (*The Intelligencer /Wheeling News-Register*)

POSTED: December 23, 2009

"Vote your hopes, not your fears," Sen. Tom Harkin urged his colleagues Sunday night in attempting to ensure that a massive health care bill will be approved by the Senate.

That is precisely the problem with the bill, in both its Senate form and the language already passed by the House of Representatives. In an attempt to do something - anything - about health care, too many lawmakers are hoping everything will turn out all right. The legitimate fears about the bills, felt by tens of millions of Americans who will be affected adversely, are being ignored.

Harkin, D-Iowa, was successful. The Senate bill was advanced in a vote that occurred shortly after 1 a.m. Monday. The timing was because Senate liberals are pushing to gain final approval by Christmas.

Enough is known about the Senate bill to worry many people deeply. Money to pay for it - estimated conservatively at $1 trillion over 10 years - has to come from somewhere. As usual, that "somewhere" will be the pockets of hard-working American men and women. In effect, the bill would make health care less affordable for many, because of new taxes.

Some flaws in the bill are well known. For example, both the Senate and House bills call for nearly $500 billion in cuts to the Medicare program.

But what worries many people is what is not known about the bills. In particular, what power will be granted to federal agencies under provisions buried in the bills? Will the government gain control over health care similar to that granted to the Environmental Protection Agency in regard to industries? At some point in the future, will a government agency declare that it has the power to make sweeping changes in national policy, whether Congress agrees or not? That very thing is happening now in regard to the EPA's announcement that if Congress does not approve some form of "cap and trade" rules, the agency will establish them on its own.

Few Americans have been given the time to look carefully at the health care bills and decide whether they are good - or hazardous to our health.

But that is the idea in the Senate, where the original 2,074-page bill was added to with 383 pages of amendments last weekend. Liberal leaders in the Senate don't want Americans to know what's in the bill. We are supposed to hope that everything will turn out all right in the end.

We fear that is not realistic - but lawmakers like Harkin and Senate Majority Leader Harry Reid don't care. They are determined to get their way on the bill, whether it is good for the American people or not.

HAZARDOUS WASTE

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ASTM Warning On Coal Ash Reuse Stymies Stalled EPA Bid For Strict Rule (*Inside EPA*)

ASTM International, the private standard-setting organization, is warning that EPA's stalled plans to regulate some coal ash as "hazardous" would prompt the group to drop its specification allowing for the ash to be used as a key component in concrete due to potential liability and public perception concerns -- eliminating a key driver for the beneficial reuse of the material.

The group's warning -- sent on the anniversary of a massive coal ash spill that first prompted EPA's regulatory effort under the Resource Conservation & Recovery Act (RCRA) -- could be persuasive in driving home industry and other critics' efforts to kill EPA plans to regulate some forms of the ash as hazardous, in part because they claim it would undermine beneficial reuse of the materials.

EPA plans for a hazardous waste RCRA designation, even with an exclusion for beneficial use, "would cause the ASTM standard to be removed from project specifications due to concerns over legal exposure, product liability and public perception. This will likely result in little or no fly ash being used beneficially in concrete or other applications that support sustainability objectives," the group says in a Dec. 22 letter to EPA Administrator Lisa Jackson.

Industry sources say the letter could be especially helpful to their efforts because White House regulatory review officials may have already called on EPA to redo its initial analysis that found no impact of a hazardous designation on beneficial reuse. The ASTM letter could also be helpful because the agency declined a request from "reuse" industries to conduct a small business impact review of the regulation, the sources say. "What everybody was hearing was EPA's economic analysis accounted for a zero effect on the beneficial reuse industry and now it may be that [the White House Office of Management & Budget (OMB)] convinced them they have to go back and analyze the effects on beneficial use," one source says, citing a potential reason for EPA's Dec. 17 announcement that it would delay its proposal.

Another industry source notes that ASTM does not usually take such stances, but says the letter is “powerful” and would have the “effect of driving fly ash use” in concrete to “zero.”

The letter may also intensify pressure on EPA to drop its preferred hybrid approach regulating coal waste as hazardous when it is disposed in a landfill but as nonhazardous when beneficially reused, such as in concrete. The first industry source says the agency is being pushed to offer a menu of options without articulating a preference but that until now agency officials have been resisting.

An EPA spokeswoman would not comment directly on the ASTM letter because the agency is still in the midst of a rulemaking but she reiterated EPA's commitment to develop a rule that protects human health and the environment.

One EPA official previously told industry that the agency could not base a regulatory decision on speculative claims that a hazardous waste RCRA rule would bankrupt the beneficial reuse industry.

But an environmentalist calls the ASTM letter “discouraging” because the portion of the ash that is recycled in a small percentage of the overall waste stream and that EPA should be allowed to focus on prioritizing standards that are protective of human health. “The ‘stigma’ argument is unfounded, especially considering that hazardous substances are used all the time to make consumer products, such as batteries and electronics,” the source says.

Another activist accuses ASTM of “violating its own mission” of promoting better, safer and more cost-effective products in threatening to remove the standard for fly ash “due to vague concerns.” The source adds that ASTM has standards for paints, coatings and other items that contain hazardous materials and says in sending the coal waste letter ASTM is “taking a wholly inconsistent stand.”

The ASTM letter is just the latest setback for an EPA effort that environmentalists and other supporters say is intended to strictly regulate the massive disposal of utilities’ coal ash while encouraging reuse in concrete, roadbuilding and other beneficial activities. Last week, Jackson announced that EPA was delaying its proposal likely until next year due to the “complexity of the analysis” being conducted.

Impacts On Beneficial Reuse

The impact of a hazardous waste designation for the beneficial reuse of the ash has long been at the core of industry and other critics’ arguments against the agency effort. Industry has long argued that any hazardous classification under RCRA would bankrupt the beneficial reuse industry because it would impose a stigma on the waste, prompting current recyclers to use a nonhazardous replacement. The have also charged that eliminating such beneficial reuses would force industry to rely on costly disposal in

hazardous waste landfills, driving up expenses, forcing some utilities to shut down and undermining electricity reliability.

At a hearing before a House Energy & Commerce Committee panel, the Electric Power Research Institute (EPRI) testified about its draft study that shows between 190 and 411 coal-fired plants will be forced to shut down if EPA regulates the waste as hazardous. The study formed the backbone of an industry argument, bolstered by the Federal Energy Commission (FERC), that a strict waste regulation would undermine electricity reliability (*see related story*).

But environmentalists along with Rep. Ed Markey (D-MA) and other proponents of strict hazardous waste rules are concerned that unregulated beneficial reuses could result in harmful releases, as was the case with a golf course in Virginia that was constructed on utility ash. At a hearing earlier this month, they called for strict requirements for beneficial reuses and argued that even strictly regulated beneficial reuses would likely be less costly relative to the strict disposal costs industry fears for hazardous waste rules.

One environmentalist also argues that classifying the waste as hazardous is consistent with EPA's so-called definition of solid waste (DSW) rule, which classifies some normally hazardous waste as solid waste in order to encourage recycling. "Following the DSW rule . . . if the fly ash is being used to replace virgin [material] like when you are making cement, then it isn't a hazardous waste . . . and will not carry the stigma of a hazardous waste."

However, one industry source says that analysis will not work for coal waste because unlike material that qualifies under the DSW, there are no differences between coal ash that is discarded and ash that is recycled. For example, the DSW allows solvent and sulfuric acid to be recycled but requires distilling, smelting or some other process that fundamentally changes the discarded material. But in almost all cases of coal waste reuse, the waste is exactly the same physically and chemically, the source notes. Additionally, the DSW materials are generally utilized only in industrial settings and in situations where both the virgin product and the recycled one are hazardous.

EPA Delays Rulemaking Effort

In its announcement delaying the rulemaking effort, EPA did not explicitly acknowledge industry or other groups' concerns, saying only in a statement that "the agency is still actively clarifying and refining parts of the proposal." Nor did EPA give a new time frame for when the proposal might be issued.

The agency sent a proposed rule to OMB that favored a hybrid approach, strictly regulating some wastes as hazardous under RCRA subtitle C and others less strictly as solid waste under RCRA subtitle D.

Even before the agency sent its proposal to OMB, industry groups launched a lobbying blitz, targeting OMB, FERC, the Office of Surface Mining, and the energy and transportation departments, all of which are said to be pushing back hard against EPA's planned approach over concerns about costs to industry, electricity reliability and feared detrimental impacts on the reuse of the waste, prompting the delay.

One source says the delay was a "surprise" to industry even though OMB was sending signs that postponement was possible because of the "overwhelming concern" it was hearing from agency and outside critics.

But the announcement was a significant disappointment for environmentalists who have been buoyed by Jackson's repeated vows to issue the proposed rule before the end of the year. Many had expected it on Dec. 22 -- the one-year anniversary of the Tennessee Valley Authority spill that brought increased attention to the issue.

"We think this is the first tough decision that [EPA Administrator] Lisa Jackson has had to make. Everything else was low-hanging fruit. She announced that her deadline was this year several times, and from what we can tell at least, she blinked. I don't think it bodes well for a tough regulation," one environmentalist says.

But activists are fighting back, calling on the White House Office of Information & Regulatory Affairs (OIRA) to revise its regulatory review process to allow for more public interest groups access to the review process and to release key industry lobbying material that they charge helped delay EPA's proposal.

"Given OIRA's track record in previous administrations as a back door for industry efforts to stifle proactive regulatory proposals, the juxtaposition of these numerous meetings with industry representatives and EPA's decision to delay creates the unfortunate appearance that your office pressured the agency [to delay its proposed rule] in some fashion. The only cure for this perception, as the Obama administration rightly recognizes in so many contexts, is transparency," the Center for Progressive Reform said in a Dec. 22 letter to OIRA Administrator Cass Sunstein.

Scores of groups also ran a full-page advertisement in the *Washington Post* Dec. 22 highlighting the damage from the TVA spill and calling on Jackson to "make sure a disaster like this never happens again. America needs you to adopt strong, federally enforceable regulations to protect us from coal ash before this problem gets any worse. It is time for the coal industry to clean up its act." -- *Dawn Reeves*

MINING

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Tuesday December 22, 2009

Ruling not all to blame, officials say (*Charleston Daily Mail*)

Economy also contributing to layoffs
by Ry Rivard

Daily Mail Capitol Reporter
A federal judge's ruling is about half to blame for the potential layoffs of nearly 500 workers at a sprawling Consol Energy mining complex in Clay County, company and state officials said Monday during a tour of the mine.

That's a different picture than the one initially painted by the coal industry and state politicians following Consol's grim Dec. 8 warning that in February it likely would lay off 482 workers and idle operations at its Fola Coal Co. and Little Eagle Coal Co surface and deep mining complex near Bickmore, which straddles the Clay and Nicholas county lines.
Consol and the elected officials have each emphasized the role of environmentalists and regulators, including the Obama administration, and U.S. District Judge Robert Chambers in the layoffs.
Chambers said in a late November ruling that the U.S. Army Corps of Engineers improperly conducted the public comment period required to issue water quality permits to Consol. The ruling gave Consol 60 days to continue some mining in Bickmore before it lost its ability to do surface mining.
If coal market conditions rebound, about 50 percent of the would-be jobless workers could continue working at the site's deep mining operations even without surface mining permits that are now up in the air, said Bart Hyita, the CEO of Consol Coal.
Even if the mine can get back its permits, there could still be layoffs without a market rebound.
Hyita said Chambers' ruling has essentially made things worse. Company officials want to be able to continue to mine the site, even if it's not currently profitable, so that they can keep workers on.
He said the judge's ruling "prematurely" affected things before the market could.
Hyita said if the company could get a reprieve from the Jan. 23 deadline for losing its permits, the company could essentially survive to fight another day. The state's congressional delegation is working to get them just such a reprieve.
"It only takes a month to turn things," Hyita said.
A new danger for the company is that now that the permits are up in the air, they could fall under a stricter review process being used by the Environmental Protection Agency. It's that review process that has caused consternation in the coal industry.
Gov. Joe Manchin and Reps. Nick Rahall, D-W.Va., and Shelley Moore Capito, R-W.Va., toured the mine site Monday to show support for the miners.
Manchin said Monday that even without Chambers' ruling the market might have "throttled back" production and led to layoffs, but not the total shutdown it now faces in the first weeks of 2010.
But coal industry supporters had jumped on Consol's Dec. 8 announcement of the potential for layoffs as an example of what federal regulators can do to mining.

When Consol announced the layoffs, the company's chief executive blamed the layoffs on a "repeated assault from nuisance lawsuits and appeals of environmental regulations."

PESTICIDES

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Feds take on bigger role in Delta protection (*Sacramento Bee*)

California
December 23, 2009 Wednesday
A; Pg. 4
By Matt Weiser; mweiser@sacbee.com
December 23 2009
The Sacramento-San Joaquin Delta stands to draw a lot more attention from the federal government in 2010 under an "action plan" released Tuesday by the U.S. Department of Interior.

The plan is the result of a September agreement among federal agencies to help California deal with water problems and environmental decline in the Delta.

The plan promises to reverse years of neglect the Delta suffered during the Bush administration, when the federal government failed to meet funding and resource commitments in a number of important partnerships with the state.

"It's a pretty significant demonstration of the Obama administration's commitment to the Bay-Delta and to California," said Deputy Interior Secretary David Hayes. "It underscores the fact that the feds are going to be full partners with the state."

The Delta, the largest estuary on the west coast of the Americas, is the hub of a water supply system that serves 25 million Californians.

The federal government plays a pivotal role in the system. It operates some of California's largest reservoirs, including Folsom Dam, and one of two pumping and canal systems that divert millions of acre-feet of Delta water annually. This thirst has contributed to water shortages, pollution and steep declines in numerous fish species, including Delta smelt and chinook salmon.

On Tuesday, though, some critics saw little new or significant in the federal plan.

Bill Jennings, executive director of the California Sportfishing Protection Alliance, said the plan is largely a summary of actions already under way or a restatement of existing federal authorities.

The problem, he said, is that existing law hasn't been fully enforced over the past two decades to protect the Delta.

"It's the same broad, hopeful language we've seen over last 15 years that shepherded the collapse of this estuary," Jennings said. "This doesn't do much for fish, but it does a lot for water exporters."

Among other things in the plan unveiled Tuesday, the federal government commits to:

• Build a link between existing state and federal Delta canal systems – and overhaul rules that govern how their water can be used – so customers on the two canals can share water.

• Have the **Environmental Protection Agency** propose new **pesticide** regulations in the Delta, and propose a cleaning or inspection program for recreational boats in the Delta to control the spread of invasive species.

• Study how threatened Delta smelt respond to turbid, or cloudy, water to decide whether to build water-control gates to manage turbidity.

• Increase federal assistance for farmers affected by the drought, including water conservation incentives, and investigate carbon sequestration on Delta islands.

• More resources to the Bay Delta Conservation Plan, a process to improve plumbing and habitat in the estuary. The plan includes a proposed canal or tunnel to divert Sacramento River water out of the estuary.

Hayes said the federal government still has not taken a position on the controversial canal.

"We can't and we won't until the analysis gets completed," he said.

Lester Snow, director of the California Department of Water Resources, praised the federal government for recognizing "a historic window of opportunity" to address the Delta's problems.

"It signals the strong commitment of federal agencies to resolve California's pressing water challenges," Snow said.

Jonas Minton, senior project manager at the Planning and Conservation League, questioned why the federal plan does not include installing modern fish screens on existing Delta pumps.

Small screens designed to work at low flows would cost about $120 million, he said, and could allow 100,000 acre-feet of water to be pumped from the Delta during spring, when fish protections otherwise restrict pumping.

Instead, he noted, the federal government has spent $40 million to subsidize new wells in the San Joaquin Valley, where groundwater aquifers are already overdrawn.

"We are pleased the federal government is re-engaging in California water," Minton said. "However, they need to be careful not to make the problem worse."

SOLID WASTE

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Ind. attorney general sues lumber recycling plant (*Associated Press*)

Story also appeared: *Washington Post*

Tuesday, December 22, 2009; 11:01 AM
ELKHART, Ind. -- Indiana's attorney general is suing a northern Indiana lumber recycling plant with a history of environmental and worker-safety violations.

The lawsuit filed Monday in Elkhart County seeks preliminary and permanent injunctions to halt open dumping of wood wastes at VIM Recycling Inc.'s Elkhart operation. It also asks a judge to order VIM to remove waste materials and debris from its property.

Company spokesman Tom Holt says VIM is "extremely surprised" by the lawsuit. He says the U.S. Environmental Protection Agency has agreed to allow VIM to place wood from the recreational vehicles and manufactured housing industries on asphalt at its property.

TOXICS

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U.S. wants farmers to use coal waste on fields (*Associated Press*)

Story also appeared: *Washington Post*

By Associated Press
Wednesday, December 23, 2009; A17

The federal government is encouraging farmers to spread a chalky waste from coal-fired power plants on their fields to loosen and fertilize soil even as it considers regulating coal wastes for the first time.

The material is produced by power plant "scrubbers" that remove acid-rain-causing sulfur dioxide from plant emissions. A synthetic form of the mineral gypsum, it also contains mercury, arsenic, lead and other heavy metals.

The Environmental Protection Agency says those toxic metals occur in only tiny amounts that pose no threat to crops, surface water or people. But some environmentalists say too little is known about how the material affects crops, and ultimately human health, for the government to suggest that farmers use it.

"This is a leap into the unknown," said Jeff Ruch, executive director of Public Employees for Environmental Responsibility. "This stuff has materials in it that we're trying to prevent entering the environment from coal-fired power plants, and then to turn around and smear it across ag lands raises some real questions."

With wastes piling up around the coal-fired plants that produce half the nation's power, the EPA and U.S. Department of Agriculture began promoting what they call the wastes' "beneficial uses" during the Bush administration.

Part of that push is to expand the use of synthetic gypsum -- a whitish, calcium-rich material known as flue gas desulfurization gypsum, or FGD gypsum. The Obama administration has continued promoting FGD gypsum's use in farming.

The administration is also drafting a regulatory rule for coal waste, in response to a spill from a coal ash pond near Knoxville, Tenn., one year ago Tuesday. Ash and water flooded 300 acres, damaging homes and killing fish. The cleanup is expected to cost about $1 billion.

The EPA is expected to announce its proposals for regulation early next year, setting the first federal standards for storage and disposal of coal wastes.

EPA officials declined to talk about the agency's promotion of FGD gypsum before then and would not say whether the draft rule would cover it.

Field studies have shown that mercury, the main heavy metal of concern because it can harm nervous-system development, does not accumulate in crops or run off fields in surface water at "significant" levels, the EPA said.

"EPA believes that the use of FGD gypsum in agriculture is safe in appropriate soil and hydrogeologic conditions," the statement said.

Eric Schaeffer, executive director of the Environmental Integrity Project, which advocates for more effective enforcement of environmental laws, said he is not overly worried about FGD gypsum's use on fields because research shows it contains only tiny amounts of heavy metals. But he said federal limits on the amounts of heavy metals in FGD gypsum sold to farmers would help allay concerns.

"That would give them assurance that they've got clean FGD gypsum," he said.

Since the EPA-USDA partnership began in 2001, farmers' use of the material has more than tripled, from about 78,000 tons spread on fields in 2002 to nearly 279,000 tons last year, according to the American Coal Ash Association, a utility industry group.

About half of the 17.7 million tons of FGD gypsum produced in the United States last year was used to make drywall, said Thomas Adams, the association's executive director. But he said it is important to find new uses for it and other coal wastes because the United States will probably rely on coal-fired power plants for decades to come.

"If we can find safe ways to recycle those materials, we're a lot better off doing that than we are creating a whole bunch of new landfills," Adams said.

DECEMBER 22, 2009, 8:40 P.M. ET

BP Faces Federal, State Investigations Into Alaska Spills (*Dow Jones*)

Story also appeared: *Wall Street Journal*

By Cassandra Sweet
Of DOW JONES NEWSWIRES

SAN FRANCISCO (Dow Jones)--Federal and Alaska investigators are examining BP Plc (BP) after two recent oil spills, a new black eye for a company that pleaded guilty to a U.S. government criminal charge two years ago for its management of oil fields in the state.

The U.S. Environmental Protection Agency is investigating a large oil spill that occurred Nov. 29 at a BP pipeline on Alaska's North Slope, and the agency is working with the FBI and state agencies to determine the circumstances that led to the spill, said EPA spokesman Mark MacIntyre. The EPA's investigation is both civil and criminal in nature, MacIntyre said.

"There's a broad umbrella of investigation going on," MacIntyre told Dow Jones Tuesday.

The investigation follows a spill last month that sent more than 1,000 barrels of crude oil and water pouring over 8,400 square feet (780 square meters) of snow-covered tundra. The spill, most of which has been cleaned up, occurred after a BP pipeline burst under pressure from ice that had built up inside, according to state authorities.

The state Department of Environmental Conservation also has launched a civil investigation into the November spill to figure out what happened and whether BP violated state laws or regulations.

The Anchorage office of the Federal Bureau of Investigation didn't immediately return a phone call seeking comment.

On Monday, BP's facilities suffered another spill after a six-inch pipeline attached to an oil well broke off, releasing a mixture of crude oil, water and natural gas that covered several thousand square feet. The cause and extent of the most recent spill are still being investigated, said state Department of Environmental Conservation spokeswoman Weld Royal.

BP spokesman Steve Rinehart said the company wouldn't comment on government actions or legal issues, but that its practice is "to work cooperatively with regulatory agencies."

"BP is doing its own, thorough investigation," Rinehart said.

The London-based oil giant has been put under the microscope by federal and state authorities since the company pleaded guilty in 2007 to a misdemeanor violation of the Clean Water Act. BP paid $20 million and was placed on three years probation in connection with the decision, which stemmed from two 2006 oil spills of more than 200,000 gallons of oil caused by corroded pipes. An August 2006 spill led to a partial shutdown of the Prudhoe Bay oil field, the largest in the U.S., which BP operates for itself and other producers. The shutdown led to a brief spike in U.S. oil futures prices.

Last March, the Justice Department filed a civil lawsuit against BP for breaking federal laws during the 2006 oil spills. The complaint accuses BP of failing "to prepare and implement spill prevention" and take other measures mandated by the Clean Water Act.

In the lawsuit, filed in U.S. District Court in Anchorage, the government asked the court to order BP to pay the maximum amount allowed for civil penalties, and to order BP to take action to prevent future spills.

The State of Alaska also sued BP over the 2006 oil spills, asking for penalty fees from BP for violating environmental laws, and to be compensated for lost state revenues tied

to an estimated 35 million barrels of lost oil production. The state didn't include a dollar figure in its request.

To date, BP hasn't violated the terms of its probation, said Mary Frances Barnes, BP's federal probation officer. She added that she is "waiting to see what the investigations reveal."

-By Cassandra Sweet, Dow Jones Newswires; 415-439-6468; cassandra.sweet@dowjones.com

EPA Moves Toward Banning Controversial Flame Retardant (*OPB News*)

BY ROB MANNING
Portland, OR December 22, 2009 3:47 p.m.
Six months after Oregon lawmakers approved a ban on a controversial flame retardant, the Environmental Protection Agency has taken major strides toward outlawing it nationally. Rob Manning reports.

The chemical deca brominated diphenyl ether is usually called deca-BDE. It’s a type of flame retardant often found in consumer plastics, primarily electronics.

Last July, environmental groups convinced Oregon lawmakers to ban deca-BDE, because studies showed it threatened the health of fish, wildlife, and people.

Bob Sallinger with the Audubon Society of Portland helped overcome significant opposition from the chemical industry, to pass Oregon’s deca-BDE law. But he says national action was still necessary.

Bob Sallinger: “Even though it was effectively banned in Oregon, it could still make its way into our state and into our wildlife populations.”

EPA officials reached agreements with three companies to phase deca-BDE out of its products in the next two to three years.

But an EPA official said there’s still one Japanese chemical company responsible for products containing deca-BDE that doesn’t have an agreement yet.

Board OKs expansion of Calif. toxic waste facility(*Associated Press*)

Story also appeared: *Washington Post*

By NOAKI SCHWARTZ
The Associated Press
Tuesday, December 22, 2009; 3:49 PM

LOS ANGELES -- A county board in central California approved the expansion of the largest toxic-waste dump in the West, despite concerns about an increase in birth defects in a nearby farming town.

The Kings County Board of Supervisors on Tuesday upheld an earlier decision to allow Chemical Waste Management to expand its 1,600-acre facility near Kettleman City in the San Joaquin Valley.

The proposal still needs state and federal approval.

Community members in the largely Spanish-speaking town about three hours north of Los Angeles urged the board to reject the expansion after discovering an alarming increase in birth defects and infant deaths.

The dump's owners say there's no evidence linking the facility to the birth defects.

"I think the board vote today shows that they feel like the facility is safe and has been thoroughly reviewed throughout this long process," said Katherine Cole, spokeswoman for Chemical Waste Management.

Environmental activists and residents in the town of 1,500 called the vote disappointing.

The board said the county and state have the authority to revoke the permits if a link is shown between the birth defects and the waste site. The board previously asked the state to conduct a health investigation,

"That's ridiculous," said Maricela Mares-Alatorre, who heads the group People for Clean Air and Water. "That's like that expression closing the barn door after the horse has been let out. The investigation could take six months to two years."

About 400 truckloads of waste are hauled to the dump each day. In 2007, the last year for which complete statistics were available, that totaled more than 3 million pounds of lead compounds, nearly 2 million pounds of asbestos and more than 118,000 pounds of arsenic, according to the Environmental Protection Agency. It's the state's only facility that accepts cancer-causing PCBs.

Most of the waste comes from California, with smaller amounts from other states and even Mexico.

Of 20 children known to have been born in Kettleman City between September 2007 and November 2008, five had a cleft in their palate or lips, according to a health survey by activists. Three of those children have since died.

Statewide, clefts of the lip or palate routinely occur in fewer than one in 800 births, according to California health statistics.

Along with those health problems, activists point to the high asthma and cancer rates in the community.

The dump's owners support a health study and have even offered to pay for one. Other potential health culprits include pesticides sprayed on nearby fields, discolored drinking water and exhaust from traffic on Interstate 5, the West Coast's major north-south highway that borders Kettleman City.

After years of fighting the waste company, activists have become distrustful, accusing it and public agencies of holding meetings at inconvenient times and places and refusing to translate documents into Spanish.

They have also threatened to sue if supervisors approved the project.

Chemical Waste Management is Kings County's biggest business, providing as much as $3 million a year to the county general fund. Kettleman City community leaders complain that little of the money comes back to the town, which has no sidewalks or stop signs.

California Dairy Gives County a Gas Detection System, Settling Case (*EP Magazine*)

Dec 23, 2009

The Solano County Office of Emergency Services has received $109,062 in emergency response equipment as the result of a settlement reached by the U.S. Environmental Protection Agency with Super Store Industries (SSI), a Stockton, Calif.-based company that provides dairy products, warehousing, and distribution services. The company donated equipment to the Solano County Interagency Hazmat Team as part of a supplemental environmental project following a settlement with EPA.

In September 2009, EPA settled with SSI following alleged violations of the Emergency Planning and Community Right-to-Know Act at a facility that processes dairy products in Fairfield, Calif. For reporting years 2004, 2005, 2006, and 2007 the facility was required to submit toxic chemical release inventory reporting forms for nitric acid otherwise used and nitrate compounds manufactured at the location. An EPA inspection discovered that the facility failed to submit the required information by the reporting deadlines.

Under the terms of the settlement, SSI has agreed to pay a cash penalty of $30,117 and complete a supplemental environmental project. EPA noted that many federal actions against businesses for failure to comply with the environmental laws are resolved through settlement agreements. As part of a settlement, an alleged violator may voluntarily agree to undertake an environmentally beneficial project related to the violation in exchange for mitigation of the penalty to be paid.

SSI chose to donate a RAE Systems gas monitoring system designed to be used during an atmospheric release of gas, as well as 42 radiation pagers designed to allow the county's first responders to immediately detect the presence of radiation in an area and enable them to determine a safe distance from the source and establish perimeters to keep communities safe.

Federal emergency planning laws require facilities processing more than 25,000 pounds of the chemicals at issue in this case to report releases of the chemicals on an annual basis to the EPA and the state. Each year the EPA compiles information submitted from the previous year regarding toxic chemical releases and produces a national Toxics Release Inventory database for public availability. This database estimates the amounts of each toxic chemical released to the environment, treated or recycled on-site, or transferred off-site for waste management, and also provides a trend analysis of toxic chemical releases.

Solano County is located in California's Bay-Delta region, about halfway between San Francisco and Sacramento. RAE Systems is based in San Jose, Calif.

Chemical Sector Renews Bid For Activist Talks Before TSCA Bill's Release (*Inside EPA*)

Chemical industry officials are renewing their call for talks with environmentalists ahead of the expected introduction of legislation reforming EPA's chemical management programs, saying there are important issues to resolve prior to the bill's introduction.

It is "important to use this [time] to engage in a stakeholder dialogue," particularly focusing on some of the "complex issues" in the discussion over reforming the Toxic Substances Control Act (TSCA), Mike Walls of the American Chemistry Council (ACC) told reporters at a Dec. 16 ACC press conference in Arlington, VA.

But some industry officials have said in the past that they doubted activists' willingness to engage in talks before introduction of the bill. Industry officials have in the past called for an EPA-convened stakeholder process to discuss any reforms because of concern that environmentalists and congressional Democrats could act as the "gatekeepers for change" in the chemicals debate.

Cal Dooley, chief executive officer and president of the ACC, has said in the past that the industry is seeking TSCA reform to help boost consumer confidence in the industry's products.

At the Dec. 16 event, Dooley said while there is a “high degree of alignment” between the general principles set forth by environmentalists and industry, there are still “real differences” between the groups on some of the more specific issues.

For example, Dooley noted that there are still major differences on how risk assessment is or is not used in the approach to chemicals management. “How do you develop a system that effectively assesses the risk of a particular chemical for its particular use?” he said. For example, there could be endocrine disruptors or carcinogenic chemicals that some activists want EPA to strictly regulate, but there may be no consumer exposures to the chemicals, Dooley said.

But some activists are saying they favor a “targeted” stakeholder process, with the Kid-Safe Chemicals Act, a bill expected to be introduced by Sen. Frank Lautenberg (D-NJ) early next year, being the starting point for any discussions with industry. The bill would strengthen the standard of harm contained in current law and require industry to prove chemicals are safe, rather than EPA having to prove they are not safe.

“The bill ought to be the basis for any discussion of what TSCA reform looks like,” says a source with the Environmental Defense Fund, who questions the purpose of a formal dialogue removed from the legislative process. The source says a “targeted” process focused on specific questions driven by the legislative process could be useful, focusing on issues like minimum data requirements for EPA decisions, how to prioritize chemicals for testing and how to address confidential business information.

Health Care Focus Behind Delay

Dooley said the delay in introducing the bill is “one example of the focus in Congress on health care reform,” which is “sucking all the oxygen out of the political environment.” Still, Dooley said he expected a bill to be introduced in the first quarter of next year.

Despite the delay, Walls said there has “not [been] much opportunity to engage in a stakeholder dialogue” with other groups, and he “encouraged [other stakeholder group] colleagues . . . to get at the complex issues.”

Last October, EPA, ACC and numerous environmental groups participated in a public event hosted by the Environmental Working Group, which saw much general agreement of the different sets of principles released by EPA, industry and a coalition of environmental and public health groups. At the event, Ernie Rosenberg, of the Soap & Detergent Association, concluded that “process and procedural issues are going to be dominant in the disagreements,” but said it was also important to “find out how much we can get off the table because we do agree.”

Last summer, industry sources expressed some concern that industry is not as organized as the activists and may be outmaneuvered if environmentalists and Democratic lawmakers seek to move a bill this Congress (*Risk Policy Report*, June 30).

There seems to be “a high degree of alignment in the public health and activist community,” which an industry source says could mean that “it will be Congress and the groups who will be the gatekeepers for change” using the Lautenberg bill as a template. Industry has had less coordination, largely because different groups have different priorities with regard to issues like confidential business information, risk assessment and data production, the source says.

But the ACC is expanding its organization in an attempt to ramp up its political capability. At the Dec. 16 event, the group’s representatives reiterated its Dec. 1 announcement that it is seeking to add more small- and medium-sized companies, as well as other companies in the chemicals-based value chain. Dooley said the growth would help ACC “expand the political infrastructure we have on behalf of industry . . . [to] advocate on our priority issues.” -- *Aaron Lovell*

WATER

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December 23, 2009

Regulators shifting course on drugged drinking water (*Associated Press*)

Story also appeared: *Washington Post*, *Detroit Free Press*

EPA: Flushed meds require more study
BY JEFF DONN
ASSOCIATED PRESS
Federal regulators under President Barack Obama have sharply shifted course on long-standing policy toward pharmaceutical residues in the nation's drinking water, taking a crucial first step toward regulating some of the contaminants and acknowledging they could threaten human health.

A burst of significant announcements in recent weeks reflects an expanded government effort to deal with pharmaceuticals as environmental pollutants:

- For the first time, the Environmental Protection Agency listed some pharmaceuticals as candidates for regulation in drinking water. The agency also started a survey to check for scores of drugs at water treatment plants across the nation.
- The Food and Drug Administration updated its list of waste drugs that should be flushed down the toilet, but the agency also declared a goal of working toward the return of all unused medicines.
- The National Toxicology Program is conducting research to clarify how human health may be harmed by drugs at low environmental levels.

The Associated Press reported last year that the drinking water of at least 51 million Americans contains minute concentrations of a multitude of drugs. Water utilities, replying to an AP questionnaire, acknowledged the presence of antibiotics, sedatives, sex hormones and dozens of other drugs in their supplies.

The news reports stirred congressional hearings and legislation, more water testing and more disclosure of test results.

For example, on Jan. 1, an Illinois law goes into effect to ban health care institutions from flushing unused medicine into wastewater systems.

The EPA's new study will look for 200 chemical and microbial contaminants at 50 plants that treat drinking water. The list includes 125 pharmaceuticals or related chemicals. This research will help federal officials decide whether regulations are needed.

In the first move toward drinking-water standards, the EPA put 13 pharmaceuticals on what it calls the Contaminant Candidate List. They are mostly sex hormones, but include the antibiotic erythromycin and three chemicals that are used as drugs but better known for other uses.

They join a list of 104 chemical and 12 microbial contaminants that the EPA is considering as candidates for regulation under the Safe Drinking Water Act.

"I think this does signal a change in the regulatory and research approaches," said Conrad Volz, a University of Pittsburgh scientist. "What's happening is pretty amazing."

Several scientists tied the stronger focus on human health to the Obama administration and the president's appointment of Lisa Jackson, a highly regarded former head of the New Jersey Department of Environmental Protection, to run the EPA.

"I think we are trying to be as aggressive as we can. We understand it's a major national issue. We understand it's a major public concern," said Peter Silva, the new water administrator at the EPA.

Industry Urges EPA To Withdraw Nutrient TMDLs In Wake Of SAB Report (*Inside EPA*)

Industry officials are calling on EPA to withdraw a series of controversial total daily maximum loads (TMDLs) for streams in Pennsylvania because a recently issued draft Science Advisory Board (SAB) report says the method used to derive the TMDLs is neither defensible nor adequate.

“[T]he draft SAB report leaves no uncertainty regarding the major technical deficiencies of the Region III TMDL actions that were supported by your office,” industry lawyer John

Hall says in a Nov. 20 letter to Ephraim King, director of the Office of Science and Technology within the Office of Water. He continues, "[O]ur clients do not care how this matter is brought to a prompt end, but it must be ended immediately."

In a statement to *Inside EPA*, King said the agency "appreciates the inquiry. The agency is evaluating the issues raised as it considers appropriate next steps."

The industry call is just the latest in a myriad of criticisms the agency is facing over its existing guidance for setting nutrient water quality criteria. How the matter is resolved will set an important precedent for scores of numeric nutrient criteria the agency is hoping to set nationwide.

In a draft report released for comment Nov. 19, SAB's Ecological Process & Effects Committee pans the agency's nutrients guidance, saying it only "provides a primer on a limited set of statistical methods that could be used in deriving nutrient criteria based on stressor-response relationships" and "in its present form, . . . does not present a complete or balanced view of using the statistical methods to develop criteria."

Under the Clean Water Act, states and other regulators use water quality criteria to set enforceable water quality standards that are used to set discharge permit limits. Nutrients, which stem from fertilizer runoff, power plant emissions and discharges from point sources, are responsible for eutrophication -- a process that results in reduced oxygen levels in waters, such as the hypoxic "dead zone" in the Gulf of Mexico and other large watersheds.

The industry call and SAB criticisms come as EPA is moving forward in Florida to develop numeric nutrient criteria in response to an activist lawsuit and as environmentalists are pushing the agency to craft numeric criteria elsewhere, arguing that risk-based, quantitative numeric criteria are more easily enforceable than the narrative criteria most states use for nutrients.

But Hall says the SAB report shows EPA must withdraw three Pennsylvania TMDLs that utilized controversial statistical methods in the agency's nutrients guidance.

"[T]he draft SAB report plainly states that use of the disputed statistical procedures (such as conditional probability) as a basis for generating nutrient criteria is not 'scientifically defensible' unless (1) cause and effect is demonstrated, (2) the uncertainties of different approaches recommended in published EPA guidance . . . are properly weighed in assessing the likelihood of causal relationships and (3) the selected endpoints used in the statistical assessment are directly tied to use impairment. As your office and EPA Region III are well aware, none of these necessary steps occurred in issuing the [Pennsylvania] TMDLs for Goose, Paxton and Indian Creeks that relied on the disputed statistical methods."

The Nov. 20 letter follows two separate letters from Hall to King, on Sept. 18 and Nov. 3, also requesting withdrawal of the TMDLs.

Hall notes in the earlier letters that King previously said EPA was waiting for the SAB's report to respond and was exploring whether other "lines of evidence" besides the methods in the nutrients guidance could substantiate the TMDLs. But Hall says in the Nov. 20 letter that the other lines of evidence will not suffice either.

"As discussed in our earlier correspondence, EPA was clear that it directed its consultant to assume, not demonstrate, that nutrients caused impairments in these waters. Consequently, none of the remaining 'lines of evidence' presented in the Tetra Tech report have a demonstrated 'cause and effect' relationship to nutrient impairment, in general, or to impairment of these streams, in particular. In short, these TMDL reports are bereft of a 'scientifically defensible' demonstration that nutrients are the cause of impairments in these watersheds or that regulating nutrients is likely to remedy any alleged impairments.

"It is rather hard to imagine a more basic flaw in TMDL and criteria development and we are pleased that the SAB agreed with our concerns regarding EPA's new criteria development approach that was applied to these TMDLs," Hall writes.

Cuyahoga, other big Ohio rivers cleaning up (*Akron Beacon Journal*)

By Bob Downing
Beacon Journal staff writer
POSTED: 08:42 p.m. EST, Dec 22, 2009
Ohio's big rivers, including the Cuyahoga, are getting cleaner.

Today 93 percent of Ohio's large river miles are in full attainment of water-quality standards, compared with 79 percent in 2008, the Ohio Environmental Protection Agency reports.

That advance was reflected in recent water-quality improvements found on the Cuyahoga, Licking, upper Greater Miami, Mohican, Walhonding and lower Little Miami rivers, the agency said.

The EPA has released a draft of the state's 2010 water-quality report that depicts the status of Ohio's waterways. The agency is accepting public comment on the report until Feb. 8.

Ohio assessed the rivers for four uses: aquatic life, fish tissue sampling, public drinking water and recreational uses.

High levels of bacteria from farm runoff, septic tanks and overflowing sewers resulted in two of Ohio's 38 large-river segments failing to meet the recreational use standard, the EPA said.

Ohio has nearly 1,875 smaller watersheds, of which only 58.3 percent are in full compliance of water standards and an additional 21.2 percent are in partial compliance, the EPA says.

For a look at the report, go to http://epa.ohio.gov/dsw/tmdl/2010IntReport/index.aspx.

Send comments to DSW_TMDL@epa.state.oh.us.
Comments may also be mailed to Ohio EPA, Division of Surface Water, Attention: 303d Comments, P.O. Box 1049, Columbus, OH 43216.
The EPA will finalize the report and submit it to the U.S. EPA by an April 1 deadline.
Bob Downing can be reached at 330-996-3745 or bdowning@thebeaconjournal.com.
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The EPA will finalize the report and submit it to the U.S. EPA by an April 1 deadline.

Bob Downing can be reached at 330-996-3745 or bdowning@thebeaconjournal.com.

Jeffersonville sewer rates to increase threefold (*WAVE 3 News*)

Posted: Dec 22, 2009 5:44 PM EST Updated: Dec 22, 2009 6:30 PM EST

By Janelle MacDonald - bio | email

JEFFERSONVILLE, IN (WAVE) - Times may be tough, but residents of one Kentuckiana town better be prepared to dig even deeper. Sewer rates are going up for Jeffersonville residents - and it's not a small increase. It will almost double the average bill immediately, and within five years sewage fees will be almost three times what they are now.

It's for the same reason Louisville recently saw rates go up and Jeffersonville city officials say their hands are tied. City spokesman Larry Thomas said you can blame the federal government. He said, "the sewer rates that are in place today will not fund the work that will allow the combined sewer overflows to be fixed."

What it boils down to is this: Older areas of the City of Jeffersonville have older sewers where wastewater and runoff use the same system. The federal Environmental Protection Agency says that won't work. It violates the Clean Water Act.

Thomas said, "so when you get a heavy rain or a heavy snow melt, that basically overruns that system and that water doesn't have anywhere to go and then it overflows into the Ohio river."

What you need to understand, Thomas said, is this: "We're just doing what we have to do."

Jeffersonville resident Jack Posey said the same thing of his situation. He said, "I gotta do what I gotta do. I gotta pay it. I'm a homeowner so I have to pay it. There's no way around it."

Homeowners WAVE 3 talked with were pretty understanding considering the extra cash they'll have to shell out. Karice Hill said, "I never like to hear it's going to cost me more but I understand what we have to do to protect the environment. I get it."

Thomas said the news is not all bad. Areas with persistent drainage problems could get some relief. He said, "you're never ever going to come up with a solution for that each and every time, but the smaller ones that cause problems, those are the things that we're trying to address."

City officials also hope to create something to be proud of out of the work as well -- a canal that would run through the downtown area, something like but not quite on the scale of the Riverwalk in San Antonio. "We will get some additional benefit other than the drainage benefit," Thomas said.

Hill said, "I'm sure that we'll benefit from it. I don't want to pay more for it but I guess there's got to be a happy medium."

Thomas said while the canal could help clean up some neighborhoods and drive economic growth, it's actually about 30-million dollars cheaper than some other solutions that would help Jeffersonville meet EPA requirements.

The city has to submit its plan to the EPA next spring. If it's approved, Jeffersonville officials will move forward with work to build the canal and other improvements.

Exxon's drilling juggernaut (*CNN Money*)

By Steve Hargreaves, staff writerDecember 23, 2009: 5:24 AM ET
NEW YORK (CNNMoney.com) -- Exxon Mobil may be getting more than it bargained for with its recent plan to purchase natural gas giant XTO Energy.
The $41 billion deal would make Exxon the country's largest shale gas producer, drawing more attention to a controversial area of drilling that analysts say could invite tightened federal regulations for the entire industry. When the acquisition was announced last week, it was generally seen as a smart business move. XTO (XTO, Fortune 500) is a big player in the so-called "unconventional" gas business -- specifically, gas that lies in shale rock formations.
That business is booming. It's one of the fastest growing energy sectors in the country. But some of the shales lie near major population centers, and residents near the drilling are worried about air and, especially, water pollution from the chemicals used to extract shale gas.
"A $41 billion investment is going to make anyone with an environmental eye look sooner and deeper," said Kevin Book, a managing director at ClearView Energy Partners, a Washington, D.C.-based firm that tracks political developments in the energy sector. Exxon's entry into the field, along with interest from other international oil companies, means that shale gas has hit the big time, Book said.

The shale gas industry has been operating in relative obscurity and with minimal federal oversight: A 2005 law exempted it from the Federal Clean Drinking Water Act. State regulators do the policing.
Although there are air pollution and land issues associated with shale gas drilling, what most concerns people is the water. Extracting shale gas relies on a method known as hydraulic fracturing, where a huge amount of chemical-laced water is injected down the well hole to fracture the rock and allow the gas to flow out.
State regulators and the industry say the process is safe, as the gas lies thousands of feet below the water table.
The domestic drilling backlash
But residents near the drilling, which includes much of the New York metro area, Dallas-Fort Worth, and other large populations centers, fear the chemicals may contaminate the drinking water.
The federal Environmental Protection Agency has only just begun looking into the issue. Book said several bills in Congress include provisions that direct EPA to study the issue more broadly, and could ultimately lead to further regulation. "These are the placeholders," said Book. "Is a change in the law coming? Probably."
Pushing up the price of clean energy
A change in regulation could result in gas companies having to pump out the injected water and removing the chemicals before disposing of it back in the ground. That could

add anywhere from 8% to 30% to the cost of operating a well, said Neil Dingmann, a Houston-based analyst at Wunderlich Securities.
Yet pushing up the price of natural gas is not something environmentalists are keen to do. Natural gas is much cleaner source of electricity than coal and emits about half the carbon dioxide. Making it more expensive would only deter industries from using it, and push them toward cheaper and dirtier power sources like coal.
0:00 /2:03Tough drilling ahead for oil
Exxon is so concerned about a change in the law it has a clause with XTO that allows it to walk away from the deal if Congress bans hydraulic fracturing or makes it prohibitively expensive, according to filings with the Securities and Exchange Commision. Exxon declined to comment for this story.
Dingmann also said there's another reason Exxon may bring new attention to this type of drilling: They are a high profile company.
"It's not the energy committee going after some company nobody's heard of," said Neil Dingmann, a Houston-based analyst at Wunderlich Securities. "It's big, bad Exxon."
Soon after the XTO deal was announced Chairman of the House Energy and Environment Subcommittee Rep. Ed Markey, D-Mass., issued a statement.
While acknowledging natural gas' environmental benefits, Markey questioned the environmental safety of the drilling and raised anti-trust issues.
"I intend to convene hearings in the Subcommittee early next year so that our Members can take a closer look at this proposed transaction," he said.

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