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ADMINISTRATOR JACKSON

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Senators try to thwart EPA efforts to curb emissions (*Washington Post*)

By Juliet Eilperin
Washington Post Staff Writer
Friday, January 22, 2010; A02

A bipartisan group of senators introduced legislation Thursday to block the Environmental Protection Agency from regulating greenhouse gases under the Clean Air Act, a move that could undercut one of the Obama administration's top domestic priorities.

As prospects fade that Congress will pass a comprehensive climate bill this year, the EPA has been moving forward to enact regulations that would put costly limits on power plant pollution, making the agency the target of influential industry representatives and some members of Congress.

"We're being presented with a false choice between unacceptable legislation and unacceptable regulations," said Sen. Lisa Murkowski (R-Alaska), adding that it made no sense in the midst of an economic downturn. "Here in Washington, federal bureaucrats are contemplating regulations that will destroy jobs, while millions of Americans are doing everything they can just to find one."

Murkowski, joined by three Democrats and 35 other Republicans, said she is offering a "resolution of disapproval" that would prevent the EPA from taking action on emissions by reversing its recent finding that greenhouse gases endanger the public's health and welfare.

The resolution faces an uphill battle because it would have to pass both houses, but it highlights the deep unease that Republicans and moderate Democrats feel about taking action on climate change -- either in legislation or through the EPA.

Sen. Barbara Boxer (D-Calif.), chairman of the Senate Environment and Public Works Committee, called the move "a direct assault on the health of the American people." She said that if the public waits for Congress to pass climate legislation, "that might not happen, in a year or two, or five or six or eight or 10."

Last month, at a dinner with environmentalists, EPA Administrator Lisa P. Jackson said her staff had figured out how it could impose a nationwide, market-based system to curb greenhouse gases like the one being contemplated in Congress. But that approach could spark years of litigation from industries that would have to comply with new and

potentially complex federal rules and would probably impose higher costs on industry than steps shaped by lawmakers.

John Podesta, a White House ally who heads the liberal think tank Center for American Progress, said that although the administration is still hoping for a legislative solution on climate, "they're not going to give up their authority to move forward in the absence of comprehensive legislation. We've seen how difficult it is to get 60 votes for almost anything."

For months, most environmentalists and representatives of fossil-fuel-based industries assumed that Congress would pass legislation that would override what many call "Plan B," in which the EPA -- empowered by a 2007 Supreme Court ruling -- regulates greenhouse gases on its own.

The newly activist agency is pressing ahead. It finalized its scientific finding that greenhouse gases qualify as a pollutant last week, and by the end of March it plans to finalize rules regulating greenhouse gases that cars and trucks emit and rules for identifying any facility emitting at least 25,000 tons of carbon dioxide as a target for regulation.

It's that step, targeting coal-fired utilities, oil refineries and other major emitters, whose products and services ripple through the entire U.S. economy, that is sparking a major lobbying and litigation fight.

"The Murkowski resolution asks each senator to deny the overwhelming science that greenhouse gas pollution is a real and serious threat to the health and welfare of our citizens," Jackson said Thursday. "It disregards the Supreme Court decision that directed us to act and ignores the evidence before our own eyes."

Influential business interests, ranging from the Southern Co., a utility, to the U.S. Chamber of Commerce, are making it clear that Congress will have to step in to stop the administration from reaching that far. The House-passed climate bill prevents the EPA from using the Clean Air Act to regulate greenhouse gas emissions from vehicles, power plants and a few other major emitters, despite the Supreme Court ruling that gave the agency the right to do so. Democrats made that concession to win votes for the overall package, but industry groups are trying to enshrine it in law without a climate bill.

"We think it would be premature for EPA to move ahead," said Southern spokesman Jason Cuevas. "We are sharing that information with people on the Hill."

U.N. Foundation President Timothy Wirth called it "the number-one goal of the industry, to defang the EPA."

Obama officials, utility executives and environmental advocates all say they'd prefer Congress to complete legislation this year. But even backers of a bill, such as American

Electric Power chief executive Michael G. Morris, are skeptical that will happen, given the lack of enthusiasm among moderate Democrats and nearly all Republicans. "I don't see anything happening in 2010."

January 21, 2010

Oversight Panel Sees Biofuel Crops Helping Chesapeake Bay Cleanup (*New York Times*)

By ALLISON WINTER of Greenwire

This story was updated at 6 p.m.

Farming more cellulosic biofuel crops in the Chesapeake Bay watershed could help improve water quality, according to a report released today by an intergovernmental panel overseeing the bay cleanup.

The Chesapeake Bay Commission and the state of Pennsylvania sponsored the report showing that the watershed's farms, forests, unused fields and landfills could produce about 500 million gallons of fuel -- enough to replace the gasoline consumed in the Washington metro area for about six weeks.

The estimate assumes no conversion to biofuel crops of land now used for forestry products, food or livestock production. It also assumes the use of land-management practices to curb nutrients washing off farmland into the bay.

"The focus of the report is to say what kind of opportunities do we have here if we're not going to take farmland out of production or use steep slope and highly erodible land -- what is left?" said Ann Pesiri Swanson, executive director of the commission. "It is hard for me to believe the potential for water quality gains."

The study, conducted by Pennsylvania State University, found that biofuel crops combined with traditional agriculture could help clean up the bay. Next-generation biofuel crops -- switchgrass, barley, rye and fast-growing willow and poplar trees -- could reduce erosion and pollution.

The report -- the third examining biofuel crop potential in the watershed -- also predicts that the new industry could create as many as 18,600 jobs in the region.

"An emerging biofuels industry has the potential to significantly impact the Chesapeake Bay region," the report says. "If handled correctly -- in a way that promotes the growth of the industry and also protects the bay's ecosystem -- the economic, energy and environmental benefits could be significant."

The commission recommends that governments in the watershed adopt a "conservative" next-generation biofuels production target of 500 million gallons per year from a mix of agricultural and forest feedstocks. Next-generation biofuels crops are not currently cost-competitive with ethanol or oil because their production is too expensive.

Agriculture in the bay watershed has long been under fire for contributing to nutrient and sediment pollution. U.S. EPA Administrator Lisa Jackson said earlier this month that she plans to craft and enforce tougher restrictions on agriculture and development in the watershed (*Greenwire*, Jan. 12).

The commission is urging farmers to plant more winter crops for biofuel production on fields that otherwise lie fallow. The crops could act as a nutrient "sink," soaking up nitrogen and phosphorus that could otherwise get into the water and feed algae blooms.

The report also recommends planting switch grass and other fast-growing cellulosic crops on idle land. Researchers identified 8 million acres of available cropland not currently producing crops. Much of the land available for biofuels crops would be fields planted with corn and soy at other times of the year, recently abandoned cropland or abandoned mineland.

The report does not assume plantings on most conservation land, but researchers identified almost 450,000 acres of Conservation Reserve Program land as available for switchgrass. The Conservation Reserve Program (CRP) is the U.S. Department of Agriculture's largest land retirement program for conservation. The CRP land identified in the report is in a category available for grass crops.

That recommendation did not sit well with Julie Sibbing of the National Wildlife Federation. CRP land is planted in grasses to improve water quality and provide wildlife habitat.

"The idea that CRP is sitting there idle and you can put it into monoculture and it would be just as good for wildlife -- it won't," said Sibbing. "It would be devastating."

Sibbing said the report otherwise makes good recommendations for how to develop biomass in the watershed, but it fails to consider biodiversity and lacks specific state actions that would ensure that farmers comply with some of the conservation safeguards.

Jan. 21, 2010 – 1:49 p.m.

GOP Senator Pushes Resolution To Block EPA's Greenhouse Gas Rules (*CQ Politics*)

Republican Lisa Murkowski says she has won the backing of “several” Senate Democrats for a resolution that would block the EPA from regulating greenhouse gas emissions under clean air laws.
Senate Agriculture, Nutrition and Forestry Chairwoman Blanche Lincoln , D-Ark., a moderate who faces an uphill fight for reelection in November, has already agreed to cosponsor the measure.
“I am very concerned about the burden that EPA regulation of carbon emissions could put on our economy and I have questions about the actual benefit EPA regulations would have on our environment,” Lincoln said in a statement. “Heavy-handed EPA regulation, as well as the current cap and trade bills in Congress, will cost jobs and put as at an even greater competitive disadvantage to China, India and others.”

Murkowski’s office says two other Democrats are among the 37 cosponsors. Murkowski, of Alaska, is the ranking Republican on the Energy and Natural Resources Committee.

The resolution, which is not subject to a filibuster, needs only 51 votes to pass the Senate. Democrats will control 59 votes to 41 for Republicans, once Sen.-elect Scott P. Brown, R-Mass., is seated.

But even it a resolution of disapproval passed the Senate, it would still have to get through the House. And President Obama almost surely would veto it.

Still, a resolution of disapproval that garnered enough Democratic votes to pass the Senate could be a fatal blow to Obama’s efforts to enact a cap-and-trade climate bill this year.

In December, the EPA issued a finding that greenhouse gases qualify as dangerous pollutant under the Clean Air Act, triggering a requirement that the agency begin moving to regulate carbon emissions as early as March.

The EPA finding was a response to a 2007 Supreme Court decision that found greenhouse gases are pollutants and directed the agency to determine if they threaten the public.

Obama and EPA Administrator Lisa P. Jackson have said repeatedly that they would rather see global warming gases regulated through legislation. The administration has tried to use the threat of EPA regulation to prod reluctant senators to act.

Ag groups defend atrazine (*Feedstuffs*)

1/21/10
A broad coalition of agriculture groups have written to Lisa Jackson, administrator of the Environmental Protection Agency, in defense of the herbicide atrazine, a critical tool in

growing crops as diverse as corn, sorghum, sugar cane, and citrus. It has been used safely in over 60 countries for 50 years.
The EPA will begin a re-re-evaluation of atrazine as part of a series of Scientific Advisory Panels, which will begin on February 2nd.
The groups said atrazine has "become the target of a coordinated attack by environmental groups seeking to eliminate its use."
The coalition of agriculture groups will be actively involved in the EPA re-evaluation of atrazine and will "insist that transparent, peer-reviewed science utilizing accepted practices govern regulatory decision-making," a statement from the coalition said.
"Atrazine is used on more than one-half of all U.S. corn and two-thirds of sorghum. It is one of the primary elements that make American agriculture so phenomenally productive," said Jere White, executive director of the Kansas corn and grain sorghum growers associations. "Every EPA Administration since the EPA was founded - Republican and Democrat - has endorsed atrazine's safety and that is why we join together to pledge our support and confidence in this product."

Obama EPA Agenda 'Overload' Seen Risking Agency Credibility, Morale (*Inside EPA*)

1/22/2010
The Obama EPA's ambitious agenda of major new regulatory, enforcement and other initiatives on climate change, air pollution, chemicals, and other issues is threatening to overwhelm agency resources, industry and other sources say, claiming the agenda could result in a loss of credibility and a drop in staff morale if the agency falls short of its goals.

While the Obama administration generally has faced criticism for taking on too many different issues, sources say EPA Administrator Lisa Jackson is a key driver of the agency's ambitious efforts. "The overload is very clearly a problem. It might be a systemic issue . . . but they call her 'Action Jackson' for a reason," an industry attorney says.

In response to a query about the agency's workload, an EPA spokeswoman says, "Nearly 18,000 committed citizens joined EPA to protect the health and environment of all Americans -- and that's exactly what we're doing."

Environmentalists generally praise EPA's ambitious agenda and many are even urging the Obama administration to pursue more -- and more aggressive -- policy changes. One environmentalist says EPA is "cleaning up the mess" left by the Bush administration and that the agency appears to be devoting enough resources to accomplish its initiatives. But another environmentalist recently conceded that EPA's proposed enforcement priorities may be overly broad.

In the first year of the Obama administration, EPA has begun work on long list of regulatory efforts that some say threaten to undermine the agency's effectiveness. For example, the agency is working on greenhouse gas regulations for mobile and stationary sources, reviewing each of the agency's six air quality standards, ramping up its oversight of chemicals and proposing to double the number of categories on which to focus enforcement.

Jackson sent a Jan. 12 memo to agency employees outlining seven themes she would like the agency's work to focus on throughout 2010: climate change; air quality; chemical safety; cleaning up communities; clean water; environmental justice and expanding environmentalism; and strong state and tribal partnerships. Last year, she also took steps to formalize consideration of some of her priorities -- climate change, environmental justice and children's health -- in agency policy development (*Inside EPA*, Nov. 27).

But critics say the downside of EPA's breakneck pace is that the agency could fail to follow through on its initiatives given the sheer number of agenda items, which could lead to a loss of credibility that may be liability for Democrats in mid-term elections, according to the industry attorney. "You lose 'street cred' for sure. If you say you are going to do something and then you don't, you become the subject of mid-term election fodder," the source says.

Agency employees' morale is also likely to be compromised, the source says. EPA employees want to do a good job, but they are being asked to do more than they can do with existing resources, the source says.

Further, President Obama has said agencies face either a spending freeze or cuts in his upcoming fiscal year 2011 budget, suggesting that EPA will not benefit from a major new influx of funding that could help provide the resources necessary to adequately meet its goals for air, climate change, toxics and other policy areas.

The industry attorney highlights EPA's work on toxics as a key indicator of the overload facing EPA. The agency in December issued the first in a series of "action plans" to assess and address the risks of four kinds of chemicals, and the agency intends to release new action plans for other chemicals every four months. These plans are very time consuming and their frequent release will quickly expend agency resources, according to the source.

In addition, the agency is also expected to take a slew of other actions on toxics, including determining whether to update its risk assessment for the controversial pesticide atrazine, initiating new measures to limit the risks of carbon nanotubes and requiring disclosure of inert ingredients in pesticides, the source says. All of these decisions will require an investment of resources that sources say EPA may struggle to meet.

As another example of “initiative overload” a second industry source cites the agency’s ongoing review of all of its national ambient air quality standards (NAAQS), including revisions to several Bush-era NAAQS rules.

The agency is currently reviewing all of the NAAQS, which set maximum allowable air concentrations of ozone, particulate matter, nitrogen dioxide, sulfur dioxide, carbon monoxide and lead. The agency often is reviewing numerous standards at once, but the Obama EPA initiated a new review of the ozone standard recently finalized under the Bush administration, boosting its workload reviewing standards.

On climate change, EPA faces a potentially daunting agenda to develop a slew of Clean Air Act rules to regulate greenhouse gases. The agency’s final finding that greenhouse gases endanger human health and welfare triggers a duty under the air law to issue a slew of rules to curb greenhouse gas emissions.

Already, the agency is working on a “tailoring” proposal that would raise the threshold for establishing greenhouse gas limits in Title V and prevention of significant deterioration permits and is expected by March to finalize its first-time rule to set limits on vehicle emissions of carbon dioxide and other greenhouse gas emissions. Pending legislation in Congress could also create new mandates for EPA to pursue a slew of climate rules.

Any EPA climate rules are also expected to face litigation, which would add to more than a dozen new lawsuits and petitions industry has filed against Obama EPA rules in recent months. Sources have previously said that defending agency rules in court is a time-consuming and resource-intensive effort.

Enforcement is another of several areas in which the agency is seen by some as taking a too-ambitious approach. EPA is proposing to double the number of categories it will prioritize for enforcement over the next few years, raising questions about whether the proposed list is so broad that it will dilute the agency’s focus on key needs at a time when the enforcement program has seen a diminution of its enforcement results (*Inside EPA*, Jan. 8).

Another environmentalist has called the priorities list a “hodgepodge,” while one informed source has said that having too many priorities is nearly as dangerous as having no enforcement priorities.

Environmentalists generally defend the pace and size of EPA’s workload by saying that aggressive steps are necessary to fix what they say are a slew of lingering problems left over from the Bush administration.

“They are cleaning up the mess they inherited,” says the first environmentalist. “This is unfinished business or botched business,” the source says, citing the ozone standard and the agency’s work to replace the Clean Air Interstate Rule, a Bush EPA cap-and-trade rule to cut power plant emissions that was struck down by a federal court.

The source also says that the agency appears to be devoting sufficient resources to handle its numerous initiatives. And EPA is taking new regulatory and other developments, such as greenhouse gas rules, one step at a time, beginning with just emissions from vehicles and then moving on to only the largest stationary sources, the source says.

Environmentalists are hailing many EPA's efforts so far, such as its work on climate change, air pollution and the Chesapeake Bay cleanup. However, some activists are pushing the agency to go even further than its already ambitious policy agenda to ramp up its efforts on perchlorate, atrazine and mercury air pollution, as well as inspection and enforcement. -- *Kate Winston*

Thursday, January 21, 2010
EPA in PA

Federal agency wants community input on 'environmental justice' (*Texas Examiner*)

James Shannon
Mid & South County Editor
Thursday, January 21, 2010

ASKED & ANSWERED: EPA responds to questions about the Environmental Justice project
Questions submitted to EPA Region 6 - in writing at their request - were not answered by press time, but Jeannine Hale, Region 6 Director of Environmental Justice and Tribal Affairs did respond in some detail today. The Q&A sheds some light into EPA thinking and is presented below in its entirety.
How was the event publicized?
EPA used several methods to inform the community about the Showcase project in general, and more specifically about the meeting on January 19, 2010. Over the past several weeks, we have been compiling a preliminary contact list of people, groups, churches, and other stakeholders. Whenever we spoke with people by phone, email or in person, we let them know we would be having a meeting. Once the meeting date was set, we mailed a flyer with meeting information to churches located in Westside and to the Public Library. We provided the flyer to the City, who agreed to put the notice on city's TV cable channel. We issued a press release to local media and there was an article in Port Arthur (The News). We sent an email alert to the contact list. The day of the meeting, we drove around Port Arthur's West Side, handed out some flyers and told people we met about the meeting.
How was Port Arthur's west side selected?
The EPA Region 6 Dallas office selected Port Arthur's west side as the geographic area/community to focus on for the Showcase Initiative. In selecting Port Arthur, EPA considered factors such as the number of regulated facilities in the area, vulnerability to

natural disasters, population demographics such as income, the proximity of population to regulated facilities, the presence of multiple stressors, and whether a specific geographic area could be identified where it would be possible to obtain measurable results in a relatively short time period.

What can be done here with $100,000? How does EPA envision that money being spent?

EPA will be responsible for determining how any of the $100,000 of showcase funding is spent. EPA wants to track tangible environmental/health results, so we will be looking for ways to spend the money that will help achieve these results. The community input EPA obtained at the January 19, 2010, meeting will be used by EPA as project planning moves forward. EPA will first work with the community to identify important issues, then work to identify ways that funds may be allocated to best address community issues.

As was obvious last night, there is significant history in this community on these issues - hence the contradictory statements of community activists and local officials. To what extent Is EPA aware of this history?

EPA Region 6 was aware prior to the meeting that people in the community would likely have varying views and a wide range of concerns. EPA was pleased to receive input from those at the meeting who had diverse perspectives. The Showcase project process envisions bringing together the community and a diverse array of other stakeholders representing varying viewpoints, then finding ways to work together.

Industry reps at the event last night did not speak. Was this by design?

The initial meeting was primarily to hear from residents of the community and the public. Certainly, no one was asked not to speak. At least one industry representative spoke up when EPA asked who wanted to be involved in future meetings. At future meetings, we anticipate there will be ample opportunity for dialogue between interested community leaders, residents, industry, academic institutions, representatives of state/local/federal government, and other interested parties. It is important that all views are heard, and that those who may have resources or ideas to help resolve community concerns or issues are invited to participate in discussions.

Community activists and local officials gathered at Mount Sinai Missionary Baptist Church on the west side of Port Arthur on Tuesday night, Jan. 19, at the invitation of the

U.S. Environmental Protection Agency (EPA).

EPA called the meeting to solicit input on the designation of the west side as an Environmental Justice Community Project, a new initiative from the agency that selected one community from each EPA region for a demonstration project to address concerns in communities disproportionately exposed to environmental risks.

In Region 6, which serves Arkansas, Louisiana, New Mexico, Oklahoma and Texas, the community chosen was Port Arthur, specifically its west side. Jeannine Hale, director of the Office of Environmental Justice and Tribal Affairs for Region 6, led a contingent of EPA staff down from Dallas for the community meeting. While she was not familiar with those in attendance, for the most part the local residents and officials knew each other quite well from clashes over environmental issues in the past.

Port Arthur Mayor Deloris "Bobbie" Prince and community activist Hilton Kelley, whose Community In-power and Development Association has been involved in previous environmental protests, eyed each other warily in the early stages of the meeting before a series of increasingly tense exchanges had the mayor emotionally defending the city's actions to date.

City Manager Steve Fitzgibbons stoically listened to a litany of complaints from residents, many of whom expressed solidarity with Kelly's group and spoke of past alliances with the activist. Finally, after repeated declarations that Port Arthur had no plan in place to deal with a catastrophic accident at a refinery or chemical plant, Fitzgibbons had had enough.

In a controlled voice, he declared that not only did Port Arthur have a voluminous emergency plan in place - he held his arms two feet apart to suggest the size of the document - but that the Port Arthur plan had been deemed a model for other communities to emulate.

Lowra Jones, a Port Arthur resident and environmental specialist who had criticized the city for the lack of a comprehensive plan, said it was required by Emergency Planning and Community Right-to-Know Act (EPCRA) regulations.

"People are desperate because of conditions in their community, and feel that city officials have not heard their cries for help," said Jones.

EPA officials present did not respond to comments made at the meeting, with Hale recording issues voiced by speakers on a large writing pad at the front of the room. Among the concerns from residents inscribed on the pad were refinery emissions; noise levels - "especially at night"; and smells, with one resident complaining, "I have to hold my breath to get to my place."

Other issues raised concerned residents who live close to refineries and chemical plants on the west side, including the massive Carver Terrace Apartments public

housing project, bordered on two sides by the Motiva and Valero refineries. Kelley has said as a former resident of Carver Terrace, he believes the project should be torn down and the residents relocated to other, more suitable housing.

Port Arthur Housing Authority officials told The Examiner they plan to raze Carver Terrace when they have adequate replacement housing stock in place, but no firm target date has been set.

The environmental justice campaign signals a definite change in the EPA's direction since President Barack Obama took office in January 2009. Lisa Jackson, a former 16-year EPA employee who later served as commissioner of New Jersey's Department of Environmental Protection, listed environmental justice as one of her seven priorities - along with air and water quality and climate change - when she was confirmed as EPA administrator last year.

In announcing this initiative, the agency said, "EPA has begun a new era of outreach and protection for communities historically underrepresented in EPA decision-making. As a start, EPA is building strong working relationships with tribes, communities of color, economically distressed cities and towns, young people and others."

The EPA's objectives are substantial, though the methodology to achieve those objectives remains unclear. "The Port Arthur Environmental Justice Showcase Community Project will use collaborative, community-based approaches to improve public health and the environment and will serve as the Environmental Justice Showcase Community for the five-state EPA Region 6 area," said the EPA release announcing the community meeting.

Also unclear is how the $100,000 amount EPA said will be utilized to achieve those objectives will be spent. Questions submitted in writing as requested to the EPA Region 6 office had not been answered at press time.

Representatives from industry were present at the meeting, including Barbara Phillips and Morris Carter of Valero and Verna Rutherford of the Motiva Port Arthur Refinery. All three listened attentively, although none of them spoke at a meeting designed to solicit community input.

In recent years, the companies that operate refineries in the area have become more active in the community, from participation in festivals, fairs and charities to sponsorship of community events. Motiva established the Motiva Youth Training Academy for select high school students in partnership with the Port Arthur Independent School District designed to improve employment opportunities for area youth in business and education. The one-semester program provides students with classroom instruction and structured work-place learning, with the goal of encouraging career growth and future education, including a college degree.

While not discounting the worthiness of this effort, several community residents at the

meeting complained of high unemployment on the west side and said more jobs at the refineries should go to local residents.

Director Hale concluded the meeting saying they would take the concerns expressed at the meeting back to Dallas to evaluate the status of this demonstration project still in its infancy. They pledged to return and assured those present that the meeting at Mt. Sinai Missionary Baptist Church was only the beginning of their campaign.

Mid & South County editor James Shannon can be reached at (409) 832-1400, ext. 227, or by e-mail at james@theexaminer.com.

Nation's Second-largest Portland Cement Manufacturer to Add New Pollution Controls at Iowa, Kansas and Missouri Plants (*Kansas City infoZine*)

Posted Thursday, January 21, 2010 :: Staff infoZine
As part of the federal government's first-ever nationwide legal settlement with a Portland cement manufacturer over Clean Air Act issues, all of the company's operating facilities, including those in Buffalo, Iowa (also known as the Davenport plant); Fredonia, Kan.; and Sugar Creek, Mo., will be required to install and implement an estimated total of $170 million in new air pollution control equipment.

Kansas City, KS - infoZine - In a consent decree filed today in U.S. District Court for the Southern District of Illinois, Lafarge North America, Inc., based in Herndon, Va., and two of its subsidiaries have agreed to pay a $5 million civil penalty to resolve alleged violations of the Clean Air Act's new source review regulations. Of the $5 million civil penalty, the nation's second-largest Portland cement maker will pay $3.4 million to the United States and $1.7 million to the 13 states and agencies that have joined in the settlement.

In EPA Region 7, Iowa will receive a $135,000 share of the settlement, while Kansas and Missouri are each to receive $55,250.

"Consistent with Administrator Lisa P. Jackson's seven priorities, this settlement calls for tough new controls and innovative technologies to cut down on harmful air emissions that threaten the health of millions of Americans," said Cynthia Giles, assistant administrator for EPA's Office of Enforcement and Compliance Assurance.

Nationwide, Lafarge's installation of the pollution control equipment is expected to reduce its plants' emissions of nitrous oxide by more than 9,000 tons per year, and reduce sulfur dioxide emissions by more than 26,000 tons per year. At Lafarge's three facilities in Iowa, Kansas and Missouri, the resulting annual emissions reductions are expected to total 1,127 tons of nitrous oxide and 1,388 tons of sulfur dioxide. Lafarge is expected to spend a total of $19 million on the new control technologies at its Iowa, Kansas and Missouri facilities.

In a complaint filed concurrently with today's settlement, the United States alleged that Lafarge and its subsidiaries, or their predecessors, modified one or more of each of their facilities without first obtaining pre-construction permits and installing required pollution control equipment as required by the Clean Air Act. These violations were discovered as a result of EPA investigations and reviews of company submitted data. The states and agencies joining in the settlement have made similar allegations in their complaint, which is filed separately.

The consent decree is subject to a 30-day public comment period and approval by the court.

Article link: http://www.infozine.com/news/stories/op/storiesView/sid/39619/

EDITORIAL / OP-ED / COMMENTARY / LETTERS
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Trash talk – what do we do right now? (*Wicked Local Plymouth*)

GateHouse News Service
Posted Jan 22, 2010 @ 06:00 AM
Two factors weigh heavily in municipal decisions regarding waste management: cost and environmental impact. Our government focus looks at trash from a "lifecycle" point of view, and so we include recycling, composting, landfilling and waste-to-energy incineration in our immediate plans to contend with trash. We ask, what do we do right now? And then, what do we do in the longer term?

Municipalities are concerned with minimizing the financial impact on taxpayers in a time of revenue shortfalls, budget cuts, recession, and high unemployment and job insecurity. But we also see our towns in discussions – sometimes heated – that suggest those who advocate for practicing greener solutions to both dealing with waste and containing waste through smarter manufacturing, behavior and consumption are earning more air and ear time. Emerging technologies are merging into the discussion – there are those who say it's too new and unproven, so wait and see; there are those who say the future is here, have faith, go for it now.

But while, perhaps, the future is here – or more likely close at hand – new technologies for processing waste disposal are yet to be proven to many decision makers who have to make the best choices they can right now.

According to the U.S. Environmental Protection Agency, many municipalities, businesses and people around the county already practice contemporary approaches to

dealing with MSW (an acronym for “municipal solid waste,” otherwise known as trash or garbage). We practice source reduction, recycling and composting, and what’s left over we dispose in landfills or with “waste combustors.”

Waste combustors burn our trash and garbage at high temperatures, reducing the volume of waste and generating electricity in the process. And while alternative technologies, such as pyrolysis, gasification and anaerobic digestion, are being watched, a study conducted for the state Department of Environmental Protection and filed just a year ago (“Assessment of Materials Management Options for the Massachusetts Solid Waste Master Plan Review” performed by the Tellus Institute, of Boston, December 2008) suggests that pyrolysis and gasification won’t be viable until at least 2020, although anaerobic digestion, akin to composting, is perhaps viable now.

Landfills are rapidly becoming dinosaurs here in Massachusetts, although most trash around the country does go into landfills. Today, about a third of our trash is recycled. What’s left either goes into landfills or goes to waste-to-energy facilities, which further separate recyclables and then shred and burn remaining trash at high temperatures, creating heat that is used to produce steam, which powers turbines that create electricity. Because that trash would otherwise go into landfills, you could say – and the government does – that trash is a renewable power source. But the state has imposed a ban on new landfills and incinerator facilities and will likely extend that ban this year.

The Department of Environmental Protection, which implemented the moratorium, will release its Solid Waste Master Plan soon. The DEP’s 2010 master plan will set guidelines for the next 10 years for waste-to-energy facilities, as well as recycling and performance standards.

“Focusing on incineration and landfills is the wrong end of the waste equation,” Energy and Environmental Affairs Secretary Ian Bowles said late last year. “While Massachusetts is ahead of the national average in recycling … there is a lot more we can do to increase recycling and reduce disposal of useful materials.”

Meanwhile, many of our communities send their trash to waste-to-energy facilities, and probably the most common facility used by towns in our area is the Covanta SEMASS plant on the Wareham/Rochester line (Covanta operates 40 facilities world-wide). SEMASS is initiating discussions with many of its municipal clients to renew their contracts with the plant. The company predicts a significantly increased expense of processing and is offering attractive deals to some municipalities to re-up sooner rather

than later. Speculation abounds that Covanta wants to lock in long-term contracts as collateral for loans to fund capital expansion of its plants. A pocketful of 20-year contracts adds up to millions of dollars in a guaranteed revenue stream. But also, locking in clients for the next couple of decades would build a competitive wall against emerging technologies.

Over the next couple of weeks we'll take a look at some of the aspects of dealing with trash: local conversations covering a range of topics, an up close and personal look at the Covanta SEMASS plant and the cost of doing business with it, and discussion of alternative approaches and technologies both hovering nearby and looming on the horizon.

The Tellus report tells us that waste generation in Massachusetts will increase from13.9 million tons in 2006 to 18.3 million tons by 2020. Expect technology and consumer behavior to kick in to make our products less trashy and more intelligently consumed. Efficient waste management on a consumer level, along with smart lifestyle practices, will help keep the growth in check, but they won't eliminate it or even reverse it. Sharply increased recycling and composting methods will help the cause, and Tellus estimates that our overall trash diversion rate could grow to 62 percent by 2020. But as the population grows, so grows our trash.

How we rid ourselves of our trash will speak enormously about ourselves. The next decade will undoubtedly bring about increased changes in our behavior and changes in trash disposal technology. But the question remains: What do we do right now?

the nature of things

EPA Steps In on Water Quality (*The Ledger*)

Published: Friday, January 22, 2010 at 12:03 a.m.
The plot is thickening on the little environmental drama that has been building for several years in Florida.

It has pitted environmental groups who are tired of watching the algae and muck thicken in Florida's waterways against state environmental officials whose only response was to construct some Byzantine system that didn't really get the job done, egged on by commercial interests who were even more uninterested in change.

I'm talking about the U.S. Environmental Protection Agency's announcement that it plans to impose numerical pollution standards on phosphorous and nitrogen concentrations in Florida water bodies.

The standards also dictate how algae-green the water can become.

To read some of the statements from the business community and public utilities in recent weeks, you'd think this was an unexpected bolt from the blue.

In fact, it's a much belated effort to enforce a 38-year-old federal law called the Clean Water Act.

Also, some of the claims that were trumpeted by critics in advance of the release of the EPA's 197-page proposed standards, such as it would be a one-size-fits-all statewide approach, did not materialize.

For instance, phosphorus limits in this part of Florida are more lax because there's so much naturally occurring phosphate that a lower level would be unrealistic and serve no environmental purpose.

Now will come the interesting part.

The EPA published the proposal to get comments, and I expect the agency will get plenty.

Three public meetings, including one Feb. 17 in Orlando, are planned, though I suspect the really substantive comments will be submitted in writing.

The EPA's not imposing these pollution limits voluntarily.

It took a lawsuit by a number of environmental groups, notably the Florida Wildlife Federation and the Sierra Club, to make this happen.

I think anyone who has lived in Florida for decades and spends time on the water knows the lakes and rivers aren't what they used to be.

The EPA document answers two key questions:

How widespread is the pollution?

EPA officials say 1,000 miles of rivers and streams, 350,000 acres of lakes, and 900 square miles of estuaries are too polluted to meet minimal water-quality standards. And those are just from the ones for which scientists have good water quality data.

Is the pollution really that serious?

EPA officials say this type of pollution can damage drinking water sources and increase exposure to harmful algal blooms that are made of toxic microbes. This can cause damage to the nervous system or even cause death.

Another danger is the formation of by-products in drinking water from disinfection chemicals, some of which have been linked with serious human illnesses such as bladder cancer.

Sewer plant discharges, stormwater runoff from city streets, and runoff from farms and ranches have combined to cause the problem.

And Florida's future growth isn't going to make the situation any better.

Although much of the drumbeat against the regulations comes from industries, and cities and counties that operate systems responsible for much of the pollution, we're all in this together.

We all contribute to water pollution in small ways, but the cumulative effect is large.

The bill for fixing the problem will fall on all of us.

Don't be surprised if something extra shows up on your tax bill someday soon to deal with this.

Some cities, such as Winter Haven and Lakeland, already have stormwater utility taxes. Polk County never enacted one, choosing instead to divert money from other sources to pay for projects.

The time has come to have a specific source of money to pay for the work.

In that respect, the critics, who have been characterizing this as a "water tax" have a point, though there's another way to look at it.

If you used their reasoning, you'd call code enforcement a "housing tax."

After all, there's littlereal difference between cracking down on environmental blight and cracking down on housing blight.

The longer you wait, the worse it gets.

To see the proposal, go to www.epa.gov/waterscience/standards/rules/florida/

[Tom Palmer can be reached at tom.palmer@theledger.com or 863-802-7535. His blog on the environment is at environment.blogs.theledger.com]

AIR

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January 22, 2010

Senators Want to Bar E.P.A. Greenhouse Gas Limits (*New York Times*)

By JOHN M. BRODER

WASHINGTON — In a direct challenge to the Environmental Protection Agency's authority, Senator Lisa Murkowski, Republican of Alaska, introduced a resolution on Thursday to prevent the agency from taking any action to regulate carbon dioxide and other climate-altering gases.

Ms. Murkowski, joined by 35 Republicans and three conservative Democrats, proposed to use the Congressional Review Act to strip the agency of the power to limit emissions of greenhouse gases under the Clean Air Act. The Supreme Court gave the agency legal authority to regulate such emissions in a landmark 2007 ruling.

The agency has declared carbon dioxide and other greenhouse gases to be a threat to human health and the environment and is moving to write regulations to restrict emissions from vehicles, power plants and other major sources. The action could impose significant costs on the economy but would also rein in production of the heat-trapping gases that most scientists link to worrisome changes in the global climate.

"Make no mistake," Ms. Murkowski said in a floor statement, "if Congress allows this to happen there will be severe consequences." She said businesses would be forced to close or move overseas, domestic energy production would be curtailed, housing would become more expensive and agricultural costs would rise.

Her resolution requires a majority vote in the Senate, a remote possibility because of the strong opposition of the Democratic leader, Senator Harry Reid of Nevada, and most other Democrats. It faces even longer odds in the House. And then it would require the signature of President Obama, who is all but certain to veto it because it would rob him of a critical regulatory tool.

Ms. Murkowski said that the Obama administration was using the threat of E.P.A. regulation to force Congress to move quickly on broad energy and climate-change legislation, including a complex cap-and-trade program to limit carbon-dioxide pollution.

Ms. Murkowski, the senior Republican on the Senate Committee on Energy and Natural Resources, has nearly unanimous Republican support in addition to the backing of the three Democrats: Senators Blanche Lincoln of Arkansas, Mary Landrieu of Louisiana

and Ben Nelson of Nebraska.

Her effort was applauded by a broad swath of industry, agriculture and energy lobbies, which fear the prospect of what they consider capricious and heavy-handed regulation by the E.P.A.

An aide to Mr. Reid said that the measure was unlikely to come to a vote before March because of a crowded legislative calendar. He also said that while Mr. Reid believes that legislation to address climate change is preferable to E.P.A. regulation, the agency must retain the authority to act if Congress does not.

“There is no disagreement that it would be better than E.P.A. regulation for Congress to pass bipartisan comprehensive clean energy and climate legislation that creates jobs, improves our energy security and invests in making our economy and businesses more efficient and globally competitive,” the aide, Jim Manley, said. “But, thus far, very few Republicans have shown any willingness to work with us to get that done.”

EPA vows to do all it can for school’s air (*USA TODAY*)

By Blake Morrison and Brad Heath, USA TODAY
The U.S. Environmental Protection Agency pledged Thursday to "use all the tools at our disposal" to reduce high levels of a toxic chemical that continues to permeate the air outside an elementary school in Marietta, Ohio.

The chemical, manganese, can affect children in much the same way as lead. Government scientists have concluded that long-term exposure can cause mental disabilities and emotional problems.

COMPLETE COVERAGE: Toxic Air and America's Schools

The EPA plans to release data today that show high levels of manganese outside a cluster of schools in and near Marietta. One air sample — taken Oct. 22, 2009, outside Warren Elementary — shows manganese levels that were 23 times above what the EPA considers safe for long-term exposure.

"That is pretty remarkable," said Stephen Lester, science director for the Center for Health, Environment & Justice, a Virginia-based advocacy group that focuses on children and schools.

Two other schools, including Neale Elementary in Vienna, W.Va., just across the Ohio River from Marietta, also appear affected. One reading at Neale was five times higher than what is considered safe for long-term exposure.

Breathing high levels of manganese for extended periods can cause "irreversible damage," Lester said. He worried that the readings might represent "just the tip of the iceberg. How many other chemicals are these kids exposed to?" he asked. "It's not just manganese alone that you worry about. It's the combined effect of all these chemicals on the central nervous system."

EPA spokesman Brendan Gilfillan said the agency plans to investigate the source of the manganese in Marietta. According to data collected by the EPA, several companies in Marietta reported releasing manganese into the air in 2008, the most recent year for which complete records were available. One, Eramet Marietta, reported releasing 240,000 pounds of manganese into the air that year. The company could not be reached for comment Thursday.

Marietta has been the subject of air quality studies since 2000. In July, the Centers for Disease Control and Prevention said one of its studies had found elevated levels of manganese and other toxic chemicals in the air at several locations.

The EPA renewed its interest in the area last year, when it launched a $2.25 million program to monitor the air outside 63 schools in 22 states. It included among the 63 schools two in Marietta — Warren Elementary and the Ohio Valley Education Service Center.

The EPA's air monitoring program came in response to a USA TODAY investigation that identified hundreds of schools where chemicals appear to saturate the air. Gilfillan said the agency has finished testing the air outside 54 of the 63 schools and expects to issue reports on each school by this fall.

EPA believes Chevron was aware of violation (*Anchorage Daily News*)

COOK INLET: Company says it's working with investigators.
By ELIZABETH BLUEMINK
ebluemink@adn.com
(01/22/10 02:17:26)
Search warrants served on two Cook Inlet oil facilities last week were based on federal environmental regulators' suspicions that Chevron Corp. had knowingly violated its air pollution permits and made false statements, court filings show.

An Anchorage federal court magistrate on Jan. 7 authorized the U.S. Environmental Protection Agency's Criminal Investigation Division to seize computers, files, photos and other records at Chevron's Trading Bay Production Facility and Granite Point Tank Farm.

In an affidavit, EPA Special Agent Matthew Goers told the judge that his agency had obtained sufficient information to suspect that Chevron and possibly its subsidiaries,

managers and employees had committed felonies, including Clean Air Act violations and false statements to the federal government.

The searches occurred Jan. 12 and 13, with federal investigators flying to the two remote, on-shore Chevron facilities on the west side of Cook Inlet in an Alaska Army National Guard Black Hawk helicopter, according to state and federal officials.

Chevron on Thursday said it is cooperating with the investigation but declined to discuss the EPA's court filings.

"In May of 2008, we provided the government with voluntary disclosure relating to these issues and have been cooperating with the government's information requests since that time. We take such non-compliance allegations seriously," the company said in a written statement, provided by Chevron spokesman Mickey Driver.

At Trading Bay and Granite Point, Chevron subsidiary Union Oil Co. of California processes and stores crude oil from several Cook Inlet production platforms. The company then ships the oil to the Tesoro refinery in Nikiski.

SHUT-OFF EQUIPMENT

The alleged violations began in 2006, when Chevron shut down a vapor control unit for two of its oil storage tanks at Trading Bay.

In 2007 or earlier, the company also shut down the vapor control units for oil storage tanks at Granite Point, according to Goers' affidavit.

The vapor control units were designed to capture vapor from the oil before it escaped the tanks and reuse the vapor as fuel. Shutting the units down allowed a significant amount of air pollution to escape from the tanks, Goers wrote.

Chevron had described the tanks to regulators in 2006 and 2007 as "insignificant sources" of pollution that emitted no more than 2 tons per year of volatile organic compounds and 2 tons per year of hazardous air pollutants. Both groups of chemicals are regulated as toxic pollutants that can cause health problems.

Instead, the Trading Bay tanks released more than 100 tons per year of volatile organics into the air from 2006 to 2008, according to Goers, citing Chevron estimates. The Granite Point tanks released more than 15 tons per year of crude oil vapors in the same time period, he said in the affidavit.

In 2008, Chevron sent a letter to state regulators saying it had potentially been violating its Clean Air Act permit at Trading Bay since shutting down its vapor control unit two years earlier. It requested that regulators invoke a federal policy that waives or reduces fines for companies that self-report their own violations.

In 2009, a state inspector visited Granite Point and pointed to its tanks, asking how its vapors were recovered. A Chevron operator told her that its vapor control unit "was not operating at the time because a necessary compressor was not operating." Regulators later learned that the unit had shut down in 2007, Goers wrote in his affidavit.

On the day of the state inspection, Chevron sent a letter to state regulators, asking to amend its previous filings about air pollution at Granite Point. The company said that it hadn't adequately described the air emissions at the tank farm when it applied for a permit in 2006, according to the affidavit.

FALSE STATEMENTS?

The purpose for the search warrants was to seize documents and other evidence that might show whether the company knowingly withheld information and gave "material false statements" to environmental regulators, the affidavit said.

From 2006 to 2008, Chevron submitted documents to environmental regulators saying that its Cook Inlet facilities complied with their air permits. In 2007, company officials told regulators that they were still using the vapor control system at Trading Bay, and that the tanks were not venting to the atmosphere, Goers wrote.

Goers also interviewed current and former Chevron employees who described problems with the vapor control system at Trading Bay before its shutdown in 2006, he wrote.

"Problems attributed to the vapor recovery system by current and former Chevron employees include the following: fugitive vapors escaping from the roof of the tanks, improperly sized compressors, damaged and/or inoperable circuit boards, insufficient parts, repair requests which were unsupported by management, and various other problems with the system which tend to indicate that the vapor recovery system was not functioning properly, may have been out-of-service for extended periods of time, and then eventually led the vapor recovery system to not function," Goers wrote.

Chevron officials told state regulators that it deactivated the vapor control unit for its Granite Point tanks because the company wasn't producing enough natural gas to operate the compressor it used to guide the vapors into the unit, according to the affidavit.

U.S. Magistrate Deborah Smith signed the warrants to search and seize records at the two facilities, which are not accessible by road. The Alaska Army National Guard confirmed Thursday that it flew the agents to western Cook Inlet to conduct the searches.

Find Elizabeth Bluemink online at adn.com/contact/ebluemink or call 257-4317.

Friday, January 22, 2010 - Page updated at 12:46 AM

2 Seattle-area plants enter clean-air agreement with the EPA (*Seattle Times*)

By Craig Welch
Seattle Times environment reporter

Two of the biggest polluters along Seattle's Duwamish River corridor will reduce dirty air emissions over the next year as part of a settlement with the U.S. Justice Department.

Saint-Gobain Containers, which makes jars and glass bottles for beer and wine, and the Lafarge North America cement plant have agreed to install new emissions controls that will cut back pollution by about 1,400 tons a year by Feb. 1 of next year.

Federal investigators accused the parent companies of both manufacturers of modifying several of their cement and glass plants around the country decades ago without getting needed permits. Modifications let the plants pump out more of the ozone-causing nitrogen oxides and sulfur dioxides that are known to aggravate asthma and cause respiratory trouble.

The settlement is part of a

nationwide agreement that requires the companies to spend a combined $282 million at 26 plants upgrading facilities to cut back on unhealthy air. And it comes on the heels of similar settlements with coal-fired power plants and oil refineries — the nation's top two polluting industries.

The Clean Air Act requires companies to seek permits before making major changes in plant operations that significantly increase air pollution.

The Environmental Protection Agency has been moving industry by industry to uncover old violations. Investigators pore through company files and inspection reports and analyze emissions data going back as far as 1992.

"We chose the cement and glass industries because we had reason to believe there was a high rate of noncompliance," said Katie McClintock, with the EPA in Seattle, who worked on the settlements.

The cement industry is the nation's third-largest polluter, and the administration this year plans to adopt new rules controlling its emissions. Investigators had noticed massive capacity expansion among cement-makers, but had not noticed a similar increase in permit applications.

The glass industry had seen rapid consolidation without a corresponding increase in permits.

The Justice Department didn't detail which plants in which states had violated the Clean Air Act. Court documents claim that "some or all" of the plants increased emissions.

Sylvain Garnaud, president of Lafarge North America Inc.'s cement division, told The Wall Street Journal the company "remains firm in its belief that it has operated its plants in an environmentally responsible manner and in compliance."

But under the settlement, his company agreed to spend $170 million to reduce its emissions at 13 plants and pay a $5 million penalty. Saint-Gobain will install more than $112 million in new pollution-control equipment and pay $2.25 million in fines.

Seattle's Lafarge plant is one of the company's smaller kilns and didn't contribute huge volumes of pollution to air around Puget Sound. But it was one of the company's dirtiest plants, McClintock said. "We'll see a big reduction in pounds of pollution per ton of emissions," she said.

Seattle's glass plant is just the opposite. It's one of that company's cleaner-burning plants, but also among its largest.

Craig Welch: 206-464-2093 or cwelch@seattletimes.com. The Wall Street Journal contributed to this report.

EPA announces stricter ozone standards (*Community Impact Newspaper*)

By Melissa Mixon Friday, 22 January 2010

A new and stricter ozone standard could put Central Texas, including the Cedar Park and Leander area, in danger of violating clean air rules set by the U.S. Environmental Protection Agency.

The new standard was announced Jan. 7 and brings the current ozone standard of 75 parts per billion down to between 60 and 70 parts per billion.

The current number is for the EPA-designated Austin-Round Rock metropolitan area, which includes the counties of Bastrop, Caldwell, Hays, Travis and Williamson.

While a range has been set, a final figure will not be announced until August, after a period of public comment and review.

It is still unclear when the standard would go into effect; however, the implementation date is important because it determines how much time the Central Texas area has to reduce its ozone emissions.

Not complying with the standard can lead to an EPA-designated status of nonattainment, which is already held by cities like Houston and Dallas. Non-attainment areas face state and federal regulations designed to curb ozone levels and get the region back within compliance. The restrictions, which can delay road projects and

business development, can remain in place for 20 years after the region returns to compliance.

Officials in Cedar Park and Leander said the new standard could have serious consequences.

“What this really means for the citizens is that to get a road built, it’s going to take longer, and if you want businesses to come in, it’s going to cost more and it’s going to put restrictions on maybe the kind of businesses that can come in,” Cedar Park Councilman Tony Dale said.

Dale said the city will have to find ways to make sure it is doing everything it can to reduce emissions, while also balancing that with the cost of services that the city provides residents.

In March 2009, the Cedar Park City Council passed a resolution in support of emissions reduction measures to assist with Williamson County’s clean air efforts.

The resolution gave several recommendations such as fueling vehicles after 3 p.m., notifying and educating citizens about Ozone Action Days and encouraging “clean air habits,” such as combining errands when driving and tree planting, said Melanie Carr, a spokeswoman for the city.

Carr said the city also started an educational campaign, which included a public service announcement, the production of “Go Green” guides that are distributed at city hall and posting alerts for Ozone Action days on the city’s TV channel and website.

Leander Mayor John Cowman said it is too soon to tell how the new standard will affect Leander, but, regardless, he said the city has already worked to promote “green” living.

“Our city is basically being designed with one-car-families in mind, with public transportation being a major component of that,” Cowman said.

Cowman and Leander City Manager Biff Johnson said the city’s planned 2,300-acre transit oriented development, or TOD, is a prime example of the city’s efforts. The TOD encourages dense, walkable and pedestrian-friendly areas that center on the Capital Metro commuter rail line.

In recent months, several Central Texas cities, businesses and individuals participated in a voluntary regional initiative to improve air quality known as the Big Push.

As part of it, Williamson County is converting 24 of its 500 vehicles to propane over the next two years. Of the fleet, 14 vehicles are hybrids.

While some cities may meet the new standard with alarm, because of the prospect of nonattainment, environmentalists and some lawmakers say the standard is an

opportunity to improve air quality, help Texans become healthier and halt development of coal plants, the largest source of ozone in the state.

“We are not where we need to be in terms of safe, clean air,” state Rep. Eddie Rodriguez said.

EPA updates guidance for SCR engines (*Today’s Trucking*)

01/21/2010
WASHINGTON -- In an effort to clear the air on its requirements for selective catalytic reduction (SCR) engines, the U.S. Environmental Protection Agency has issued new guidance on the miles and hours a truck can run after the DEF tank runs dry.

The original guidance from the EPA in February 2009, required engine performance to be degraded after a truck travelled a certain distance with an empty diesel exhaust fluid (DEF) tank.

As part of its lawsuit against the EPA, Navistar said that provision in the 2010 engine rules was essentially a “licence to pollute” and “pollution for convenience.”

Citing the petition for review filed in the U.S. Court of Appeals, the EPA decided to rewrite the provision and issued a letter to engine manufacturers on Dec. 30, 2009.

“Because some prescriptive language in CISD-09-04 may have led to confusion regarding our intent that the document be used as guidance, rather than setting forth binding requirements, I believe it is appropriate to provide a new document providing revised guidance regarding certification of heavy-duty diesel engines using SCR,” wrote Karl Simon, director of compliance and innovative strategies with the EPA’s Office of Transportation and Air Quality.

In the new guidance, any mention of miles or hours driven on an empty DEF tank is removed. Instead the EPA only suggests that it would likely take a 25 percent reduction in torque for a driver to notice decreased operation.

However, it will be up to the manufacturer to determine how long after a DEF tank runs dry that engine performance begins to decline:

“In determining strategies that are sufficiently onerous to cause the driver to replenish the DEF tank and minimize any adverse emission impact, manufacturers can consider strategies that begin to degrade performance prior to the DEF tank being empty and that progressively become more onerous as the DEF tank becomes empty.”

LaFarge North America agrees to $5 million DOJ and EPA settlement (*West Seattle Herald)*

First settlement of its kind; covers 12 states
January 21, 2010
Lafarge North America Inc. which operates a cement and aggregate plant at 5400 West Marginal Way has agreed to enter into a settlement agreement, announced today, with the U.S. Department of Justice (DOJ), the U.S. Environmental Protection Agency (EPA) and 12 states to resolve claims arising under the Clean Air Act for historic emissions of nitrogen oxides and sulfur dioxides. The settlement addresses all of Lafarge's active cement manufacturing plants in the United States.

The settlement is the first of its kind in the cement sector and is consistent with settlements the DOJ and EPA have obtained in other industry sectors, including electric generation and petroleum refining. The settlement represents for Lafarge a complete and expeditious resolution of issues under the Clean Air Act which Lafarge has sought to address in a proactive and cooperative manner with the DOJ and EPA.

Portions of the 1977 Clean Air Act require companies to obtain pre-construction permits if a large facility is upgraded or modified through
certain physical or operational changes. The settlement arises out of DOJ's and EPA's belief that one or more Lafarge cement plants made historic modifications without necessary permit review. Under the terms of the settlement, Lafarge will pay a civil penalty of approximately $5 million and will make significant emission reductions of nitrogen oxides (NOx) and sulfur dioxides (SO2) through the installation of additional pollution control equipment and other measures.

Sylvain Garnaud, president of Lafarge North America's Cement Division stated: "Lafarge North America remains firm in its belief that it has
operated its plants in an environmentally responsible manner and in compliance with the requirements of the Clean Air Act. That said, we also firmly believe that industry leaders like Lafarge have to work with local, state and federal authorities to find solutions to the most challenging problems. Agreements like this one, and the actions we will undertake pursuant to this agreement, demonstrate that we want our plants to continue to minimize emissions to the atmosphere as much as possible."

Craig Campbell, vice president of environment and public affairs for Lafarge North America's Cement Division stated: "Every day we are looking for and identifying opportunities to improve our environmental performance in ways that exceed regulatory requirements and guidelines. We look forward to working closely with local, state and federal governments to implement the enhancements described in the agreement."

JANUARY 21, 2010, 2:21 P.M. ET

Senator Offers Measure to Overturn EPA Greenhouse-Gas Effort (*Wall Street Journal*)

By SIOBHAN HUGHES
WASHINGTON—Sen. Lisa Murkowski offered Thursday a measure to overturn the Environmental Protection Agency's plans to regulate greenhouse-gas emissions, putting a new edge on a conflict over environmental policy.

The Republican lawmaker offered a "resolution of disapproval" after picking up support from lawmakers including Sen. Blanche Lincoln (D., Ark.), who is high on the list of Democrats at risk of losing their seats in the November midterm elections. The resolution would block an EPA finding that greenhouse gases pose a danger to the public, a legal pre-requisite for regulating.

"We should continue our work to pass meaningful energy and climate legislation, but in the meantime, we cannot turn a blind eye to the EPA's efforts to impose back-door climate regulations with no input from Congress," Ms. Murkowski (R., Alaska) said on the Senate floor.

It isn't clear when the resolution will come up for a Senate vote. Still, the disapproval resolution represents the start of an effort by Republicans to take on the Obama administration over environmental policy. Republicans are newly emboldened by a victory in Massachusetts earlier this week, when Republican Scott Brown won a seat long held by Democrats and took away a key Democratic advantage.

Warnings that the EPA regulations will cause economic hardship play to fears of joblessness as the U.S. unemployment rate remains stuck at 10%. Democrats have argued that steering the U.S. toward clean energy will create millions of new jobs. Republicans counter that rules to curb greenhouse-gas regulations will cost jobs in traditional industries instead.

"Make no mistake: If Congress allows this to happen, there will be severe consequences," Ms. Murkowski said. "Businesses will be forced to cut jobs, if not move outside our borders or close their doors for good."

Senate Democrats have struggled to pass climate legislation amid opposition with their own ranks. Coal, manufacturing and oil interests have lined up against the bill, forcing some Democrats to choose between their constituents or the president's agenda.

Write to Siobhan Hughes at siobhan.hughes@dowjones.com

Thursday, January 21, 2010, 3:34pm EST

Lafarge fined $5M, ATL plant involved (*Atlanta Business Chronicle*)

The United States on Thursday won a Clean Air Act settlement to cut air emissions from Portland cement plants throughout the country, including a Lafarge North America Inc. plant in Atlanta.
Herndon, Va.-based Lafarge and two of its subsidiaries agreed to install and implement control technologies at an expected cost of up to $170 million to decrease emissions of nitrogen oxides by more than 9,000 tons each year and sulfur dioxide by more than 26,000 tons a year at their cement plants

As part of the settlement, Lafarge (NYSE: LAF) will pay a $5 million fine to resolve alleged violations of the Clean Air Act's new source review regulations, the U.S. Environmental Protection Agency said. Lafarge will pay $3.4 million to the United States and $1.7 million to 13 states and agencies. The facilities included in the settlement are in or near Atlanta; Whitehall, Pa.; Ravena, N.Y.; Calera, Ala.; Harleyville, S.C.; Paulding, Ohio; Alpena, Mich.; Tulsa, Okla.; Sugar Creek, Mo.; Buffalo, Iowa; Fredonia, Kan.; Grand Chain, Ill. and Seattle.

The federal government alleged Lafarge and its units, or their predecessors, modified one or more of each of their facilities without first obtaining pre-construction permits and installing required pollution control equipment as required by the Clean Air Act. The violations were uncovered after EPA investigations and review of company reports.

Nitrogen oxides are one of the main ingredients involved in the formation of ground-level ozone, which can trigger serious respiratory problems, EPA said. They also contribute to formation of acid rain, nutrient overload that deteriorates water quality, the creation of atmospheric particles that cause visibility impairment most noticeable in national parks, react to form toxic chemicals and contribute to climate change, according to EPA.

Exposure to sulfur dioxide can aggravate asthma, cause respiratory difficulties, and result in emergency room visits and hospitalization, EPA said.

Burlington factory owner settles with EPA for millions (*Journal Times*)

Posted: Thursday, January 21, 2010 12:50 pm
Saint-Gobain Containers, which is based in Muncie and operates a plant at 815 McHenry St. in Burlington, agreed to a $112 million settlement with the U.S. Environmental Protection Agency on Thursday for violations of the Clean Air Act. Saint-Gobain is the nation’s second largest maker of container glass, the EPA said in a press release announcing the settlement.

Under terms of the settlement, the company agreed to install pollution-control equipment and pay a $2.25 million civil penalty. In the complaint filed as part of the settlement, the press release said, the federal government alleged that over the course of 20 years Saint-Gobain built new furnaces or modified existing furnaces without first obtaining necessary permits and installing required pollution-control equipment.

The settlement covers 15 Saint-Gobain plants in 13 states.

Murkowski tries anew to block EPA regulators (*Anchorage Daily News*)

By ERIKA BOLSTAD
ebolstad@adn.com
(01/21/10 10:56:55)
WASHINGTON -- Sen. Lisa Murkowski took her battle with the Environmental Protection Agency to the floor of the Senate today, saying she was left with no choice but to fight a federal agency she believes is "contemplating regulations that will destroy jobs while millions of Americans are doing everything they can just to find one."
The Alaska Republican announced she would seek to keep the EPA from drawing up rules on greenhouse gas emissions from large emitters, such as power plants, refineries and manufacturers. Murkowski did it by filing a "disapproval resolution," a rarely used procedural move that prohibits rules written by executive branch agencies from taking effect.

She threatened dire economic consequences if the EPA, rather than Congress, writes the rules for how to regulate greenhouse gas emissions under the Clean Act. Both the White House and congressional leaders have said they prefer to write a law that would cap and reduce greenhouse gas emissions. While the House of Representatives has passed such legislation, it has stalled in the Senate.

The EPA is working on regulations that will limit emissions by large producers of greenhouse gases as part of its compliance with a 2007 U.S. Supreme Court decision requiring the agency to determine whether greenhouse gases endanger the country's health and welfare.

If Congress fails to act, the EPA's rules could set the standard for greenhouse gas emissions from big, stationary sources of pollution. Murkowski today re-emphasized her concern about an executive branch agency writing the rules rather than lawmakers.

"If Congress allows this to happen there will be severe consequences to our economy," Murkowski said. "Businesses will be forced to cut jobs, if not move outside our borders or close their doors for good perhaps. Domestic energy production will be severely restricted, increasing our dependence on foreign suppliers and threatening our national security. Housing will become less affordable."

She was immediately countered by Sen. Barbara Boxer, chairwoman of the committee that has done the most work on climate-change legislation: the Senate Environment and Public Works Committee.

Murkowski's disapproval resolution would essentially throw out the process by which the EPA found that greenhouse gases endanger public health, Boxer said.

She called Murkowski's resolution an "unprecedented move to overturn a health finding by health experts and scientific experts in order to stand with the special interests."

The EPA had no immediate comment but has been fighting Murkowski since she introduced a proposal last fall that called for limiting for one year the agency's ability to regulate greenhouse gases. Murkowski argued then that it would give Congress time to work on its own climate legislation so that what she called "the worst of our options, EPA regulation," didn't take effect before lawmakers completed their work.

Murkowski has as co-sponsors 38 fellow senators, including three Democrats: Sen. Mary Landrieu of Louisiana, Sen. Blanche Lincoln of Arkansas and Sen. Ben Nelson of Nebraska.

Her move has prompted an aggressive response by environmentalists, who launched a radio and television advertising campaign in Anchorage and Washington, D.C., that focused on the role two industry lobbyists had in writing Murkowski's original proposal last fall.

It's not clear how much support Murkowski has beyond her 38 co-sponsors. All 12 of the Democrats on Boxer's committee oppose the disapproval resolution.

Senate Majority Leader Harry Reid also criticized Murkowski's effort, saying recently during an event in New York sponsored by the Geothermal Energy Association that Murkowski's proposal was "misguided."

"It's a highly political move, and a highly hazardous one to our health and the environment," Reid said. "If this senator succeeds, it could keep Congress from working constructively in a bipartisan manner to pass clean energy legislation this year."

Landrieu opposes effort to regulate greenhouse gas (*Associated Press*)

Story also appeared: *Worcester Telegram*

NEW ORLEANS — U.S. Sen. Mary Landrieu is opposing the Environmental Protection Agency's effort to regulate greenhouse gases by using the Clean Air Act.

Landrieu, a Louisiana Democrat, is pushing a resolution to stop the first federal limits

on climate-changing pollution from cars, power plants and factories. The White House has said compelling scientific evidence showed that global warming endangers Americans' health.

Landrieu says "greenhouse gases do not harm our lungs and pollute our air." She added that using the Clean Air Act to regulate carbon emissions would result in "poorly-designed regulations" that would damage the economy and do little to improve energy security or stop climate change.

Landrieu says Congress should come up with new legislation to deal with carbon emissions.

EPA Hedges On Approving First State VOC Rules For CAFO Emissions (*Inside EPA*)

1/22/2010
EPA is hedging on whether to approve first-time state rules for controlling volatile organic compound (VOC) emissions from concentrated animal feeding operations (CAFOs), backing measures that strengthen a California air district's plan to regulate the emissions, but deferring or disapproving other portions of the plan.
The decision shows the agency's current thinking on the issue and the shortcomings in existing research on emissions from the sector and could provide insight into how EPA may seek to regulate the emissions as the agency is currently weighing whether to write federal rules governing CAFO emissions.

The agency Jan. 14 issued a limited approval of revisions to the San Joaquin Valley Air Pollution Control District's portion of California's state implementation plan (SIP) to address CAFO emissions of VOCs, a precursor of ozone. The air quality blueprint is intended to bring California into attainment with EPA's 1997 8-hour ozone standard. *Relevant documents are available on InsideEPA.com.*

According to the agency's technical support document, the district's rules are the first in the country to regulate VOC emissions from CAFOs. Other states have written rules to limit dust and ammonia emissions from CAFOs.

The agency approved the portions of the rule that prevent air quality degradation, or backsliding, disapproved the portions of the rule that apply to swine and poultry operations and deferred, due to a lack of information, its decision on the provisions that apply to beef and dairy operations.

However, the agency ignored industry concerns about the rule's cost-effectiveness, variability among different facilities and other issues, rejected the district's defense of the rules and rebuffed some of environmentalists' concerns about the inadequacy of the rules.

If EPA does not approve within 18 months revisions to the SIP that correct the disapproved portions of the plan, the agency may impose sanctions or a federal air plan. In the meantime, the rules, including the portions that have been disapproved and deferred will remain in effect.

EPA Poised To Address Western States' 'Exceptional Events' Concerns (*Inside EPA*)

1/22/2010
EPA air chief Regina McCarthy is considering how to respond to Western state complaints that the agency's controversial rule allowing states to toss out air emissions recorded during so-called "exceptional events" is too complex to implement and discriminates against dusty and fire-prone Western regions, sources say.

As McCarthy weighs the issue, which was raised by the Western States Air Resources Council (WESTAR) in a Sept. 11 letter and discussed by McCarthy and her advisors recently, state requests for EPA to accept exemptions under the exceptional events rule pile up, creating other regulatory problems, state and EPA sources say.

However, in one of few formal agency actions on the rule, EPA Region IX late last year rejected California's request to exempt pollution caused by high winds which brought dust from Mexico over the boarder -- a decision local California officials plan to contest.

One WESTAR source says Western states want EPA to change how the rule is implemented, including fast-tracking agency responses or revising the rule to allow its use "any time monitored values are affected by an exceptional event that is not reasonably controllable or preventable, or allow for data that does not otherwise meet the definition of an exceptional event to be excluded" on a case-by-case basis.

The source says the problem so far has been that the issue is low on the Obama administration's list of priorities. "We are trying to get Gina McCarthy's attention on this," the source says.

An EPA headquarters spokesman declined to elaborate on what the agency might do, while noting in a Jan. 14 statement that, "We are continuing to work on this issue."

States are seeking changes in how the Obama EPA implements the controversial 2007 Bush-era rule allowing states to toss out pollution measured on ambient air quality monitors -- which determine compliance with national ambient air quality standards (NAAQS) -- when those emissions are caused by exceptional events such as high winds and fires that cannot be predicted or controlled.

At the same time, environmentalists who unsuccessfully challenged the Bush-era rule in court are keeping a watchful eye to ensure that the Obama EPA does not ease the

rule's implementation and allow local areas to show compliance with NAAQS limits by improperly using exemptions allowed under the rule.

Under the rule, an exceptional event is broadly defined as a natural event or an event that is unlikely to recur that is not reasonably controllable or preventable. States must prove that such events are the exclusive cause of the monitored exceedance, and that the event caused a measured pollutant concentration in excess of normal historical fluctuations.

WESTAR in its letter to McCarthy says many problems with the rule's implementation "can be traced to the lack of clarity surrounding EPA's expectations about what a state should include in its demonstration package, as well as lack of consistency between the preamble and the rule itself."

For example, EPA Region IX in a Dec. 22, 2009, letter to Imperial County, CA, rejected the county's request for EPA to certify that certain high-wind events that caused dust storms in 2006 and 2007 qualified under the exceptional events rule. *Relevant documents are available on InsideEPA.com.*

The finding is the first final non-concurrence under the rule issued by Region IX, which has the largest backlog of requests for exceptional events determinations of any EPA region, and is prompting states to escalate their concerns with EPA's implementation of the rule.

Industry Says Upcoming EPA MACT Rules Delaying Switch To Renewables (*Inside EPA*)

1/22/2010
EPA's delay in proposing maximum achievable control technology (MACT) rules for boilers and incinerators -- and a related definition of what materials are considered boiler fuel rather than incinerator waste -- are causing industry to delay major investments into planned switches to renewable fuels, such as wood waste, industry sources say.

The delay in switching to renewable energy sources is significant because it postpones investments in a poor economic environment as well as related air quality benefits that will be achieved by moving away from fossil fuels, industry sources say. Further, they note that the delays may become permanent if EPA imposes a stringent waste definition that captures many renewables or if industry believes EPA's upcoming MACT rules are too onerous.

EPA says it will likely propose its Clean Air Act definition of nonhazardous materials that are solid waste April 15, alongside proposals for the boiler MACT and commercial and industrial solid waste incinerator (CISWI) rules that face legal deadlines for issuance.

EPA in January 2009 issued an advance notice of proposed rulemaking for the waste definition rule, and is facing industry pressure to issue the proposal ahead of the two MACT rules, which were to have been proposed last fall. But EPA and environmentalists extended the court-ordered deadline to mid-April and the deadline for a final rule to mid-December, prompting one power company to announce this month it will delay a planned conversion from coal to woody biomass.

Power industry sources say the delay, announced Jan. 8 by Southern Company subsidiary Georgia Power, is symptomatic of a broader trend throughout the industry. Facilities are more seriously considering switching to renewable energy sources -- particularly in the face of looming first-time EPA climate change rules expected to be unfriendly to coal. However, those facilities are faced with uncertainty over the pending EPA waste definition and whether converted facilities will be regulated under Clean Air Act section 112 as a boiler, or under the more stringent section 129 of the air act as an incinerator, as well as uncertainty about the stringency of EPA's pending boiler MACT.

A power industry source says the Georgia Power delay is just one example of how the upcoming interrelated EPA rules are delaying conversions to cleaner fuels -- along with associated environmental benefits.

"Plans to convert to renewable fuels are not happening right now, even though EPA wants to encourage [such switches.] There are investment uncertainties nationwide," the industry source says. "Part of the problem is we have no idea what the . . . boiler MACT is going to be. . . . The other concern is EPA is still going to come up with a revised definition of solid waste, which will determine what kinds of biomass these plants can burn."

Industry does not know whether EPA will define materials such as tree waste, wood chips, corn husks, peanut shells, switch grass and tires as fuel or as waste, so "We are in a quandary right now," the source says.

A Southern Company spokeswoman says Georgia Power will decide whether to convert the Mitchell plant from coal to wood waste after EPA issues the proposals, delaying its plan to make the change this year.

The spokeswoman expects the facility to fall under the industrial boiler MACT, rather than the CISWI rule, if it switches from its current design as a 155-megawatt coal-fired power plant, where it would otherwise be subject to EPA's upcoming utility MACT, to a 96-megawatt plant fueled by wood waste left on forest floors after timber harvests. "The conversion is being delayed because we want to see what the boiler MACT requirements are going to be," the spokeswoman says. "We intended to start spending additional money on the project in the next couple of months, but have decided it is more prudent to see what those rules say before we spend additional capital on the project.

“Our intention is to move away from coal and to a renewable fuel. This is a big project and we have invested a lot. . . . We want to move forward with it. Our hope is that we can do it, that the rule will not impact it adversely and we will be able to press ahead with the design,” according to the spokeswoman.

Georgia Power in a statement on the delay cited the “uncertainty” of how the upcoming EPA rules will impact industrial boiler emissions. “Georgia Power is committed to furthering the development of renewable energy in Georgia,” the company said. If the conversion proceeds as planned, “Plant Mitchell will have lower emissions and will be one of the largest wood biomass plants in the United States,” the company says.

EPA declined to discuss the issue other than to lay out the time line for its upcoming proposals.

The power industry source says there is also growing concern that EPA may define legitimate biofuels as waste. “It is hypothetical that EPA could limit its definition of biomass to wood and wood chips, and those fuels would fall under the industrial boiler rule, [but everything else] could be designated as waste.”

A boiler industry source adds that another aspect of the problem is that any power plant currently subject to utility rules that switches to a fuel subject to the boiler MACT will face an earlier deadline to comply. The boiler MACT must be finalized in December while the utility MACT must be finalized in December 2011.

While the boiler MACT is not expected to be more stringent then the utility MACT, industry fears both could be virtually impossible to meet. Industry supported the original Bush EPA boiler MACT rule that was vacated by a key federal appeals court as unlawful, and worries about the stringency of the boiler MACT rule under the Obama EPA. “You’d be crazy to plan a conversion if you don’t know what the outcome is going to be. . . . I’d put it off too.”

The source adds that industry also has concerns that EPA will adopt a stringent definition of solid waste that includes many legitimate biofuels because of what the source calls the “GLC equation,” referring to EPA air chief Gina McCarthy, EPA Administrator Lisa Jackson and White House energy and climate czar Carol Browner. “The GLC equation says if it is not a pristine fuel, we’ll find a way to put it under section 129,” the source says.

Additionally, the source notes the boiler MACT is expected to set the “floor” for the utility MACT, which will be proposed in March 2011, just months after the boiler MACT is finalized. The related fuel definition and CISWI rule, also expected to be finalized in December, will complete the package. And the source notes EPA officials from the solid waste and air offices are working “independently but transparently” with each other to coordinate all of the rules.

One environmentalist, however, downplays industry concerns about delays in making switches to renewables, noting that the key proposals will be issued in a few short months. “We are not talking about a very significant delay in the scale of building a plant. And if you look at the docket for the solid waste rulemaking, it is clear that every industry is lobbying as hard as it can to be allowed to burn any kind of waste and be exempt from incinerator requirements.”

The source adds that EPA is not sharing how it may define materials such as wood chips and corn husks but notes, “There are probably things that are all right to burn, but it is a very tricky question. What kind of corn husks are you talking about, and are they covered in pesticides, and are those pesticides released into the environment when burned? It tends to be a more complicated question than industry presents it as.” -- *Dawn Reeves*

EPA Quietly Unveils Ozone Fee Guidance Offering Case-By-Case Flexibility (*Inside EPA*)

1/22/2010
EPA has quietly unveiled its guidance for how states should implement a Clean Air Act requirement to impose thousands of dollars in fines on pollution sources in areas out of attainment with EPA’s ozone standard, granting limited flexibility from imposing the fees and assessing alternatives on a case-by-case basis.

Alongside the guidance, released Jan. 5, EPA also formally rejected a California air district’s rule to implement the fee provisions by finding that it illegally exempts certain emission sources, likely forcing the district to redo the rule to comply with the new guidance.

The guidance should also spur other air districts to revise their plans for imposing the fees -- along with alternatives to imposing the fees -- in order to comply.

Stephen Page of EPA’s Office of Air Quality Planning & Standards sent the guidance to all agency regional air division directors, outlining how states can comply with section 185 of the air act. The section requires states with areas deemed in “severe” or “extreme” nonattainment with EPA’s old 1-hour ozone national ambient air quality standard (NAAQS) to impose fines on stationary sources if the area fails to attain the standard by the required date.

EPA developed the guidance with input from a Clean Air Act Advisory Committee task force amid agency uncertainty on how to legally provide flexibility that would allow states to implement alternative emission reduction programs in lieu of imposing the expensive fees. *The guidance is available on InsideEPA.com.*

In the absence of federal guidance, several states -- including Texas and local air districts in California -- have crafted their own plans for implementing the fees that allow exemptions from the fines. EPA's guidance formalizes the alternatives to fines that states can pursue.

States with areas classified as in severe or extreme nonattainment of the 1-hour standard at the time of the initial attainment designations for EPA's subsequent 8-hour ozone standard are subject to section 185 requirements. EPA says states can meet this requirement either through revising a state implementation plan (SIP) -- a blueprint for meeting EPA air standards -- to incorporate the fee program, or through an "equivalent" alternative program.

The air act sets the fee at $5,000 per ton of nitrogen oxide and volatile organic compounds emitted by a source during a calendar year in excess of 80 percent of the "baseline amount," the guidance says. The fees may be adjusted for inflation, EPA notes. The fees continue to apply to a source until the area meets the NAAQS, an approach aimed at driving sources to cut emissions. EPA says it will accept alternative programs if they are "not less stringent" than the expected emissions cuts that would come as a result of imposing the section 185 fees.

For areas that EPA determines are meeting either the 1-hour or the 1997 8-hour ozone air standards based on permanent and enforceable emissions cuts, EPA says the area is no longer obligated to submit a fee program SIP revision, because the cuts will meet section 185's goal of achieving attainment.

Areas that do not qualify as being in attainment can satisfy section 185 by focusing on "fee assessment, achieving further emissions reductions, or some combination of both in developing an alternative program," according to EPA's guidance. To ensure an alternative is not less stringent than section 185 mandates, states must provide data comparing emissions reductions and expected fees under section 185 to the proposed alternative.

EPA recommends that states work with the agency on a case-by-case basis in offering alternatives, and also says that any alternatives will have to go through the notice-and-comment rulemaking process.

The guidance says one alternative is for a state to develop a program that "clearly raises at least as much revenue" as the section 185 fees, perhaps through shifting the fee burden from a specific set of major stationary sources to other non-major sources, including owners and operators of mobile sources. States could also craft fee plans that target fees at less well-controlled sources as an incentive for those sources to further reduce emissions.

Another alternative is for states to adopt a program that achieves at least as many additional emissions cuts as expected from the section 185 fees. The pollution cuts in

the alternative program could come from the same set of sources subject to the fees, or from a different set in whole or in part, EPA says.

States could also adopt a combination of an emission-equivalent program and a fee-equivalent program, EPA says. For example, some portion of the emissions reductions necessary to demonstrate equivalenc

EPA Scales Back Utility MACT Data Collection After White House Review (*Inside EPA*)

1/22/2010
Following White House review, EPA has scaled back the scope of its final information collection request (ICR) to support its pending strict maximum achievable control technology standard (MACT) for power plant air toxic emissions, reducing sampling and other requirements that could save industry $30 million in associated costs.

The White House Office of Management & Budget (OMB) approved the changes to the data collection request Dec. 24, according to a notice published in the Jan. 15 *Federal Register*. Among the alterations EPA made to scale back the collection request are provisions limiting sampling and analytical requirements, and giving smaller companies more time to submit sampling data. The cost to industry is expected to drop from roughly $105 million to about $75 million. *Relevant documents are available on InsideEPA.com.*

However, EPA in responses to comments on the ICR rejected a host of other industry requests to further narrow the scope of the data collection. For example, EPA refused to extend beyond eight months the deadline for when the data is due and strongly rejected calls to limit the ICR only to mercury emissions.

EPA is under a legal deadline to develop a first-time MACT for coal- and oil-fired power plants by the end of 2011 after the U.S. Court of Appeals for the District of Columbia Circuit vacated the Bush-era effort to de-list electricity generating units as a “source category” subject to the technology-based emissions limits. The ICR will be key to EPA’s development of the MACT by requiring industry to collect reams of data to help support the rule, which must require all facilities to meet emissions based on the average of the top 12 percent of best performers.

An earlier draft ICR would have required industry to use so-called duplicate trains for stack tests, meaning each stack would have to be tested with two probes. But in the amended ICR approved by OMB, the agency is agreeing to allow single sampling of stack tests at about 150 units.

In addition to reducing the amount of sampling, the change will also lower analytical costs “because industry will have to analyze one sample instead of two,” one industry source says. “It halves the number of samples you have to analyze and that is something that was pretty important to industry. . . . It is a positive step.”

EPA’s Dec. 16 response to comments says, “EPA has reviewed the requirement for paired/duplicate trains and has decided that the requirement is not essential to the completion of the ICR or to the acquisition of adequate data on which to base a standard. Although we continue to believe that the use of paired trains is the preferred method, we do not want to undermine the industry’s ability to comply with the time frame established in the ICR.”

The other key change that EPA agreed to make to the data collection request on industry’s behest is to allow smaller companies subject to stack sampling requirements to ask EPA to be allowed to submit all data at the eight-month mark, rather than the time frame EPA is imposing on most of the industry, requiring 60 percent of data to be submitted in six months, 20 percent in seven months and the remaining 20 percent within eight months.

While EPA’s changes scale back the ICR, industry continues to oppose elements of the overall ICR, including the agency’s collection of data on air toxic emissions other than mercury.

Industry in comments on the draft ICR argued that forcing utilities to provide data on non-mercury emissions violates the Clean Air Act. But EPA rejected those claims in an earlier Nov. 5, 2009, response to comments, noting that it intends to set a limit for every air toxic emitted and citing the D.C. Circuit’s ruling vacating the Bush mercury trading rule as one that “foreclosed” industry claims.

Industry also opposes EPA’s unchanged plans to conduct tests for dioxin and furan at 50 random plants. The industry source says the plan does not follow the regular process of developing MACT based on the best performers. “Those 50 random plants are not, by definition, the best performing units,” according to the industry source. “We think it is a waste of money. EPA thinks they need it. We asked that it be removed from the ICR and it wasn’t.”

EPA defends the requirement in its final response to comments, saying it “has no basis for determining the top performing 12 percent of units for dioxin/furan . . . emissions. Therefore, EPA has selected 50 units at random from the population of coal-fired” plants to make such a determination. -- *Dawn Reeves*

CLIMATE CHANGE/GLOBAL WARMING

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Dorgan Open To Supporting Murkowski Push To Block EPA GHG Rules (*Inside EPA*)

1/22/2010
Sen. Byron Dorgan (D-ND) says he may be open to supporting a pending legislative effort by Sen. Lisa Murkowski (R-AK) to block EPA regulation of greenhouse gases (GHGs), but is avoiding taking a firm position because Murkowski is yet to formally unveil the text of her proposal.

At the same time, Sen. Jim Webb (D-VA) told reporters Jan. 20 that he is "talking with" Murkowski about a possible Senate vote to block EPA regulations, but did not elaborate.

Murkowksi has said she is planning to offer a stand-alone resolution that would block EPA regulation of GHG emissions, indicating a shift in strategy that could allow her more time to gain bipartisan support for the measure. Earlier, the senator had indicated she planned to offer the resolution as an amendment to legislation on raising the federal debt ceiling, which is slated for Senate floor consideration any day.

During a Jan. 19 conference call for the group Securing America's Future Energy -- when Murkowski was still touting a possible rider as her preferred strategy -- Dorgan said, "Depending on how the amendment is drafted . . . is there an amendment that I could possibly support? Maybe."

Meanwhile, environmentalists are targeting Murkowski and Rep. Earl Pomeroy (D-ND), who recently introduced legislation to block EPA GHG rules, with new television ads criticizing those efforts. Pomeroy said in a statement to *Inside EPA*, "It is my strong view, and that of many others in Congress, that this is a matter for the legislative branch. The Clean Air Act is poorly equipped to deal with greenhouse gases which is why I introduced my bill and some ads from some out-of-state interest groups are not going to stop me from doing what is right." Calls to Murkowski's office for comment were not returned by press time.

The State Voice coalition of environmental officials from California, Connecticut and other states also sent a Jan. 15 letter to Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) urging the Senate not to strip EPA's authority to regulate GHGs and oppose Murkowski's rider. "Congress should guarantee that the well-established and proven tools under the [Clean Air Act] remain available to assist in achieving the nation's GHG reduction goals," according to the group's letter. *The letter is available on InsideEPA.com.*

Dorgan, who chairs the Democratic Policy Committee, also says he does not think climate change legislation will move through Congress this year and reiterated his preference for the Senate to take up just the energy bill that passed through committee last year. He noted that components of that bill -- including its establishment of a nationwide renewable electricity standard, efficiency incentives and new transmission

policies to expand access to renewable energy -- would provide a starting-point for efforts to reduce GHG emissions that could be built on in future sessions.

The energy bill could pass the Senate by June, Dorgan predicted, but he stressed that decisions on scheduling were entirely up to Reid. The majority leader last week said he would like to see the chamber take up an energy and climate bill this spring that would cover the same ground as the cap-and-trade bill that passed the House last year. Sen. John Kerry (D-MA), who along with Sens. Lindsey Graham (R-SC) and Joe Lieberman (I-CT) is working on assembling a bipartisan climate bill, opposes efforts to separate the energy bill from wider efforts to regulate emissions.

3 Dems co-sponsor Murkowski's bid to hamstring EPA (*Greenwire*)

Robin Bravender and Darren Samuelsohn, E&E reporters
01/21/2010
Three moderate Democrats are supporting a Senate measure aimed at blocking U.S. EPA's authority to regulate greenhouse gas emissions, the measure's GOP sponsor said today.

The proposal is being offered this afternoon by Alaska Republican Lisa Murkowski in a bid to retroactively veto EPA's finding that greenhouse gases endanger public health and welfare, a determination that sets the stage for pending climate rules, Murkowski spokesman Robert Dillon said.

Sen. Blanche Lincoln (D-Ark.), who chairs the Agriculture Committee, along with Sens. Ben Nelson (D-Neb.) and Mary Landrieu (D-La.) have signed on as co-sponsors of Murkowski's resolution, the Alaska senator said today.

"I am very concerned about the burden that EPA regulation of carbon emissions could put on our economy and have questions about the actual benefit EPA regulations would have on the environment," Lincoln said. "Heavy-handed EPA regulation, as well as the current cap-and-trade bills in Congress, will cost us jobs and put us at an even greater competitive disadvantage to China, India and others."

Lincoln said the Senate should focus on slashing carbon emissions by passing the energy bill that cleared the Senate Energy and Natural Resources Committee last June.

Murkowski has been considering several options for blocking EPA regulations, including the disapproval resolution and an amendment to a debt ceiling bill. The senator decided to introduce the resolution today, Dillon said, but could still offer an amendment if she chooses to.

"She's going forward with the disapproval resolution. It's a cleaner process; it goes right to the heart of the issue," Dillon said. "She doesn't see the need to do both unless something changes," he added.

The disapproval resolution would require 51 votes to pass, while the amendment would require 60 votes. The House would have to approve, and President Obama would have to sign either one in order for it to become law. Murkowski's office and other observers have acknowledged that both measures would face tough political fights.

Several other moderate Democrats said yesterday that they had spoken to Murkowski about her efforts to block EPA climate rules, although they declined to say whether they would vote for her resolution (*E&ENews PM*, Jan. 21).

White House vows to fight resolution

Meanwhile, the Obama administration is girding to battle Murkowski's efforts to limit EPA's regulatory authority.

"The Senate leadership has been clear that the substance of the resolution is something that they oppose," Gary Guzy, deputy director of the White House Council on Environmental Quality, said today. "And we will work with them in order to try and prevent its passage."

Asked what Obama would do if the resolution did clear both chambers of Congress, Guzy replied, "I'm not going to speak for the president. If we get there, we'll make some judgments about that then."

Of the EPA endangerment finding, he said, "That really has represented years of consistent work and is something that was required by and flowed from the Supreme Court decision in *Massachusetts v. EPA*. So we remain very concerned about undermining that body of scientific work and departing from what is really a scientifically required and appropriate set of findings."

While serving as the top EPA lawyer during the Clinton administration, Guzy argued that greenhouse gas emissions from motor vehicles could be subject to regulation under the Clean Air Act. His legal memos spawned the lawsuits that led to the Supreme Court ruling.

House GOP asks White House to stall endangerment finding

Meanwhile, House Republicans are urging the White House to force EPA to reconsider its endangerment determination.

Reps. Lamar Smith (Texas), Trent Franks (Ariz.), Sam Graves (Mo.), and Lynn Westmoreland (Ga.) asked the Office of Information and Regulatory Affairs (OIRA) to exercise its authority to force EPA to reconsider its finding and at a minimum withdraw

the finding unless the agency further investigates how its proposed rules will affect small businesses.

"On the basis of EPA's endangerment finding, virtually every economic activity undertaken in America stands to come under the thumb of federal regulation," said a **letter** sent today to OIRA chief Cass Sunstein.

White House affirms commitment to comprehensive bill (*Greenwire*)

Darren Samuelsohn, E&E senior reporter
01/21/2010
A senior White House adviser rallied to the defense today of comprehensive climate and energy legislation despite questions from moderate Senate Democrats about pushing a controversial bill at a time of voter revolt on the economy.

"There continues to be very strong support among a range of legislators for comprehensive climate legislation that includes cap and trade," said Gary Guzy, the deputy director of President Obama's Council on Environmental Quality.

Guzy, speaking at a conference hosted by the ICF International consulting group, said Obama would make the public connection in the coming months between the overall climate and energy measure and his broader push toward economic recovery.

"The president believes that the inclusion of a transformation of the economy to a clean energy economy is a critical part of achieving our country's economic recovery, so we will continue to work to address that comprehensive set of issues," Guzy said.

Moderate Senate Democrats -- including Carl Levin of Michigan, Tom Carper of Delaware, Dianne Feinstein of California and Robert Casey of Pennsylvania -- questioned yesterday a push for a sweeping climate and energy bill when voter angst is centered around the economy. They spoke a day after Republican Scott Brown's surprise victory in the Massachusetts special election to fill the Senate seat of the late Ted Kennedy.

"It's going to be very hard to do something on that in the next weeks and months," Casey said. "And after that, I can't tell. But we have to have substantive strategies on job creation."

Several moderate Democrats have also urged Obama to slice off cap-and-trade provisions and promote an energy-only measure. But Guzy said the administration was not planning for a less-aggressive Plan B.

"We're working to be able to accomplish comprehensive legislation," Guzy said.

Obama officials are relying on Sens. John Kerry (D-Mass.), Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.) to come up with the sweeping bill that can then be conferenced with House-passed global warming legislation. The trio are meeting daily on their bill and hope to produce a product for floor debate by the spring. Graham yesterday said he is pleading with GOP colleagues to support a cap on emissions in exchange for an expansion of domestic energy resources, from offshore and onshore drilling to nuclear power.

"I've got a lot of Republicans who are really excited about the energy part," Graham said yesterday. "What I'm telling them, and what I'm telling y'all, if you want energy independence, the way to get there is through cleaning up the air, and we'll see what happens."

Industry groups met to discuss legal action against EPA regs (*Greenwire*)

Robin Bravender, E&E reporter
01/21/2010
Representatives from a host of heavyweight industry groups gathered at a Washington law firm last week to discuss legal strategies for combating U.S. EPA's pending climate regulations, according to sources familiar with the matter.

Attorneys and lobbyists from at least a dozen industry associations met at Sidley Austin LLP on Friday to discuss a joint strategy for challenging the agency's forthcoming efforts to curb greenhouse gas emissions, sources said. People agreed to discuss the meeting on background because their organizations did not authorize them to speak publicly about legal matters.

Attending were representatives of the American Chemistry Council, American Petroleum Institute, American Public Power Association, Edison Electric Institute, National Association of Manufacturers, National Petrochemical and Refiners Association and the U.S. Chamber of Commerce, the sources said.

Sidley Austin convened the groups for a "sales meeting" in which the firm was "essentially offering its services to potentially consolidate a joint litigation strategy," a source said. The meeting lasted a little over an hour, a participant said, and reached no conclusions.

Nick Braden, a spokesman for the American Public Power Association, confirmed a representative from his group attended the meeting, "one of a series of meetings where industry trade groups get together."

"We didn't offer any kind of opinion either way," Braden said.

Several sources said the groups that were present do not share a uniform view about EPA's effort.

Sidley Austin partner Roger Martella led the first half of the meeting, a participant said. The meeting was then guided by representatives of industry groups. Martella declined to comment on the meeting, citing attorney-client privilege.

Jeff Holmstead, an attorney at the Washington law firm Bracewell & Giuliani, said these types of meetings are held occasionally with trade groups. "If law firms are aware that there's a concern with a particular regulation, then firms like to be involved with these things, and they will occasionally pitch their services," he said.

Both Martella and Holmstead came under fire recently after news reports revealed that they advised Sen. Lisa Murkowski (R-Alaska) on a failed amendment last fall that sought to block EPA from regulating greenhouse gases from stationary sources for one year (*E&E Daily*, Jan. 12).

John Walke, clean air director at the Natural Resources Defense Council, called the groups present at the meeting the "legion of doom."

"Individually and sometimes collectively, those groups have been the most prominent in fighting health and environmental protections under the Clean Air Act," Walke said.

ENERGY

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TownePlace Suites to Become First LEED Certified Hotel at Baltimore BWI Airport (*AZoBuild*)

TownePlace Suites by Marriott At Baltimore BWI Airport will receive LEED® Existing Building Certification from the U.S. Green Building Council (USGBC), making the hotel the first property at BWI Airport to have that distinction.

LEED (Leadership in Energy and Environmental Design) certification is an internationally recognized green building certification system, providing third-party verification that a building was designed and operated to provide enhanced energy savings, water efficiency, emissions reduction and overall environmental quality. LEED certification is available for existing buildings that have been retrofitted to comply with USGBC standards and those newly constructed.

The TownePlace Suites property, built in 2007, is undergoing comprehensive programs to qualify for LEED status, including composting all breakfast waste to achieve zero waste, using sustainable and environmentally friendly cleaning products, replacing plumbing hardware with low-flow devices and purchasing renewable energy wind credits to offset the hotel's carbon footprint.

"We're thrilled that the TownePlace Suites property will be BWI Airport's first LEED certified hotel," said Michelle Emley, general manager of the hotel. "Going green is not only good business, it's the right thing to do. Because we host so many business and leisure travelers every day, we have the opportunity to set a great example and teach people the easy steps they can take to make their own homes more environmentally friendly."

The owners of the TownePlace Suites property also recently opened downtown Baltimore's first green hotel, on track for Gold LEED-certification, the Fairfield Inn & Suites Baltimore on S. President Street, blocks from the Inner Harbor. Located on the site of the former Baltimore Brewing Company, the hotel's distinctive and environmentally friendly design includes a rain barrel made from the brewery's repurposed grain storage silo, which is now used to capture and store rain water to serve the property's landscaping irrigation needs.

Both the TownePlace Suites Baltimore BWI and the Green Fairfield Inn Baltimore have also been awarded the Environmental Protection Agency's ENERGY STAR® Rating, the first step in LEED certification. ENERGY STAR, which provides an energy performance rating system used for consumer products, appliances and commercial and industrial buildings, is a joint program of the U.S. Environmental Protection Agency

and the U.S. Department of Energy. Buildings that rate in the top 25 percent nationwide for energy efficiency qualify for the ENERGY STAR.

Source: http://www.marriott.com/default.mi

Posted 22nd January 2010

FUEL

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EPA To End GHG 'Grandfathering' For Corn Ethanol Plants In Pending RFS (*Inside EPA*)

1/22/2010

EPA's upcoming final renewable fuel standard (RFS) will stop "grandfathering," or exempting, existing corn ethanol plants from having to meet the standard's greenhouse gas (GHG) reduction requirements by forcing currently exempt facilities to meet the GHG requirements when they make modifications, a senior EPA official says.

Paul Argyropoulos of EPA's Office of Transportation & Air Quality said EPA will also include more detailed analysis of the RFS' non-GHG air quality impacts and use some new methodologies in its final rule as compared to its proposal. "We have new information, updated scientific data and research," he said at a National Academies of Science (NAS) biofuels panel event Jan. 15 in Washington, DC. "We actually modified our methodologies . . . for making our final determinations."

The new methodologies could be an example of what one environmentalist had previously said could be significant changes to the agency's climate calculations between the proposed and final rule. At press time, the White House Office of Management & Budget was still reviewing the final regulation.

EPA will issue the rule in the "very near future," Argyropoulos told the NAS panel, which is conducting a study of the energy security, environmental, economic and other impacts of biofuels policies as required by provisions in the 2007 energy law -- which mandated creation of the agency's pending RFS -- and the 2008 farm bill.

The RFS will for the first time require GHG reductions from fuels compared to gasoline. The law requires increasing volumes of biofuels to be blended into gasoline, reaching 36 billion gallons in 2022, and requires each of four categories of biofuels to reduce GHGs by different amounts compared to gasoline, ranging from 20 percent reductions for corn ethanol to 60 percent reductions for cellulosic biofuel.

Ethanol producers criticized EPA's May proposed rule, saying the agency overestimated the climate impact of fuels, for example by considering the climate impact from international land use change that occurs when farmers in other countries clear forests to plant crops to replace U.S. feedstocks that have been diverted to biofuels. Argyropoulos' remarks offer an early indication of how the agency will approach some of the contentious climate issues in the rule.

For example, Argyropoulos said the final rule will limit the scope of a grandfathering provision in the 2007 law, which exempts corn ethanol plants under construction or operating at the time the law was enacted from the RFS' 20 percent GHG reduction requirement. After discussing the grandfathering provision, he said, "Now, if you make changes to your facilities . . . they would then also have to meet the minimum 20 percent reduction requirements."

EPA's proposed RFS outlined a number of options for interpreting the exemption, but Argyropoulos did not clarify which option the agency will select in its final rule. EPA's stated preferred alternative is to continue to exempt a baseline amount of biofuels that the grandfathered facility produced at the time of the energy law, but require new volumes enabled by facility modifications to meet the 20 percent reduction mandate.

But the agency proposed four other options, two of which could end grandfathering at the facilities when they make modifications. One option would redefine grandfathered facilities as new facilities subject to the RFS' GHG limits if the facility underwent enough repair and reconstruction to be considered a new facility. Another option would apply the standard's GHG limit to any new significant production units at the facility.

Argyropoulos also said that EPA is changing some of its methodologies for the final RFS, but did not provide details or outline how the changes would impact the rule. EPA is also expanding its analysis of non-GHG air quality impacts, including emissions from vehicles, off-road vehicles and fuel production and distribution. "We've gone well beyond where we were in the notice of proposed rulemaking, including assessing the air quality impacts," he said.

Argyropoulos also confirmed that EPA will accept petitions from industry to evaluate new biofuels to determine whether they meet the RFS. EPA said in the proposal that it would allow producers or importers of new renewable fuels or biofuels processes to apply to EPA to determine whether they meet the law's definition of renewable fuel.

The changes in methodologies Argyropoulos mentioned may show what the environmentalist had previously said could be significant differences between the proposed and final rule. There were a lot of unanswered questions in the proposed rule and EPA planned to conduct additional analysis after the proposed rule that could impact the final rule, the environmentalist says.

For example, there was a significant piece of analysis dealing with forestry that was not done in the proposal, which alone could have a significant impact on the final rule, the

source says. If EPA's forestry analysis in the final rule shows that biofuels have an impact on domestic forests, it could drive up the fuels' GHG lifecycle impacts, which help determine whether fuels reduce GHGs enough to qualify for RFS credits.

EPA's proposed rule says the agency plans to use the Forestry Agricultural Sector Optimization Model to look at the interaction between agriculture and forestry, but that the agency had not yet run the forestry portion of the model. "We plan to utilize a complete version of the model for our analysis in the final rule, where agricultural land use impacts also affect forestry land use, and cellulosic ethanol produced from the forestry sector will affect cellulosic ethanol production in the agriculture sector," according to the proposed rule.

EPA also used interim values in the Food and Agricultural Policy Research Institute's (FAPRI) international agricultural models, the environmentalist says. If the agency changes its assumptions in this model for crop yields or the value of co-products, it could ripple through the agency's numbers for imports and exports, the source says. "The really big impacts come from changes to exports," the source says.

The FAPRI model, when combined with additional EPA analysis, helps determine the controversial international land use change portion of the agency's analysis, which also helps determine which fuels meet the GHG reduction requirements necessary to gain credit under the standard. -- *Kate Winston*

EPA Faces Broad Opposition To Plan For Strict Risk Levels For Methanol (*Inside EPA*)

1/22/2010

EPA is drawing broad opposition from industry and other federal agencies to its proposal to set strict risk levels for the synthetic fuel methanol, with industry warning it will undermine growing production of biodiesel and other commercial uses and federal agencies saying the agency has not made the case for strict cancer and risk protections.

EPA Jan. 13 unveiled its draft Integrated Risk Information System (IRIS) assessment of methanol, which for the first time lists the chemical as a likely human carcinogen and also sets a first-time safe daily dose for inhalation exposure, or reference concentration (RfC), of 2 milligrams per cubic meter of air. *Relevant documents are available on InsideEPA.com.*

The agency's prior assessment, published in 1993, included a safe daily oral dose, or reference dose (RfD) of 0.5 milligrams per kilogram per day (mg/kg-day) but concluded there was insufficient data to perform a cancer assessment or calculate an RfC. EPA's new draft includes a nearly identical RfD of 0.4 mg/kg-day.

EPA's draft says that methanol is "among the highest production volume chemicals reported in the U.S. EPA's Toxic Release Inventory," in 2008. EPA notes that it anticipates increased demand for methanol, which it says is "growing steadily in almost all end uses," but is largely linked to increased biodiesel production.

But the Methanol Institute, the industry's global trade association, says in a Jan. 12 statement that EPA's pending risk assessment could result in harmful economic impacts. "The stakes of this scientific review of the EPA health assessment are high," says Institute spokesman Greg Dolan.

According to the Institute's statement, methanol is used to make products including paints, plastics, solvents and textiles. Global methanol consumption in 2008 was approximately 14 billion gallons, and is expected to reach more than 17 billion gallons by 2012, according to the statement. "Methanol is an essential chemical building block for hundreds of products that touch our daily lives. It is also a re-emerging energy fuel," he says. Methanol also occurs naturally in fruits and vegetables.

But industry and the White House Office of Management and Budget (OMB) argue that EPA's proposed risk levels are stricter than background levels. "Does EPA recognize, based on the [World Health Organization's International Programme on Chemical Safety] findings, that they are proposing standards that would be below background levels? ... How has EPA taken consideration of background levels into account?" OMB writes.

The Methanol Institute's Dolan says that EPA's proposed reference dose could be equaled by drinking an eight-ounce glass of orange juice.

The agency critics also raise numerous questions with EPA's assessment of methanol's carcinogenicity. The Defense Department, for example, says it is "premature" for EPA to identify the fuel as a "likely" human carcinogen, due to stated differences between human and rodent metabolic processes, the limitations of the animal studies discussed in EPA's draft assessment, and lack of human data to support the carcinogenic potential of methanol, according to the Pentagon's February 2009 comments released alongside the draft assessment.

The comments suggest that EPA's assessment is on shaky ground because there has not been an increase in the incidences of lymphoma suggested by EPA's risk findings. "Since food represents the greatest source of exposure, one would anticipate a large increase in incidence of lymphoma in humans as methanol is a naturally occurring chemical produced in the human body and readily found in air and body fluids."

Similarly, OMB points out that the National Institutes of Health's Hazardous Substances Data Bank, which is frequently updated, states that there is no evidence from animal studies to suggest that methanol is carcinogenic.

GENERAL

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Obama EPA Changes To Bush-Era Policies Rankle Some Agency Staff (*Inside EPA*)

1/22/2010

Obama EPA changes to Bush-era environmental policies are increasingly rankling some agency staff due to concerns that the overhauls are being made for political and not substantive reasons and without an effective strategy to replace the previous administration's programs, agency sources and observers say.

Among the changes sparking concern are a push by EPA Administrator Lisa Jackson to regulate some types of coal ash as hazardous that staff say is consuming valuable resources and risks the future of EPA's coal ash reuse program, and the termination of a key Bush-era voluntary chemicals assessment program in favor of mandatory "action plans" to address chemicals of concern. EPA did not respond to a request for comment by press time.

One former agency source says the Obama EPA's termination of the Bush administration's voluntary Chemical Assessment and Management Program (ChAMP) upset some career staff within the Office of Prevention, Pesticides & Toxic Substances (OPPTS). "The decision to back away from ChAMP was one people who worked in the program office were surprised and disappointed by," according to the former agency source.

EPA's Jackson in September terminated ChAMP, a program critics said was an inadequate approach to chemical assessments. "The office [OPPTS] has struggled for a long time to develop an effective program. While ChAMP was not an answer to all issues, there were useful elements in it," the source says.

ChAMP was implemented to meet commitments that former President George W. Bush made on chemical security issues to his Canadian and Mexican counterparts. ChAMP aimed to assess nearly 7,000 chemicals by 2012, prioritizing chemicals for EPA to act upon. It relied on usage data that industry is required to provide EPA every five years under the Inventory Update Reporting rule, combined with hazard information volunteered by industry.

ChAMP was "designed to meet a lot of concerns," says an EPA source. "We made a lot of commitments to Canada and Mexico. When they jerked the rug out from under it, no one thought about [those]." The agency source continues, "It leads to a lot of distraction around here. We had a plan in place, it was working, contracts were in place, there was a logical progression. And now we are supposed to sit around and twiddle our thumbs."

In place of ChAMP, Jackson has outlined a series of principles for addressing chemicals of concern both through existing Toxic Substances Control Act (TSCA) authority and for TSCA reform. EPA is currently pursuing a number of “action plans” intended to better regulate chemicals of concern under existing laws.

The EPA source notes that staff were “stunned” when they were told to delete all references to ChAMP in agency documents last spring, in part because Steve Owens had not yet been confirmed as the head of the Obama EPA OPPTS. “It obviously came from the administrator’s office,” the source says.

An attorney following toxics issues says the “shift from ChAMP to these chemical action plans [is] a shift from chemical assessment to chemical management.” The source acknowledges that the list of chemicals singled out for action is “small” and “not new.” The source describes the approach as “a whole different definition of success. ChAMP at best produces a whole list of priority chemicals and leaves it to someone else to do something about [them].”

Meanwhile, a former Bush EPA official says that agency career staff in the waste office are also “frustrated” by the amount of time being spent to pursue Jackson’s preferred hybrid approach for coal ash rules that would regulate some types of waste as hazardous under federal waste law and other types as solid waste. “It is chewing up a ton of resources and the career folks think [coal ash] is benign,” the source tells *Inside EPA*.

EPA’s proposal to regulate coal ash under the Resource Conservation & Recovery Act remains under White House Office of Management & Budget review, and is the subject of fierce 11th-hour lobbying by industry, state and other opponents of the hybrid approach (*see related story*). Critics warn that any designation of coal waste as hazardous, even through a hybrid plan, would decimate the beneficial reuse of the waste.

EPA staff also fear that a hazardous designation could kill the agency’s voluntary Coal Combustion Products Partnership, known as C2P2. It is a cooperative effort between EPA, the American Coal Ash Association, the Utility Solid Waste Advisory Group, the Electric Power Research Institute, the Department of Energy, the Federal Highway Administration and the Agriculture Department that promotes the beneficial reuse of coal combustion products, according to EPA’s Web site. “They want to see coal waste beneficially reused and [a proposal to designate the material as hazardous] will kill that,” the source says. “There is a lot of frustration in the ranks.”

The EPA source and former agency source claim that the rollback of Bush-era programs is more stark than past administration transitions. The former EPA source says the Bush administration continued a voluntary program started under the Clinton administration where the chemical industry provided hazard data on its products, the High Production Volume Challenge Program. “It wasn’t any politics-based decision

making," the former EPA source says. "A way could have been found to continue ChAMP while going in a new direction."

HAZARDOUS WASTES

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EPA shows TVA's Kingston coal ash cleanup options (*Associated Press*)

Story also appeared: *Washington Post*, *Tuscaloosa News, ABC News, Myrtle Beach sun News*

Bill Poovey, The Associated Press
Published: Thursday, January 21, 2010 at 2:17 p.m.

CHATTANOOGA, Tenn. (AP) — As the cleanup of Tennessee Valley Authority's Kingston ash spill continues, the Environmental Protection Agency has suggested ways to move forward and what it could cost, but a key question remains unanswered.

The federal EPA is still trying to decide if coal ash should be reclassified as a hazardous material — a step that would likely make disposal more expensive and affect TVA rate payers.

EPA headquarters spokeswoman Latisha Petteway said the environmental agency doesn't yet know how that decision will turn out. She declined to comment about it could affect the Kingston cleanup scenarios that came out this week from EPA's district office in Atlanta.

TVA's Dec. 22, 2008, spill is considered one of the largest environmental disasters in TVA history. A breach in an earthen dike at the coal-fired power plant sent 5.4 million cubic yards of ash into the Emory River and onto nearby private property. TVA's cleanup, projected to cost $1.2 billion, is ongoing.

The utility expects to get the spilled coal ash out of the Emory River by this spring and to have the 2.4 million cubic yards that spilled on the site collected by 2013. TVA is shipping the dredged ash by rail to a garbage landfill in west Alabama.

While the spilled ash contains arsenic and potentially carcinogenic heavy metals, it is not regulated as hazardous waste. Some environmental groups want EPA to change that, or to change the rules for its disposal.

TVA chief executive Tom Kilgore has said a change to hazardous waste "does have the potential to affect" ash disposal. The utility has said the cleanup cost will be passed on to rate payers.

Reclassifying the coal ash as hazardous waste would also affect recycling, as its byproducts are used in cement and building materials.

EPA's proposal had been expected by the end of 2009 but the agency delayed the decision indefinitely "due to the complexity of the analysis."

The EPA and TVA have given the public until Feb. 18 to comment on the options for the next phase of the cleanup and projected costs.

The least costly option, up to $315.5 million, would be onsite disposal of the ash.

Eric Schaeffer, director of the Environmental Integrity Project, said Thursday that would be a bad option if the ash is put back into a pond.

"That one seems like throwing good money after bad," he said.

Schaeffer said EPA "just needs to get the ash rule out."

TVA spokeswoman Barbara Martocci said Thursday that EPA's options and cost projections are based on current rules and TVA is "following all the regulations that are in place. We are asking the public to determine the best way to move forward."

Martocci declined to speculate about how reclassifying coal ash might affect the cleanup options and costs that the public is being ask to comment on.

The nation's largest public utility has already spent more than $200 million on the first phase of the cleanup. The options in the EPA analysis range up to another $741 million.

TVA has nearly 9 million consumers in Tennessee, Alabama, Mississippi, Kentucky, Georgia, North Carolina and Virginia.

EPA, Florida Cleanup Fight May Leave 40,000 Exposed To Unsafe Radiation (*Inside EPA*)

1/22/2010
EPA officials are expected to urge the agency’s yet-to-be-named Region IV administrator to move toward cleaning up former phosphate mining sites that could be exposing as many as 40,000 people to cancer-causing levels of radiation in their central Florida homes -- sites that have languished in the agency’s Superfund database for decades while EPA and state officials have quarreled over the appropriate cleanup standards, informed sources say.

How EPA deals with the potential threat at the homes built on the sites is expected to set a national precedent for how stringently former phosphate mining lands, as well as scores of other radiation sites, will be cleaned up.

But resolving the issue may be difficult as EPA is arguing for strict Superfund cleanup limits while state officials argue that the Superfund limits are “overly conservative.”

There was “a clear reluctance on the part of state” officials to the idea that the area should be cleaned up to meet EPA standards, says a former EPA official. “It was being discussed at pretty high levels” within the Bush EPA and the Florida administration of then-Gov. Jeb Bush (R), which was concerned that a costly cleanup would undermine the phosphate industry, the former EPA official says.

In addition, the massive cost of cleaning up the Florida sites -- as high as $11 billion, or nine times EPA’s annual Superfund budget -- could also serve as a lightning rod in the debate over the Superfund program’s finances, where activists and congressional Democrats are pushing to reinstate the expired Superfund tax on industry and establish stricter financial assurance rules requiring companies to prove they can afford to clean up environmental contamination.

To date, more than 10 square miles of potentially contaminated former phosphate mining lands near Lakeland, FL, have been developed for residential use, sources say. According to EPA’s Web site, the agency is evaluating 23 former phosphate mining sites as part of its “Florida Phosphate Initiative,” although one EPA source says 23 is “probably an understatement” and that the real number is closer to 28.

The agency’s Superfund database lists numerous former mining sites in the Lakeland area, and according to the EPA source, some of the phosphate sites include the former Tenoric Mine operated by the Borden Chemical Company and other former phosphate sites operated by the Agrico Chemical Company and the Mobil Chemical Company. The corporate successors to Borden, Agrico and Mobil declined to comment.

It is unclear, however, which of the sites may pose dangerous levels of exposures. EPA’s public Web site and Superfund database do not acknowledge residential exposure is a potential threat at any of the sites.

But the former EPA official says there is “no doubt the level of radiation” some people in this “high growth area” of Florida are being exposed to is unsafe. “I felt this was a very serious situation,” says the former EPA official who pushed unsuccessfully in recent years for the agency to act. “I was very frustrated internally.”

One source familiar with the Florida sites describes them as the “Libby of radiation sites,” referring to the infamous Montana mining town where thousands were exposed to cancer-causing asbestos.

EPA scientists determined in the 1970s there were unsafe levels of radiation present in the indoor air of homes built on some of the sites, according to a 1979 agency study recommending that no additional homes be built on the lands until the agency could study the problem further. The study says that as a result of high concentrations of radium-226, “many individuals residing in Central Florida are exposed to undesirable levels of radiation.” Phosphate mining activities can significantly increase the concentrations in soil of radium-226, a naturally occurring radionuclide.

But other than conducting a few relatively narrow follow-up studies, EPA has taken no action to address the risks. Instead, the agency has quietly engaged in a protracted debate over the cleanup level with state and local officials, some of whom raised concerns over the expected high cost of the cleanup and the negative impact it could have on Florida’s phosphate industry -- long considered to be one of the state’s largest and most important, the former EPA official says.

According to an agency spokesman, “EPA and the state of Florida continue to work cooperatively on this important matter.” Selecting an appropriate cleanup standard for the sites “continues to be a key part of the discussion,” the spokesman says.

A spokeswoman for the Florida Department of Health said only that the agency is “working with [its] federal partners to educate the public about radon,” a radioactive gas that can contaminate the indoor air of homes built on contaminated soil, and that the agency is working “to broaden [its] scientific body of knowledge.”

Over the years, residential development on the former phosphate mining lands has continued, and sources say approximately 40,000 people could now be exposed to dangerous levels of radiation. According to a 1999 *Federal Register* notice, some people in the area are exposed to up to 500 millirems (mrem) per year of radiation, which environmentalists argue is a level significantly higher than the 15 mrem levels EPA has historically considered safe.

Based on current EPA Superfund standards, about 1 in 40 people would be expected to develop cancer at the 500 mrem dose level, according to a 2006 internal concept paper the federal *Agency for Toxic Substances & Disease Registry* (*ATSDR*) developed regarding the Florida situation, which *Inside EPA* recently obtained. This is a risk approximately 250 times greater than the 1-in-10,000 cancer risk level that EPA typically considers the worst acceptable scenario at a Superfund cleanup site.

Nonetheless, Florida officials have argued no cleanup is necessary unless people are being exposed to more than 500 mrem per year, according to the ATSDR paper and another internal document prepared by Florida officials that *Inside EPA* also recently obtained.

EPA officials, according to the ATSDR document, have argued the agency’s traditional radium-226 cleanup standard should apply to the residential properties, but Florida

officials have resisted this idea even though this standard -- while more stringent than what Florida is pushing for -- is significantly less stringent than the Superfund risk limit.

The traditional EPA standard, called an applicable or relevant and appropriate requirement (ARAR), dictates that radium-226 concentrations in soil should not exceed 5 picocuries per gram (pCi/g) above what naturally occurs in the area, the ATSDR document notes. Picocuries measure the amount of radioactivity in soil, while millirem measure the dose received. The ATSDR paper says both EPA and ATSDR have used the 5 pCi/g level to ensure safety in many places, including Pennsylvania, New Mexico, New York and Michigan. But even at this level, up to 1 in 2,500 people could still be expected to develop cancer, according to modern Superfund risk calculations, the ATSDR document notes. *Relevant documents are available on InsideEPA.com.*

Nonetheless, Florida officials consider the 5 pCi/g ARAR “overly conservative,” the ATSDR document says. In their own proposal, Florida officials cite guidelines in a report by the congressionally chartered National Council on Radiation Protection (NCRP) in defense of their argument that a 500 mrem dose is the appropriate standard. NCRP “has carefully considered the risks associated with exposure to naturally occurring radiation and weighed these risks against the societal impacts and costs of remediating these risks,” the Florida plan says.

Over the past few years, environmentalists and some EPA officials have fought proposals that suggest radiation limits as high as 100 and 500 mrem are sufficiently protective of public health. Many of these proposals were drafted by the agency’s Office of Radiation & Indoor Air (ORIA) under the Bush administration.

For example, a broad coalition of activists in 2005 blasted an ORIA proposal to revise the *Federal Radiation Protection Guidance for Exposure to the General Public* to allow an overall exposure limit of 100 mrem per year. The proposal, which activists equated to allowing exposures equivalent to 1,200 chest x-rays, has never been finalized.

In January 2009, the Bush EPA approved a draft guide for responding to nuclear emergencies suggesting the public could be exposed to a dose equivalent to 500 mrem in drinking water -- resulting in the guide suggesting allowable concentrations thousands of times higher than permitted by EPA’s own regulations. The draft guide, the publication of which the Obama administration halted days before its scheduled release, is currently under review.

If EPA were to accept 500 mrem as a protective standard at Superfund sites such as the ones in Florida, it would set a negative and far-reaching precedent for future radioactive cleanups and emergency responses, one activist says. “EPA has for years said 100 millirem is way outside the risk range,” the activist says. “This would be EPA living in a different universe.”

The dispute between EPA and the state over the appropriate cleanup requirements has even stymied efforts to assess the potential scope of exposure. For example, the 2006

documents were drafted by ATSDR and Florida officials as part of their preparation for an aerial survey EPA had planned in an effort to better characterize how much of the land in question is contaminated and to what extent. The survey was postponed, however, as a result of the dispute over the cleanup level, the former EPA official says, and, according to a Florida source, the agency has yet to reschedule.

EPA officials have advocated for establishing a cleanup level for the area prior to conducting the aerial survey, in part so that, in the event the results of the survey proved worrisome to members of the public, the agency would already have a plan in place for how to address the risks that it could clearly communicate to concerned citizens, the former EPA official says. Establishing a cleanup standard prior to obtaining the survey results would also help ensure the standard was based on human health concerns rather than cost and political considerations, the former EPA official says.

In addition to the dispute over the cleanup standard, potentially high cleanup costs have also been an issue at the site, the former EPA official says. A 2004 report by EPA's Inspector General (IG) estimated the cost to clean up the Florida phosphate sites could be as much as $11 billion -- nearly half of the up to $24 billion in future hardrock mining cleanup costs that EPA faces across the country and more than 12 times the agency's annual Superfund budget of about $1.2 billion for the five years that preceded the report.

But although EPA has been able to identify some viable parties potentially responsible for the cleanup, and although EPA officials argued the IG may have overestimated the cost of cleaning up the sites, the agency might have to pay for much of the cleanup itself, which the former EPA official says was a challenging prospect, particularly given the complex nature of a residential cleanup and the fact that funding for the Superfund program had been in steady decline under the Bush administration. -- *Douglas P. Guarino*

State Officials Warn OMB Of EPA Hazardous Coal Ash Rule Cost Impacts (*Inside EPA*)

1/22/2010
State officials are raising last-minute concerns with the White House Office of Management & Budget (OMB) about dire cost impacts they face if EPA's pending coal ash rule declares some forms of the ash hazardous, warning it would impose resource constraints on environmental regulators and limit the use of coal ash in road-building.

The 11th-hour state lobbying, which also includes sending letters to EPA and the Department of Transportation (DOT) outlining the concerns, adds to industry pressure on OMB to block EPA's suggested preferred approach of regulating coal ash under a "hybrid" approach. The plan would declare some coal ash hazardous under the

Resource Conservation & Recovery Act (RCRA) and some, such as recycled ash used in concrete, as non-hazardous subject to less stringent controls.

Officials from the American Association of State Highway & Transportation Officials (AASHTO), which represents state DOTs, met with OMB Dec. 15 on the issue, while the National Governors Association (NGA) and the Association of State & Territorial Solid Waste Management Officials (ASTSWMO) met Nov. 23 with OMB.

State groups rarely take these concerns to the White House, particularly before EPA has issued a proposal. However, one environmental law professor complains that OMB has signaled it is “open season” on the pending regulatory proposal by accepting a record number of meetings, mainly with industry opponents of EPA’s preferred hybrid RCRA approach, after the agency forwarded its draft proposal for White House review last October.

OMB has held nearly 30 meetings on the EPA plan since Oct. 16, “signaling it’s open season on this, and it looks terrible,” the source says. States “are not being helpful” by going to OMB when “it is very clear [states] haven’t been able to address [coal ash] on their own” through state-specific rules, the source adds.

EPA in December delayed issuance of the proposal, citing the complex analysis involved. But an agency source says that while the inter-agency review process “is taking longer than expected” it is no cause for alarm.

But the law professor warns, “The handwriting’s on the wall here,” for blocking EPA Administrator Lisa Jackson from proposing her preference for a hybrid approach. “She may still win, but there is much less of a chance.”

Additionally, a former Bush EPA official says Jackson “ran into a buzz saw at the White House,” noting the standoff between Jackson and OMB officials that resulted in the delay to issuing the proposal, which OMB formally acknowledged on its Web site last week.

State environmental officials are concerned about the impact a hazardous classification would have on their resources because it would mean that millions more tons of material would have to be stored, handled and managed more carefully by environmental regulators under already-strained state budgets.

A hazardous waste declaration for coal ash could also adversely impact state transportation officials’ ability to use the ash in concrete for road-building, states warn. The beneficial reuse industry that takes coal waste and uses it as a component in products, such as cement, has already raised similar concerns with OMB about the impacts that a hazardous waste designation would have, warning it could decimate the industry.

NGA in a Nov. 16 letter sent to EPA waste chief Mathy Stanislaus claimed that a hazardous waste rule would mean 3,134 million tons of coal waste, “or 67 times the current amount, will need to be shipped and disposed of in hazardous waste landfills. . . . As you know, it is extremely difficult and controversial to site a hazardous landfill.” The group also warned of a resource impact, saying, “At a time when states are dramatically cutting programs and furloughing and laying off staff, this would be an unnecessary financial burden.” NGA provided the letter at its Dec. 15 meeting with OMB. *Relevant documents are available on InsideEPA.com.*

States also submitted letters from the Environmental Council of the States (ECOS), which represents state environmental directors, and the National Conference of State Legislatures (NCSL), both written in mid-October and stating the groups’ strong opposition to an EPA hazardous waste rule for coal ash.

ECOS’ letter warns of a “chilling effect” on beneficial reuse programs from a hazardous or hybrid approach and also “question[s] the value of a federal approach for [coal waste] in light of the potential state fiscal impacts [and] regulatory implications.” The NCSL letter warns that most states require a beneficial use determination that recycled waste not be hazardous. “Regulating coal combustion waste as hazardous waste will have the combined impact of limiting its beneficial use while increasing the amount of waste needed to be handled by landfills.”

Additionally, AASHTO officials at their meeting gave OMB a resolution that the organization approved last October opposing a hazardous waste rule. The resolution notes the group will work “to protect the use of fly ash in highway construction and is against any proposed ruling that would impede its use for those purposes.”

AASHTO also submitted responses to a survey asking whether state DOTs would continue to use coal ash it if was listed as a hazardous waste with an exemption for beneficial use. Maine warned of the likely implications of “monitoring for potential leachate, future handling of recycled materials post-use, etc., which would create problems that could drastically decrease our use of fly ash,” while Washington state DOT officials said such a designation would make use “more expensive, difficult and problematic. . . . Public perception becomes reality and the same is true for regulatory agencies; they would make use impossible.”

The group also submitted Nov. 23, 2009, letters that AASHTO sent to both EPA’s Jackson and Transportation Secretary Ray LaHood warning of the impacts of a hazardous designation, as well as November letters from the Michigan and Minnesota DOTs to the Federal Highway Administration to make that agency aware of state opposition to EPA’s effort.

Finally, AASHTO also included a draft Dec. 5, 2009, report by the Electric Power Research Institute, *Quantifying the Benefits of Using Coal Combustion Products in Sustainable Construction*, which concludes that beneficial use reduces annual energy consumption by 162 trillion British thermal units, annual water consumption by 32 billion

gallons and annual greenhouse gas emissions by 11 million tons, saving a total of $5 to $10 billion. -- *Dawn Reeves*

Ky. Senate passes bill allowing waste storage (*Greenwire*)

01/21/2010
The Kentucky Senate yesterday passed a bill allowing the storage of nuclear waste in the state. The bill's sponsor, an independent state senator, hopes allowing such storage will open the door to nuclear energy facilities in the state.

The district of state Sen. Bob Leeper, the bill's sponsor, is home to the Paducah Gaseous Diffusion Plant, the only uranium production facility in the United States.

The bill, which now goes to the Kentucky House, takes the focus off the fact that 90 percent of the state's energy is produced by coal, said state Sen. Ray Jones (D).

"This turns a blind eye to the fact that Kentucky coal produces 90 percent of the state's energy," Jones said. "Why would anyone want to shift the debate away from the use of coal?" (Joseph Gerth, Louisville *Courier-Journal*, Jan. 20). **-- PV**

SOLID WASTES
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Pilot EPA Equity Methodology May Downplay Solid Waste Rule's Impacts (*Inside EPA*)

1/22/2010
EPA's just-released draft methodology for analyzing the environmental justice impacts of its controversial definition of solid waste (DSW) rule -- a pilot project for broader agency efforts to analyze equity in rulemakings -- could significantly downplay the rule's adverse impacts on low-income and minority communities, a source says.

The agency recently unveiled its Jan. 13 draft analysis for the DSW rule's disproportionate impacts from hazardous waste recycling regulations on environmental justice communities. The Bush-era final rule provides exemptions to Resource Conservation & Recovery Act (RCRA) requirements for waste management in an effort to promote recycling. *The methodology is available on InsideEPA.com.*

EPA is reviewing the rule following a Sierra Club petition asking the agency to repeal the regulation. Environmentalists have also filed a lawsuit alleging the exemptions go

too far and will lead to dangerous “sham” recycling at facilities located disproportionately near low-income and minority communities.

To address concerns about the rule’s equity impacts, the Obama EPA vowed to conduct an environmental justice analysis of the rule, and says the methodology will be a key part of its broader agenda to bolster the role that equity plays in agency decisionmaking. EPA says in its proposal that the draft analysis will serve as a “pilot project” for EPA’s Environmental Justice Executive Steering Committee’s rulemaking workgroup “as it develops a systematic process to incorporate Environmental Justice considerations within EPA’s rulemaking procedures.”

But if EPA conducts the analysis as outlined in the proposal, *Draft Environmental Justice Methodology for the Definition of Solid Waste Rule*, it will likely downplay the very risks environmentalists have raised concerns about and prompt the activists to renew their criticism of the rule, says the source familiar with equity issues.

Under the proposed methodology, EPA would consider it a benefit from an environmental justice standpoint if the DSW rule leads to hazardous materials, which would have otherwise been disposed of according to strict RCRA requirements, being sent to recycling facilities to be reclaimed under the less-stringent DSW exemptions. This is because, under this scenario, fewer hazardous materials would be sent to the communities where the strictly permitted RCRA facilities -- such as landfills and incinerators -- are located, EPA says in the document.

But this premise ignores the fact that the recycling facilities that would instead receive the materials are even more likely than the strictly permitted RCRA facilities to be located near low-income and minority communities, the source argues. EPA is saying in the document that if hazardous materials are sent to a strictly permitted RCRA facility it could be an equity concern, but if the material is recycled, “then it doesn’t matter,” the source claims.

Concerns that the recycling facilities are more likely to be located in low-income and minority communities are compounded by the fact that, under the DSW rule, those facilities are more likely to have compliance issues, the source says. The rule only requires that hazardous materials kept at such facilities be “contained” without defining from a technical standpoint what that means, as the RCRA regulations do, and because the rule provides EPA and state regulators with few enforcement mechanisms compared to the RCRA regulations, the source says.

EPA waste chief Mathy Stanislaus has previously said that the DSW analysis is expected to provide a model for similar studies of other EPA policies in the future -- a point EPA reinforces in the proposal (*Inside EPA*, July 24).

The agency notes that many of the issues discussed in the draft are unique to the DSW rule but says that to the extent any comments raised on the methodology relate to the broader issues of environmental justice, EPA will share that information with its policy

office, enforcement office and equity steering committee “so that this information can be considered as the agency develops guidance for conducting environmental justice analyses.”

At the same time, EPA “remains mindful that each environmental justice analysis addresses a unique set of circumstances, and that the DSW [environmental justice] analysis should not be used to create a ‘one-size-fits-all’ expectation for EPA’s approach to environmental justice analyses in other contexts,” EPA says.

An agency spokeswoman did not directly address the criticisms of the methodology, saying, “Under the overall EPA effort, any information that is gained from public review of the DSW [environmental justice] effort will help inform the agency as it takes action to include environmental justice considerations in rulemakings.”

Meanwhile, the source familiar with environmental justice issues said the methodology could also complicate EPA’s anticipated effort to regulate some coal combustion waste as hazardous under RCRA. The analysis classifies sending less hazardous substances to to strictly regulated hazardous waste facilities as a benefit from an equity standpoint, which would be in contrast to the position that coal ash should be sent to such facilities, the source says.

The chemicals addressed in the DSW rule are significantly more toxic than coal ash, the source argues, and therefore, if EPA takes the position that it is beneficial from an environmental justice standpoint that those chemicals be sent to unpermitted, industry-audited facilities rather than those complying with strict RCRA permit requirements, than the coal industry will be able to argue in court that the same should be true for coal ash, the source says.

EPA is effectively arguing that it is better for these materials to “go to these self-audited, loosey-goosey unpermitted facilities” instead of to “highly prescriptive, overly regulated RCRA facilities,” the source claims.

The agency plans to discuss the draft methodology with its National Environmental Justice Advisory Council and host a roundtable to gain public input in New Orleans on Jan. 28. The agency will host a second public roundtable on Feb. 23 in Arlington, VA, and a third roundtable online Feb. 25. EPA is accepting public comments on the proposal until March 15. -- *Douglas P. Guarino*

SUPERFUND

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EPA plans more testing in Mossville (*KPLC Channel 7 News*)

Posted: Jan 21, 2010 11:38 PM EST Thursday, January 21, 2010 11:38 PM EST
Updated: Jan 22, 2010 12:12 AM EST Friday, January 22, 2010 12:12 AM EST

From KPLC Staff

Mossville, LA (KPLC) Officials with the Environmental Protection Agency met with residents in the Mossville community Thursday evening to announce new testing for possible contamination. The announcement comes after years of complaints from residents that contamination was making them sick. The EPA says testing will be conducted in March and April with the results being made public in July. If contamination is found, the area could receive cleanup funding from the EPA's Superfund.

Milestone report on Portland Harbor pollution lowballs risk, EPA says (*Oregon Live*)

By Scott Learn, The Oregonian
January 21, 2010, 6:00PM
An exhaustive report on Portland Harbor contamination -- written by industries and local government agencies that will likely have to pay for much of the cleanup -- tends to "minimize the risks to human health and the environment" from harbor pollution, federal regulators say.

The 13-page critique is a strong signal from the U.S. Environmental Protection Agency, which oversees Oregon's largest Superfund site, that it plans to hold polluters and land owners' feet to the fire on harbor cleanup.

The work is expected to cost up to $1 billion, paid for industry, landowners and Portland's sewer and utility ratepayers.

EPA officials say the October report from the Lower Willamette Group prematurely rules out some harbor contaminants as threats to wildlife and overstates uncertainties about the pollution's risk to human health.

"They tried to make some inappropriate claims about what's risky and what's not," said Eric Blischke, an EPA project manager. "They just really kind of beat that to a pulp to some degree."

The Lower Willamette Group paid $74 million for the harbor investigation with input from the EPA. The group's 14 members include the city, the Port of Portland, Northwest Natural Gas and big Oregon industries such as Gunderson, Siltronic and Evraz Oregon Steel.

The dispute is important: The lower the risks of harbor pollution in Willamette River

sediment, the less cleanup work the group's members and other harbor landowners will have to do.

Barbara Smith, the group's spokeswoman, said the draft report does not lowball risks.

"Everybody believes the process and the data and the data collection are all really good. We're glad this project is moving forward," she said.

The report includes results from more than 6,000 sediment and water samples and tests of fish and shellfish tissue conducted over eight years and along 10 miles of river, pinpointing where contaminants are highest. Finishing a draft was perhaps the most significant milestone since the EPA declared the harbor a Superfund site 10 years ago.

So far, the basic contaminant data in the hundreds of pages of reports looks good, EPA officials said.

They don't expect the dispute to delay progress on cleanup. Regulators hope to have a cleanup plan in place by the end of 2012.

But when it comes to deciding how much contaminated sediment to clean up, much will ride on the interpretation of risk to humans and to critters. That will help determine whether contaminated sediment is capped or -- at much higher cost -- dredged. It'll also help determine how much dredging or capping gets done.

Much of the risk is tied to estimated consumption of fish full of harbor pollutants, particularly PCBs, once common as insulators and in other industrial applications. PCB concentrations in fish on both the Willamette and the Columbia range from 20 to 100 times higher than EPA targets, the report found.

That's why hackles rose at EPA's Portland office when the Lower Willamette Group's human health narrative emphasized that the risk assumptions about how much fish people eat are "potentially significantly higher than actual risks."

The highest ingestion rates used were about 19 to 23 fish meals a month, all from the 10-mile study area. EPA says that's a reasonable estimate based on studies of tribal families and subsistence fishermen with heavy fish diets.

The EPA's letter said the report too quickly ruled out other contaminants harmful to wildlife, such as pesticides and tributyl tin. The report's conclusion that the majority of contaminants identified in the draft report posed no unacceptable environmental risks, EPA said, is "incorrect."

EPA not adding Pompton Lakes site to Superfund list (*New Jersey News Room*)

Thursday, 21 January 2010 18:53
Will work with other agencies to speed clean up of former DuPont munitions plant
BY JOE TYRRELL
NEWJERSEYNEWSROOM.COM
Jarred by last month's state report appearing to confirm a cancer cluster in Pompton Lakes, environmental agencies said they will work together to speed the clean up of contamination from a former DuPont munitions plant.
But in agreeing to become "co-lead" on the project with the state, the U.S. Environmental Protection Agency rejected calls from some residents to add the site to the federal Superfund clean-up list.

The agencies and other participants have scheduled a 7 p.m. meeting on Jan. 25 at Pompton Lakes High School, 44 Lakeside Ave., to discuss the status of the site and ways to set clean-up goals.

"What it means is that we're dividing up the work" with the state Department of Environmental Protection, said EPA spokesman David Kluesner.

Concerted action is needed because "there's more than 200 different problem areas" on the plant property and nearby residential and commercial areas, he said. By working together, the two agencies "are going to expedite work," he said.

"That's what government agencies are supposed to be doing, working together to help people," said DEP Larry Hajna. "The federal government can bring more resources to bear, so we welcome their involvement."

A December report by the state Department of Health "absolutely" added to the sense of urgency in Pompton Lakes, Kluesner said.

"It's a very high-profile, important project," he said.

The state health department study showed elevated rates of kidney cancer among woman and non-Hodgkin's lymphoma among men in the "plume neighborhood," above a flow of groundwater contaminated by heavy metals and chemicals from the old plant.

The findings prompted renewed calls from some residents to add the site to the Superfund, a program once funded by a federal tax on polluters but now limited by what the EPA can allocate and retrieve from "responsible parties" through negotiations or lawsuits.

Instead, EPA Regional Administrator Judith Enck said future steps will be "patterned after the Superfund." Where the money will come from is not entirely clear, although Kleusner said his agency will pay upfront for technical assistance and installing or replacing vapor mitigation systems to control chemical fumes in homes.

"We're not having to go to DuPont and ask for money," Kluesner said. "We are committing our funds."

"It's still DuPont paying" under the consent order, Hajna said. But he added he is unsure how that will play out if the government players, which include the Agency for Toxic Substances and Disease Registry, reject the company's proposals for future work.

Kluesner suggested that designating the plant as a Superfund site could complicate the legal issues, not least because EPA might want to renegotiate the agreement with DuPont.

"We don't want to drag down the project... without adding any real benefit," he said.

The company's remediation efforts so far have been complicated because the underground flow is deep in some spots and shallow in others. The EPA will turn to analysts from around the country, including its own Ada, Okla., research lab, who have experience with similar clean-ups, according to Kluesner.

But an immediate priority remains installing vapor systems in more homes. The agencies acknowledge complaints from some residents that systems are not working well, and Monday's meeting will include information for getting replacements, Kluesner said.

The munitions factory produced artillery shells, blasting caps and other explosive devices from 1886 to 1994, operating under DuPont for all but its first few years. Discharges from the plant contaminated groundwater, as well as soil and sediment in the Acid Brook running through the 600-acre property to Pompton Lake.

In 1988, DuPont signed a consent order with the state Department of Environmental Protection and began cleaning up the brook. The DEP and EPA required the company to install a pumping and treatment system for groundwater emanating from the site, which went into operation in 1998.

But the investigation also found the plume of chemical solvents — capable of causing kidney, liver, skin and neurological problems — had spread off site toward Pompton Lake.

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No firm timeline for Koppers site cleanup yet (*Gainesville Sun*)

City officials encouraged by Beazer East's willingness to cooperate
By Christopher Curry
Staff writer

Published: Friday, January 22, 2010 at 6:01 a.m.
No firm timeline or details for the cleanup or redevelopment of the Cabbot-Carbon Koppers Superfund site emerged from a meeting Thursday.

However, Gainesville city officials were cautiously optimistic that property owner Beazer East Inc. and the U.S. Environmental Protection Agency were willing to cooperate with local officials and residents on a more thorough remediation than the one identified in an EPA draft released last year.

Updated information that Beazer East senior environmental manager Mitchell Brourman presented during the Thursday afternoon City Commission meeting has Koppers Inc. closing down operations and moving out equipment, chemicals and supplies by the end of March. Koppers has owned and operated the wood treatment plant since 1989.

Beazer East, out of Pittsburgh, operated the plant, located at 200 N.W. 23rd Ave., from 1916 to 1988 and is responsible for funding and seeing through the future cleanup of the western 90 acres of the contaminated site.

The company purchased the property back from Koppers in December, a move that could hasten the cleanup because there will no longer be an active wood treatment plant on site.

Brourman said Beazer East was committed to see that the property was "more effectively cleaned up" and to not "let the land sit fallow."

While there was general discussion of a potential mixed-use commercial and retail development - and city commissioners pushed to have the property left in a condition that would allow residential development - all talks were general and preliminary.

The EPA plans to bring in a contracted consulting firm, E2 Inc., to get community and resident input on the future use of the land. Brourman said Beazer East would work through that process and has no "preconceived notions" about the future of the property, except to make it a "center of attraction instead of a center of detraction."

Following significant lobbying from city and county officials to have a more thorough cleanup plan put in place more quickly, Scott Miller, the EPA section chief in charge of the Superfund site, unveiled an updated timeline that has the agency releasing its final required plan for remediation on June 4. That plan, known as a record of decision, will not be the final step before remediation work begins.

"This is more the EPA saying 'this is what they're going to do,' " said John Mousa, environmental program manager for the Alachua County Environmental Protection Department. "It does not necessarily give you all the details on how they're going to do it."

Currently, the EPA is scheduled to issue its final feasibility study on the cleanup of the site on March 15 and then have a one-month public comment period from April 5 to May 5 before issuing its record of decision.

But that timeline could be pushed back as the EPA allows for public participation and input on the plans, Miller said.

Gainesville Mayor Pegeen Hanrahan praised the EPA's "very aggressive schedule" to release a remediation plan, but said the need to get to the cleanup as "quick as possible" has to be balanced with making it "as thorough as possible."

The site has been listed as a federal Superfund site for more than 25 years. Creosote, a chemical that causes cancer, has been detected in the aquifer, and tests have shown the presence of toxins such as dioxin, arsenic and benzo(a)pyrene in soil samples.

At one point Thursday, Hanrahan asked Brourman if Beazer was willing to purchase homes from neighboring residents who want to get away from the site.

"So many of them have expressed to me, 'I'm stuck in this house,' " she said. " 'I can't ethically sell it to someone else'."

That decision, Brourman said, "is above my pay grade."

Contact Christopher Curry at 374-5088 or chris.curry@gvillesun.com.

TOXICS

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Industrial Chemicals Lurking In Your Bloodstream (*Forbes*)

Rebecca Ruiz, 01.21.10, 4:00 PM ET

Concern is heating up over whether common industrial chemicals found in plastics and other consumer goods could be harming our kids.

The Food and Drug Administration made headlines when it said last week that it would review the safety of Bisphenol A, an industrial chemical commonly used in plastic bottles and food containers. It is worried that the chemical might have subtle but deleterious effects on the neurological and reproductive development of kids.

For years the chemical has been the subject of controversy over whether it can harm people. Some studies have linked it to abnormal brain and reproductive organ development in animals while others have shown little evidence that is harmful in the

small doses that are likely to be ingested by humans. Other adverse health effects to which it has been linked include erectile dysfunction and heart disease in humans and early onset of puberty in female rats.

In Depth: 10 Chemicals You Should Worry About

But BPA is just one of hundreds of industrial chemicals that may be in your blood or urine right now. A report released by the Centers for Disease Control and Prevention in 2009 found detectable levels of a total of 212 chemicals in blood or urine samples from 2,400 people nationwide. These included the agricultural pesticide atrazine, the gas additive Methyl tert-butyl ether (MTBE) and the coal and petroleum byproduct benzene. Little is known about the human health effects of most of the chemicals.

The chemical industry has long argued that these chemicals are safe at current exposure levels. None have been conclusively shown to harm humans at low levels. But R. Thomas Zoeller, an endocrinologist and University of Massachusetts professor, says the widespread presence of industrial chemicals in the human population is alarming. “I sincerely hope that what we know from animal research doesn't translate to humans, but I don’t have much optimism,” he says. Worse yet, he adds, "You're not giving people a choice about contamination.”

Researchers are particularly nervous about the weed killer atrazine, BPA and other chemicals known as endocrine disruptors. These are thought to interfere with the body's ability to regulate estrogen or other hormones. When those processes go awry, it can lead to neurological and reproductive defects. Endocrinologists are concerned that these chemicals may be able to cause subtle health problems at doses far lower than the high doses toxicologists typically use to assess safety today.

A widely cited study published in the *Proceeding of the National Academy of Sciences* in 2002 found that atrazine exposure at doses 30 times lower than allowed by the EPA caused tadpoles to develop both male and female sex characteristics, turning them into hermaphrodites. It also lowered testosterone levels in adult male frogs below the level found in females.

The EPA is evaluating the human health effects of atrazine and is expected to publish some of its results late this year. That's not the only endocrine disrupting chemical that the EPA is worried about. Late last year, the agency quietly said that it would review the safety of phthalates, long-chain perfluorinated chemicals (PFCs), polybrominated diphenyl ethers (PBDEs) and short-chain chlorinated paraffins. The chemicals are found in a range of commercial and consumer products--building materials, semiconductors, furniture, toys and cosmetics--and tend to accumulate in the environment or in animal and human tissue. More than 1 million pounds of each is produced annually.

Cal Dooley, president and CEO of the industry group American Chemistry Council, says the industry has the "utmost confidence" in the safety of these chemicals and questions the EPA's decision to single out a few chemicals.

U Mass' Zoeller says the EPA's decision to single out the four chemicals is sound, but he is also worried that outdated methods will be used during the EPA's review. In the past, researchers have studied endocrine disruptors the same way they studied other potentially toxic chemicals: by giving animals ultra high doses and watching for toxic effects. But paradoxically, his research has shown that endocrine disruptors may cause the most harm at relatively low doses. Low doses of the chemical may mimic or disrupt the effects of natural hormones that have potent effects in small amounts. High doses, on the other hand, tend to desensitize the endocrine system, he says.

In addition to reviewing the safety of industrial chemicals, the EPA is also looking to reform decades-old toxic chemical legislation known as the Toxic Substances Control Act of 1976. Among its goals is to require manufacturers to release safety data, which they can currently protect as confidential information.

There are now 86,000 chemicals on the EPA's inventory of compounds used in commercial and consumer products. Since 1976, the agency has only succeeded five times in restricting or banning chemicals.

"We feel that we need to be able to say with confidence that chemicals sold in the U.S. are safe," says Jim Jones, deputy assistant administrator for the EPA's office of pesticides and toxic substances. "We have a lot of work to do to get there."

As for BPA, study results have been confusing as to whether or not it really harms people. Last week, for example, an epidemiology study in *PLoS One* found that people with high levels of BPA had a slightly increased risk of heart disease. A similar study conducted in 2008 by the same authors found a much stronger correlation.

During the Bush administration, the FDA deemed BPA safe at low levels. But citing new research on the chemical's potential effects on neurological and reproductive organ development in infants and children, the FDA now says it will take steps to reduce BPA exposure in the food supply. Its BPA safety review won't be finished until at least 2012, when two government studies on BPA are scheduled to finish.

EPA Plans Broad TSCA Rulemaking To Regulate ‘New’ Nanomaterial Uses (*Inside EPA*)

1/22/2010
EPA is launching a broad rulemaking under the Toxic Substances Control Act (TSCA) to regulate “new” uses of nanoscale chemical substances, a measure that together with another upcoming rule could provide the agency with an expansive regulatory architecture to gather data on the substances’ risks and regulate them.

But the new rulemaking is prompting concern from industry officials, who fear the agency could be expanding the Bush-era definition of when nanomaterials are considered “new” substances subject to regulation.

The rulemaking is an “end run around the point that all nanomaterials should be thought of as ‘new’” under TSCA, which would allow the agency greater regulation of the materials, says a legal source.

EPA last month announced on its Action Initiation List that it is developing a “significant new use rule” (SNUR) to better manage nanoscale chemical substances. EPA says the rule will be promulgated under TSCA section 5, and sources say a notice of proposed rulemaking could appear as soon as late 2010.

“This action would require persons who intend to manufacture, import, or process this/these chemical substance(s) for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity,” according to EPA’s action list. “The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs to prevent unreasonable risk to human health or the environment.”

A SNUR is the first step under TSCA to regulate materials, which EPA uses to require pre-manufacture notices (PMNs) for chemicals. Until now, EPA has only issued SNURs for individual carbon nanotubes, a broad class of nanomaterials. The agency requires protective face and body equipment for people working with certain carbon nanotubes in an effort to reduce the possible health impacts of the substances.

An EPA spokesperson said EPA “is still working on how the agency plans to proceed on nanoscale materials,” but it anticipates “having an announcement on this issue in the not too distant future.”

The SNUR comes as EPA also recently announced it would be pursuing new reporting requirements for existing nanoscale materials under section 8 of TSCA. Under the rule, slated to be published in June, EPA would “establish reporting requirements for certain nanoscale materials,” according to the unified agenda, including information on “production volume, methods of manufacture and processing, exposure and release information, and available health and safety data” under the rule.

A former agency source says the SNUR, together with the new reporting rule, will provide the agency with a broad regulatory structure to oversee nanomaterials -- especially after the Bush-era voluntary data reporting program provided the agency with lackluster data on the substances’ risks.

A SNUR is “one way of getting regulatory oversight of nanomaterials,” the source says, adding that the idea has been considered at EPA for some time. “A combination of a

new chemicals [PMN process] plus the SNUR would give pretty good oversight," the source says.

The SNUR would also go a long way to closing the perceived gap in oversight of existing chemical nanoscale materials, according to a Jan. 7 memo from the law firm Bergeson & Campbell discussing the move.

But industry sources are also raising concerns that the rulemaking plan is the latest indication from Obama EPA officials that they plan to strengthen the oversight of both new and existing nanoscale materials.

Last year, toxics chief Steve Owens criticized the Bush EPA decision that granted broad latitude to regulators to exempt new nanoscale materials from oversight. The Bush era decision, supported by industry, determined that nanoscale versions of substances that have the same molecular structure of chemicals already appearing on the TSCA inventory are not considered "new" and are not required to go through the new chemicals review process, which can result in imposition of regulatory protections.

According to the 2008 EPA document, a nanoscale material is considered "existing" if the substance has the "same molecular identity as a substance already on the inventory," while "new" chemicals are somehow different in chemical structure from the bulk version already listed. "Although a nanoscale substance that has the same molecular identity as a non-nanoscale substance listed on the inventory differs in particle size and may differ in certain physical and/or chemical properties resulting from the difference in particle size, EPA considers the two forms to be the same chemical substance because they have the same molecular identity," the document states.

But in a key speech in London in September, Owens criticized this approach, saying an existing nanomaterial "is subject to much less scrutiny from EPA because of that designation, due to the different ways TSCA treats existing and new chemicals." Despite his criticisms, Owens said officials are not prejudging the outcome of their policy reassessment. "I cannot say what the outcome of that review will be, but I can tell you that we will be taking a fresh look at this issue and at the basis and reasoning for the decision made by EPA" in 2008.

Industry sources, however, fear the rulemaking plan could open the door to the agency redefining when the materials are considered "new" or "existing."

The former agency source says there is some question of how to craft the trigger for capturing substances under the SNUR. The rule begs questions about "defining what subjects would meet the requirements. Anything in nanoscale?" Would there be an "intent component" where manufacturers would have to be "intentionally manufacturing at nanoscale?" the source asks.

An industry source says the EPA approach seems like a "practical starting point," but cautions that "the devil is going to be in the details," particularly how EPA will define the

limits of the SNUR. The source cautions that the novelty of nanomaterials and the potential differences from bulk substances do not necessarily require blanket regulation.

“Do the differences matter from a safety or environmental perspective?” the source says. “The risks are clearly not all the same,” the source says, adding that “hopefully [EPA] will include that in their thinking” about the SNUR.

The legal source questions the broad approach of a general SNUR for nanomaterials, saying that just because the materials are small does not mean they are necessarily harmful. It’s like “trying to regulate everything that is blue. The fact they have this one characteristic in common does not mean they are worthy of regulation.” -- *Aaron Lovell*

EPA Moves Toward Stricter Chemical Secrecy Rules Prior To TSCA Reform (*Inside EPA*)

1/22/2010
EPA is limiting industry’s ability to prevent disclosure of some data as confidential business information (CBI) in new health and safety studies that companies submit to the agency, one of many steps activists are urging officials to take to require more industry disclosure before Congress amends the Toxic Substances Control Act (TSCA).

The agency is scheduled to publish a notice in the *Federal Register* Jan. 21 announcing a “new general practice” of barring industry from withholding chemical identities contained in health and safety studies if the name of the chemical is already available on the TSCA inventory of chemicals in commerce. *The notice is available on InsideEPA.com.*

The agency had previously allowed industry to claim the data as CBI when submitting health and safety studies to EPA as required by chemical reporting requirements contained in section 8(e) of TSCA, such as when the chemical is considered “new” and not yet listed on the inventory.

EPA also says it will now more closely scrutinize the CBI claims and raise the bar for industry to challenge denials of CBI claims by requiring them to do so in federal court. Submitters of CBI claims will now receive letters, which “will serve as the final EPA determinations concerning the subject confidentiality claims, and recipients of the letters may seek judicial review” under federal law.

The agency says in the notice that the action is “part of a broader effort to increase transparency and provide more valuable information to the public by identifying programs where non-CBI may have been claimed and treated as CBI in the past.”

Even before issuance of the notice, EPA said it was looking at other “available options for tightening CBI controls and making more useful data available to the public” under

its existing TSCA authority, according to an agency spokesperson. The agency is also planning changes to CBI rules as part of its TSCA Inventory Update Reporting (IUR) rule due out later this year, which requires industry to report data on “all chemical substances manufactured, imported, or processed for a commercial purpose,” according to EPA.

And last year, EPA updated its TSCA inventory to list publicly 530 chemicals that no longer qualified to be claimed as CBI. According to a July 28 *Federal Register* notice, some companies did not include confidentiality claims when reporting for the IUR. “By submitting non-CBI IUR reports for previously confidential chemical identities, manufacturers make those chemical identities eligible for inclusion on public versions of the TSCA Inventory,” according to the notice.

But claiming data in health and safety studies as CBI has long been a top concern of environmentalists who charge disclosure is needed to help the public better understand the possible risks of exposure from industrial chemicals used in commerce.

A study released Jan. 4 by the Environmental Working Group (EWG) found that industry has concealed “the identity of the chemicals in more than half the studies” submitted to EPA in the first eight months of 2009 that indicated a substantial risk of injury to health or the environment. “By definition, compounds with 8(e) filings are the chemicals of the greatest health concern,” EWG writes.

The EWG report further claims existing CBI rules mean “[t]he public has no access to any information about approximately 17,000 of the more than 83,000 chemicals” on the TSCA inventory of chemicals in commerce. Of the 20,403 chemicals added since TSCA was enacted in 1976, industry has placed CBI claims on 13,596 -- nearly two-thirds -- of these new chemicals, the report claims.

EWG’s analysis indicates that “the number of confidential chemicals more than quadrupled” on the sub-list of chemicals produced in amounts greater than 25,000 pounds annually between 1990 and 2005.

Richard Denison, a senior scientist at the Environmental Defense Fund, welcomed the agency’s plan to limit CBI claims for health and safety studies, but called for the agency to do more. “EPA starts to chip away at chemical secrecy; but don’t stop here,” he said in a Jan. 20 blog posting.

Denison argues the agency should extend the new CBI requirements for health and safety studies that have already been submitted to the agency not just for new submissions, according to the blog post. “Unless EPA goes further, its new policy will still deny the public access to the identity of many other chemicals posing substantial risk but whose identities have been masked as CBI and hence don’t appear on the public portion of the TSCA inventory,” he writes. “Indeed, I suspect that most of the chemicals with identities claimed CBI in section 8 (e) notices are also claimed CBI on

the TSCA inventory." Denison also called on EPA to provide statistics so that the magnitude of the change, and of the larger problem, can be better gauged.

Denison and other activists are also calling for EPA to take several other steps to limit CBI protections, some of which EPA is already considering. For example, sources say EPA could require greater "up-front justification" of CBI claims by industry, something a legal source says could lead to a "speed-bump" for industry in filing the claims, which may act as a disincentive for companies to file such claims.

The EPA spokesperson says the agency has the authority to require up-front justification and does so in some instances, including when dealing with the IUR and new chemical submissions. "Additionally the agency has the authority to review and require substantiation of CBI claims on materials already received," the spokesperson says.

An EWG source also calls for EPA to require industry to periodically reassert the need for CBI claims, a proposal first put forward in a 2005 Government Accountability Office report. This is something that "seems possible" under current chemicals law and could be amenable to industry, the source says.

While EPA has existing authority under TSCA to tighten CBI requirements, the agency is also seeking new statutory authority to address the issue. In its principles for TSCA reform, which EPA Administrator Lisa Jackson unveiled last September, the agency said manufacturers should be required to "substantiate" their claims of confidentiality. "Data relevant to health and safety should not be claimed or otherwise treated as CBI," the principles say.

Among other things, the agency said it will seek authority to "be able to negotiate with other governments (local, state, and foreign) on appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety," the principles say.

The legislative fixes EPA is seeking could be included in TSCA reform legislation that Sen. Frank Lautenberg (D-NJ) plans to introduce later this year. Previous versions of the Lautenberg bill, for example, included language requiring up-front justification of CBI claims submitted by companies and shifting more burden to industry to prove chemicals are safe.

The EWG source says the legislation could impose a fee system for CBI claims, similar to that recently enacted in the European Union, while a legal source says the legislation could also give EPA authority to impose administrative penalties for industry submitters misusing CBI claims.

Industry has identified CBI as a place where it is willing to talk to activists in the burgeoning TSCA reform debate to try and reach a possible consensus. But while one industry source says industry stakeholders "should be able to come to an agreement

about a more disciplined process," they "won't come to the agreement that you can't have CBI." The source stresses the role of CBI in innovation, "which allows products to be improved." -- *Aaron Lovell*

EPA Weighs Expanding Toxics Inventory To Include Key Carcinogens List (*Inside EPA*)

1/22/2010
EPA is weighing a proposed rule to expand the list of chemicals companies must report under its Toxics Release Inventory (TRI) to include a key National Toxicology Program (NTP) list of substances thought to be carcinogens, which activists hope is a sign of future expansions of TRI to cover more unreported chemicals of concern.
Industry, however, says that while the move would be "defensible" because of the NTP's strict peer review policies, it would impose new reporting requirements that could require additional resources to meet.

EPA intends to propose by May a regulation to incorporate chemicals from NTP's Report On Carcinogens (ROC) into the TRI list, according to the agency's most recent Unified Agenda. The ROC, now in its 11th Edition, "identifies and discusses agents, substances, mixtures, or exposure circumstances that may pose a hazard to human health by virtue of their carcinogenicity" in a biennial report to Congress, according to NTP's Web site.

"EPA will propose to add to the TRI list, those NTP carcinogens that have sufficient production or use levels such that the agency expects that TRI reports will be filed," EPA's Unified Agenda says. TRI requires companies to annually report their releases of 581 individually listed chemicals and 30 chemical categories.

The ROC is seen as an accepted authority on the risks of chemicals, much like data produced by the International Agency for Research on Cancer and the Occupational Safety and Health Administration's Carcinogen Listing, a legal source says. NTP -- part of the Department of Health & Human Services -- reviews peer-reviewed data to determine whether a chemical is "known to be human carcinogen" or "reasonably anticipated to be human carcinogen." The ROC review process includes external peer review and several opportunities for public comment.

To add a chemical to TRI, EPA must demonstrate that a chemical meets a listing criteria, for example known to cause cancer. An EPA spokeswoman says that a benefit of adding the NTP list to TRI is an "efficiency" because the NTP review process uses data consistent with that used by EPA to evaluate chemicals for their potential to cause cancer and classify them as either "carcinogenic to humans" or "likely to be carcinogenic to humans."

In reviewing the ROC list for possible carcinogens to add to TRI, EPA focused on "ensuring that there no inconsistencies with how the agency would consider the available data. EPA also reviewed available production and use information for each chemical to determine whether it is expected to be manufactured, processed, or otherwise used in quantities that would exceed TRI reporting thresholds, according to the spokeswoman.

Among the chemicals that EPA could add to TRI reporting requirements by adopting the ROC list are vinyl fluoride, which is used in coatings, and the chemical stabilizer glycidol, the spokeswoman adds. Both substances are found on the ROC list under the category of "reasonably expected to be a human carcinogen."

Environmentalists welcome any expansion of TRI and one activist hopes that EPA's pending proposal is a "harbinger" for even further expansion of the inventory. During the Bush administration, the source argues, many chemicals that are not required to be reported under TRI were introduced into commerce while health professionals have become increasingly concerned about the chemicals found in humans and the environment.

FDA's Review Of BPA Clears Path For EPA's Pending Chemical Action Plan (*Inside EPA*)

1/22/2010
The Food & Drug Administration (FDA) Jan. 15 released its long-awaited review of the plastic hardener bisphenol-A (BPA) in food packaging, which could clear the way for EPA's own chemical action plan for the substance, which is currently undergoing review at the White House Office of Management & Budget (OMB).

The FDA study is also prompting new vows from Rep. Henry Waxman (D-CA), chairman of the House Energy & Commerce Committee, to strengthen EPA's authority under the Toxic Substances Control Act (TSCA). Waxman said in a statement following FDA's announcement that while he is "pleased" the Administration is taking necessary steps to protect public health, "We need to do a more effective job of preventing harmful chemicals from entering the marketplace, and for this reason, I look forward to considering reforms of the [TSCA] in the coming months."

In a notice announcing completion of its long-awaited review, FDA says studies employing standardized tests show the chemical is safe at low exposure levels but that it has "some concern about the potential effects of BPA on the brain, behavior, and prostate gland in fetuses, infants, and young children" based on new studies that use novel methods to test for low-level effects.

FDA says it is now supporting a shift to a "more robust regulatory framework for oversight of BPA," and will consult with other expert agencies, including EPA, the

National Institutes of Health, National Toxicology Program, the Centers for Disease Control and Prevention and Consumer Product Safety Commission (CPSC).

While the agency is carrying out in-depth studies “to answer key questions and clarify uncertainties,” FDA is also supporting industry efforts to limit exposure, such as stopping production of bottles and cups with BPA, supporting efforts to replace BPA in other can linings and facilitating the development of alternatives of BPA for the lining of formula cans for infants, according to the notice.

The chemical -- widely used in plastics and food packaging -- has long raised concerns from environmentalists and public health advocates, who fear it can undermine development in male children and possibly create adverse heart effects.

The advocates have been urging FDA to quickly complete its study so that EPA and other agencies could proceed with new regulatory requirements. In a Jan. 14 letter to FDA Commissioner Margaret Hamburg, Ken Cook of the Environmental Working Group urged FDA to complete its review and pointed out that other agencies including EPA have already singled BPA out as a chemical of concern.

“How much more does the FDA need to know to be convinced it must protect the national food supply from further contamination?” Cook said in the letter.

Completion of the FDA review appears likely to clear the way for EPA to issue later this year its own action plan. EPA late last year submitted to OMB a draft action plan on BPA that lists an array of actions the agency plans to take under its existing authority to limit risks posed by the chemical.

While EPA Dec. 30 unveiled action plans for four other chemicals, an EPA spokeswoman says the plans for BPA and another one for benzidine dyes and pigments are still scheduled for release. “The remaining two are very much on our to-do list,” the spokesperson said. “We committed to do four in December. We expect the remaining two to be done in early 2010.”

But industry sources say the chemical is safe and are raising concerns about the effects of new regulatory requirements. The American Chemistry Council (ACC) said in a statement in response to the FDA study that they recognize that the health agencies are attempting to address public confusion about BPA but expressed disappointment that some of the regulatory recommendations “are likely to worry consumers and are not well-founded.”

Industry sources say EPA efforts to regulate the chemical will also be difficult and will require significant coordination among the agencies. “EPA has stepped into a hornet’s nest,” with the BPA action plan, an industry source says. “There are jurisdictional and technical concerns, and legal authority issues.” For example, another source notes that FDA is seen to have the lead on the issue, having worked on it for longer than EPA.

Industry sources are emphasizing the need for the administration to ensure that it coordinates any regulatory steps across several federal agencies. In a Nov. 3 letter to EPA toxics chief Steve Owens, ACC President Cal Dooley urged the agency to “identify and clearly articulate the jurisdictional boundaries existing among the various federal agencies, such as the [FDA and CPSC] when issuing [action plans].” *The letter is available on InsideEPA.com.*

Study links nonstick chemicals to thyroid disease (*Greenwire*)

Sara Goodman, E&E reporter
01/21/2010
A chemical used in nonstick cookware and stain-resistant fabrics has been linked by British researchers to thyroid disease.

Using data from the Centers for Disease Control and Prevention, the study found that people whose blood contained higher concentrations of perfluorooctanoic acid, or PFOA, were more likely to report a history of thyroid disease. The paper was published today in *Environmental Health Perspectives*.

"These results highlight a real need for further research into the human health effects of low-level exposures to environmental chemicals like PFOA that are ubiquitous in the environment and in people's homes," said author Tamara Galloway, a professor of ecotoxicology at the University of Exeter. "We need to know what they are doing."

PFOA, also known as C8, and a related chemical, perfluorooctane sulfonate, or PFOS, are under scrutiny worldwide for their potential to cause health problems. C8 is a processing agent used in the manufacture of Teflon and other nonstick products, oil-resistant paper packaging and stain-resistant textiles (*Greenwire*, May 1, 2009).

For the study released today, researchers sampled blood serum of 3,966 adults diagnosed with thyroid problems or taking medication for thyroid disease. They found that people with the highest 25 percent of PFOA concentrations were more than twice as likely to be taking medicine for thyroid disease than those with the lowest 50 percent of PFOA concentrations.

While the results demonstrate an association, more research is needed to establish causality, the researchers say. It's impossible, they say, to determine whether people had higher levels of the chemical before their thyroid disease diagnosis, so it's unknown whether having the disorder changes how the body handles PFOA.

Elizabeth Pearce, an associate professor of medicine at Boston University's School of Medicine, said the research was interesting but preliminary. To prove a connection, Pearce said researchers will need to determine which specific thyroid disorders are

caused by the chemical exposure, since the types of thyroid diseases can be quite broad.

"This study is hypothesis-generating, but it needs to prompt more research, not anything beyond that," said Pearce, who was not associated with the research.

U.S. EPA recently added PFOAs and other perfluorinated chemicals to its "chemicals of concern" list, which signals the agency's intention to learn more about health risks those compounds pose and to improve management of those risks (*Greenwire*, Jan. 4).

Group links health care cost savings to federal chemicals overhaul

Separately, a group promoting reform of federal chemical regulatory policies released a report today detailing how health care spending could be curbed by reducing people's exposure to toxic chemicals.

The Safer Chemicals, Healthy Families coalition reviewed scientific literature linking chemical exposure to cancer, learning and developmental disabilities, Alzheimer's and Parkinson's diseases, reproductive problems, and asthma.

"Scientific evidence is strong and growing, that chemicals are contributing to the alarming increases in serious health problems," report author Charlotte Brody said. "But meanwhile the federal law that is supposed to protect us has stayed frozen in time."

Sen. Frank Lautenberg (D-N.J.) and Rep. Bobby Rush (D-Ill.) are soon expected to introduce legislation that would overhaul the Toxic Substances Control Act, or TSCA.

WATER

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EPA notes higher PCB levels in Hudson dredging (*Associated Press*)

Story also appeared: *Washington Post*

Thursday, January 21, 2010; 3:29 PM

ALBANY, N.Y. -- Federal environmental officials say they believe the amount of contaminated sediment that will need to be dredged from the Hudson River will be "significantly higher" than initially expected.

The federal Environmental Protection Agency has released a preliminary evaluation of last year's dredging of PCB "hot spots" north of Albany. The dredging was a test run for the far larger Phase 2 of the cleanup, which regulators want to start in 2011.

Dredge crews hired by Fairfield, Conn.-based General Electric last year found greater concentrations of PCBs than expected. In the draft report released Thursday, the EPA suggested reassessing the depth of contamination.

PCBs are considered probable carcinogens. Local GE plants discharged wastewater containing PCBs for decades before the lubricant was banned in 1977.

EPA Launches New Rulemaking To Strengthen Water Quality Standards (*Inside EPA*)

1/22/2010
EPA is launching a new rulemaking to strengthen its water quality standards program, which serves as the foundation for a major portion of pollution controls under the Clean Water Act (CWA), that will include revisions to the agency's "antidegradation" policies to preserve pristine waters and strict new milestones for reaching permit limits.

But the rule, which EPA's Web site says would be issued as a direct final rule within 12 months, is already drawing concern from state officials who say changes to the water quality standards program have vast implications for EPA's entire system of regulating water pollution and any changes must be carefully considered.

At issue is a regulation governing how EPA and states set water quality standards that drive permit discharge limits. The regulations currently outline how to set risk-based water quality criteria and designated uses for regulating waters, how to address so-called "mixing zones" where pollution enters waterbodies, variances, antidegradation requirements for protecting pristine waters and other topics.

EPA's December Action Initiation List, which is a snapshot of the regulatory actions EPA initiates each month, says the agency "is proposing a few targeted clarifications to the water quality standards regulation to improve its effectiveness in helping restore and maintain the nation's waters," including positioning the water act to address issues such as climate change.

Two sources familiar with the issue say they expect the revisions to be fairly broad, applying to many parts of the water quality standards regulation.

The agency attempted a similar effort to revise the water quality measures during the Clinton administration but the effort was scaled back in the face of opposition from states.

An EPA spokeswoman said in a statement that "examples" of provisions under review include updating antidegradation regulatory provisions to be more consistent with recent court rulings, facilitating increased public participation in the development of state water

quality standards and improving the accessibility of state standards regulations to the public.

The CWA's antidegradation provisions aim to ensure regulators maintain the condition of high-quality waters that are in better condition than water quality standards require. But the water act does not specify how this must be done, and there is relatively little case law on the subject.

A 2008 ruling from the U.S. Court of Appeals for the 6th Circuit -- *Kentucky Waterways Alliance, et al. v. Stephen Johnson, et al.* -- partially upheld EPA's approval of Kentucky's antidegradation rules. The court generally held that EPA and states have broad discretion to determine which waterbodies merit increased protection from antidegradation rules. "Given this ambiguity in the regulation, we defer to the EPA's interpretation" that either a pollutant-by-pollutant or waterbody-by-waterbody approach is permissible, the court said.

While the 6th Circuit backed EPA's approach for determining when to protect waters, the court nevertheless remanded the issue back to EPA for further consideration, saying the agency failed to measure the individual impacts of exemptions Kentucky had provided from the antidegradation requirements, such as estimating how much pollution a waterbody can receive without harm to water quality and aquatic life.

Over the past few months, environmentalists have stepped up their pressure on EPA to require states to develop antidegradation rules (*Inside EPA*, Jan. 8).

Now EPA in its rulemaking will revise its policies to make them consistent with the 6th Circuit's ruling.

A wastewater industry source says the agency is also planning on including a new water quality regulatory tool that would give good actors incremental milestones for attaining water quality standards (*see related story*).

The provision, which EPA included in numeric nutrient criteria the agency set for Florida and refers to as "restoration standards," provides milestones for reducing nutrient discharges over time, but if a discharger misses a milestone, regulators would require the discharger to immediately meet the most stringent discharge limit. "This will enable Florida to set enforceable incremental water quality targets (designated uses and criteria) for nutrients, while at the same time retaining protective criteria for all other parameters, to meet the full aquatic life use," the fact sheet says. The plan "gives you a little bit of flexibility in terms of implementation," the wastewater industry source says.

EPA staff announced the plan in a meeting this fall, the source says.

EPA says in its December notice the agency "does not believe it is necessary to overhaul the current regulation or associated guidance and policy. Rather, the intent of the proposal is to provide clarity and regulatory tools to address the issues described

above." The agency, in the notice, says the changes are "urgently needed to help reduce the rate of new water quality impairments and increase the rate of water quality improvements. The clarifications will also help streamline operations and improve public participation in standards processes."

The EPA spokeswoman says "EPA staff are reviewing current water quality standards regulations to evaluate opportunities for streamlining and greater consistency with recent court decisions."

One state official says the number of revisions EPA attempts in the rulemaking is important given the complexity of how the regulation impacts other EPA and state regulations and permit limits. "It would be an enormous undertaking that could require all the time they've got," the state official says, because each part of the water quality standards program is "extremely complicated" and "controversial" to revise.

EPA is said to have already hired a contractor for the rulemaking and is contacting relevant stakeholders. The EPA spokeswoman says "We intend to meet with senior EPA managers on options for such provisions and obtain State and public feedback on possible revisions to provisions later in 2010."

EPA's rulemaking follows controversial failed attempts to make similar changes during the Clinton and Bush administrations. In 1998, the Clinton EPA issued an advance notice of proposed rulemaking (ANPR) for broad changes to its water quality standards program, touching on virtually every facet of the water quality standards regulation. *Relevant documents are available on InsideEPA.com.*

At the time, state water officials questioned the need for dramatic program changes, noting that if the changes were enacted state environmental agencies would have to undertake numerous costly and labor-intensive actions, including reassessing all state waters to determine if they can realistically meet water quality goals.

In 2000, the agency drastically scaled back its plan for the new regulation, focusing on mixing zones and adding requirements for nationwide consistency in how states set beneficial uses, such as "fishable" and "swimmable," for waters. The Bush EPA in 2003 issued a rule banning mixing zones for bioaccumulative chemicals of concern in the Great Lakes but did not follow through on the original intention to extend the policy nationally. EPA also never issued new regulations on "beneficial use."

Another Bush EPA water quality standards policy action also proved controversial with environmentalists. When the agency in 2002 released a draft "Strategy for Water Quality Standards and Criteria," activists feared that actions to improve water quality would be put off while guidance documents are developed.

The state official says environmentalists and others are pushing for broad changes to the water quality standards program because the Bush administration did not pursue new regulatory changes. "There's a pent-up list of desires," the source says.

But state officials worry that too many significant changes could hamper water quality protection efforts because states would not have the resources or ability to implement key CWA programs. “It’s very difficult” to amend the water quality standards regulation “because you have to address implementation up front,” given the vast impact of the rule, the source says, adding that another potential pitfall would be new avenues for litigation from the rule changes. -- *Jonathan Strong & Erica Martinson*

SAB Review Could Bolster EPA Focus On ‘Conductivity’ In Mining Permits (*Inside EPA*)

1/22/2010
EPA is seeking a Science Advisory Board (SAB) panel review of its just-completed study of literature on the impacts of mountaintop mining on water quality, which could bolster the agency’s decision to focus on “conductivity,” or the amount of electricity that passes through water, as a key factor in its ongoing mining permit reviews.

EPA Region III -- which produced the agency’s award-winning research that is providing the Obama EPA with the scientific justification for strictly reviewing mountaintop mining projects -- requested the study, which the Office of Research & Development (ORD) recently completed. ORD will send the study to SAB for review after consulting with the Interior Department’s Office of Surface Mining and the Army Corps of Engineers about it, an EPA source says.

If the study -- and SAB’s review -- as expected echo the findings of other recent studies that say higher conductivity is harming water quality in Appalachia it could bolster EPA’s scientific case for using conductivity in regulatory decisions, sources say, an approach activists welcome but which industry opposes.

The EPA source says Region III requested the new ORD study because EPA’s regional offices, which have a more direct role in issuing and overseeing individual permits, “like to know what the latest science is saying.” Region III covers several Mid-Atlantic states including West Virginia, Pennsylvania, Delaware, Virginia and Maryland.

But a mining industry official criticizes the new ORD study. “Basically, this is EPA seeking evidence to convict after they’ve already decided on a guilty verdict. The entire emphasis on ‘conductivity,’ for example, and ‘relevant’ science is an attempt to find or emphasize new evidence that heretofore has been exculpatory. They are cherry picking studies and ‘science’ that will justify a new enforcement approach.”

An EPA spokeswoman recently said in a statement to *Inside EPA* that the research office “is actively reviewing current water quality standards most relevant to coal mining discharges, including conductivity, to ensure standards protect public health, water quality, and the environment in waters below mining activities.”

SAB is narrowing a list of candidates for an *ad hoc* panel to review the study. The EPA source says the study will be made public in about one month after it is sent to SAB. It will then be open for public comment.

EPA is using conductivity as a key indicator of adverse water quality impacts in its review of pending mountaintop mining permits, a move activists say puts attention on an important water quality problem but which industry says is an unjustified shift away from other water quality indicators. A range of dissolved solids can increase conductivity, including those often contained in runoff from so-called valley fills where mining waste is dumped in nearby streams. Higher conductivity can cause a range of adverse environmental impacts such as encouraging the growth of toxic algal blooms, activists say, and this could justify EPA opposing projects that would lead to higher conductivity.

Industry has argued that EPA is pursuing “an exercise in selectivity” by focusing on conductivity, saying it shows EPA trying to find data that backs what some industry officials see as the agency’s desire to block permits, rather than making permit decisions based on existing data that may not justify opposing the permits.

A literature review on mountaintop mining published in the journal *Science* Jan. 8 “revealed serious environmental impacts that mitigation practices cannot successfully address. Published studies also show a high potential for human health impacts,” according to the article. Environmentalists are citing that review in their calls for EPA to quickly halt the practice, but a similar study by EPA may be of more use to the agency, sources say.

Unlike the study published in *Science*, ORD’s study only examines existing scientific literature on water quality impacts, with a focus on ecological implications, not human health impacts or aesthetic concerns, the EPA source says.

On the issue of conductivity, the *Science* article says, “Conductivity, and concentrations of SO4, and other pollutants associated with mine runoff can directly cause environmental degradation, including disruption of water and ion balance of aquatic biota,” citing EPA Region III’s original research on the subject.

However, industry has previously criticized EPA’s focus on conductivity, including Region III’s research. A industry critique of the Region III research commissioned by the National Mining Association and conducted by GEI Consultants found that the EPA study’s use of conductivity is “possibly inappropriate.” *The critique is available on InsideEPA.com.*

“Because conductivity is only a surrogate for other water chemistry variables, findings associated with conductivity should be investigated further to determine which specific compounds may be responsible for changes in conductivity, as it may not be possible to identify which compounds those are -- or if the specific compounds vary with location,” the critique says.

Talks May Avoid Test Of EPA Power To Delay Water Permit Compliance (*Inside EPA*)

1/22/2010
EPA and environmentalists are close to settling litigation over a discharge permit for the Los Alamos National Laboratory that would sidestep a potentially damaging legal test over whether EPA has authority under the Clean Water Act (CWA) to issue compliance schedules in water quality-based permits -- a little-litigated issue that could potentially hinder the agency's ability to issue compliance extensions for scores of impaired waterways.

In a case pending before EPA's Environmental Appeals Board (EAB), *In re: Los Alamos National Laboratory*, environmentalists argue that the agency is statutorily barred from approving extensions to established compliance schedules that occurred after July 1, 1977, even though states allow extensions for compliance schedules in National Pollution Discharge Elimination System (NPDES) permits regularly, and EPA approves them.

Environmental attorneys say the argument is relatively novel and there is no direct case law determining whether the statute explicitly bars EPA from approving compliance schedules after 1977. This means the agency may be especially vulnerable to an adverse ruling, which could limit the agency's discretion in allowing industrial stormwater runoff permits that extend compliance schedules.

"I think in terms of compliance schedules, [EPA] is very vulnerable," one attorney involved in the case says.

EPA was to have filed its response Jan. 19 to the petition brought by the Western Environmental Law Center (WELC) and others last March but instead in a joint Jan. 19 filing EPA and WELC filed for a sixth extension, until March 5. In a Dec. 10 EAB order granting the most recent extension, EAB Judge Kathie Stein said the parties were in the process of reaching a settlement.

An EPA spokesman declined to comment on the status of the settlement negotiations but said the agency maintains it has authority to grant extensions to compliance schedules and is settling the case in order to "avoid the expense and use of resources as a result of protracted litigation."

The attorney involved in the case says, "EPA was very receptive to settling [the case]," adding, "I don't know if that was about the particular factors in the case or because they thought they were vulnerable."

WELC argues in its challenge to an EPA-issued NPDES permit for the Los Alamos National Laboratory (LANL) in New Mexico that the CWA explicitly requires enforceable

water quality standards to be enforced by the agency by July 1, 1977. Therefore, the petitioners argue, EPA is bound by the statute to enforce an effluent limit and may not grant an extension for compliance after that date. *The petition is available on InsideEPA.com.*

The attorney says LANL's permit is a particularly ludicrous example of a compliance schedule being put off more or less indefinitely, because the five-year permit includes a seven-year compliance window. "The compliance schedule exceeded the life of the permit," the source says. "It was particularly egregious in this case."

Activists have raised compliance schedule issues in previous cases, a second attorney involved in the case says, but they have not argued that EPA lacks the authority to issue those permits at all, as petitioners have done in the LANL permit challenge. For example, in a case settled in the U.S. District Court for the Northern District of California in 2007, *Baykeeper v. EPA*, the plaintiffs claimed that the state's delay in issuing a water quality standard for the San Francisco Bay violated a nondiscretionary duty under the CWA to impose "a strict, mandatory schedule pursuant to which EPA must approve or disapprove."

But the attorneys say courts are unlikely to address the compliance schedule issue in this case because the activist groups challenging the LANL permit are more concerned about reducing stormwater pollution from LANL reaching the Rio Grande than reaching a clear answer on the water act's allowance of compliance schedules.

One attorney not associated with the case says the challenge could "definitely have a widespread impact" if it were to be litigated, considering the dearth of case law that directly addresses the question of whether compliance schedules are permitted under the act. But the source cautions that courts are likely to grant EPA deference, under the criteria set forth in *Chevron v. Natural Resources Defense Council*, for allowing compliance schedules.

"Under *Chevron*, the agency gets a lot of deference unless the statute is unambiguous," the source says. "It seems like it may be difficult to make the argument that the statute is unambiguous -- you would have to claim that the deadline was absolute."

But the absolute nature of the deadline is exactly what the petitioners are arguing. The CWA was intended to make the waters of the United States clean, swimmable and fishable, another attorney involved in the case says, and does not include clauses that allows those goals to be put off indefinitely simply because reducing water pollution is difficult for some polluters to do.

"If you look at the specific language of the act . . . it seeks to achieve water quality standards by these dates," the source says. "Now we've gotten in a situation where compliance schedules are issued as a matter of course." -- *John Heltman*

Industry Gears Up To Fight EPA's Nutrient Criteria For Florida Waters (*Inside EPA*)

1/22/2010
Municipal and industrial dischargers are gearing up to fight EPA's Jan. 15 proposal setting first-time numeric nutrient criteria for lakes and streams in Florida, which could set a precedent for how the agency intends to regulate scores of other nutrient-impaired waters nationwide.
The industry critics argued in a Jan. 6 meeting hosted by the White House Office of Management & Budget (OMB) that stricter nutrient limits are not scientifically justified in some waters and create unnecessarily stringent requirements that impose huge potential costs, according to sources present at the meeting.

Industry sectors represented at the meeting included municipal wastewater treatment, pulp and paper, agriculture and fertilizer manufacturers, according to OMB's Web site.

The sources say the Jan. 6 meeting came too late to win changes to the proposed rule, which OMB approved Jan. 14, but that agency officials were interested in hearing the issues likely to be of concern during the proposed rule's public review. The agency will hold three public hearings on the rule in February, and collect comments for 60 days.

Environmentalists, however, say the proposed rule is not strict enough, though activists say they can live with the measure since it provides first-time numeric requirements. They also charge that industry's cost concerns are overblown.

EPA's proposed numeric criteria for Florida waters are the first in a hotly-contested push by environmentalists to force EPA to, for the first time, implement stringent numeric criteria where states have failed to do so. Under the Clean Water Act, states draft and EPA approves water quality criteria -- risk-based limits that regulators use, along with waterbodies' designated uses and antidegradation policy -- to set enforceable water quality standards and permit limits.

Florida, like most states, has long opted for a "narrative standard," which allows discharges to continue so long as there is no discernible effect on the waterbody. In July 2008 activists sued EPA, claiming the agency had failed in its nondiscretionary duty to protect Florida's waters by failing to require the state to develop a numeric standard. EPA agreed in January 2009 to issue proposed numeric criteria for the state's lakes and flowing waters by Jan. 14 and for coastal and estuarine waters by Jan. 14, 2011.

Even before EPA issued its proposal, its method for setting numeric criteria has been controversial, with EPA's Science Advisory Board (SAB) saying late last year that the agency's guidance on how to develop the criteria is neither defensible nor adequate. Some industry sources have said they may cite the SAB findings in any future legal challenge to the regulation (*Inside EPA*, Nov. 27).

The proposed rule EPA unveiled Jan. 15 includes several measures intended to provide flexibility for industry. It divides the state into four watershed-based regions for streams and develops different nitrogen and phosphorus criteria for each region, responding to criticism that the wide-ranging geographic differences in Florida make setting one standard unreasonable. To set the criteria, “EPA evaluated a combination of biological information and data on the distribution of nutrients in a substantial number of healthy streams measured by Florida’s stream condition index,” an EPA fact sheet says. *The proposed rule is available on InsideEPA.com.*

The rule also allows for the development of site-specific criteria and creates an additional enforcement tool to give good actors incremental milestones for reducing nitrogen and phosphorus discharges. The agency plans to adopt this approach in an upcoming rulemaking aimed at strengthening how states set and implement water quality standards (*see related story*).

And for the first time, sources say, EPA is setting criteria aimed at protecting downstream uses, and not just in-stream protection of aquatic and human life. It’s a “whole new methodology that they’ve never used before,” a wastewater industry source says.

But industry sources say the agency has failed to provide an adequate scientific justification for the requirements the rule would usher in. EPA’s scientists “were not able to connect nutrient condition with stream impacts,” the wastewater source says, noting that EPA says reduced “nutrient levels will improve water quality impact,” but that there is no evidence for that.

An attorney following the issue says EPA in the proposed criteria “acknowledged that when they tried to test the stream standards, they couldn’t get a reasonable stressor response. . . . If you can’t develop the relationships, why are you issuing the standards?” the source asks. “Distribution approaches do not have cause and effect.”

But an environmentalist says EPA has provided adequate scientific justification for the rule, noting that the Clean Water Act requires the agency to use the best available science. The source says EPA measured streams without viable damage, and used them as markers for high-end nutrient limits, “which is a pretty reasonable thing to do.”

Industry sources are also concerned that EPA is setting standards to protect downstream uses, saying such an approach could have broad implications for states. “To protect downstream waters technically . . . Missouri should be looking at [its Gulf of Mexico impacts],” the wastewater source says.

The attorney adds that requiring regulators to consider downstream uses when setting water quality criteria usurps the goals of EPA’s impaired waters program, which sets watershed-wide load limits -- known as total maximum daily loads (TMDLs) -- to control pollution. “If [nutrient loads] are too high. . . you set a TMDL. You don’t change the upstream standard,” the source says.

The attorney is concerned that EPA will set upstream limits without taking into account how nitrogen dissipates as it moves through a system, resulting in strict limits for some upstream dischargers. “It’s not a reasonable approach and not consistent of EPA’s historical development of standards,” the attorney says.

But the environmentalist rejects the industry concern, saying EPA’s proposal recognizes changes in nitrogen levels. Industry opponents “got the story completely backwards,” the activist says.

Many wastewater industry sources are also raising concerns that the new criteria will force them to revise existing plans for cutting their releases, resulting in costly delays and facility upgrades. “EPA feels strongly that they can’t consider costs when they come up with criteria,” the wastewater source says.

But the industry attorney following the issue says that based on the way EPA’s statutes are written, water quality standards are written to protect the uses of water, without consideration of cost. If the costs are too great, there are mechanisms written in to allow for waivers or deferrals.

The environmentalist says the wastewater industry claims are overblown. In Florida, many utilities dispose of their effluent through underground injection and land application, neither of which will be subject to stricter requirements. Their numbers are “wildly exaggerated,” the environmentalist says.

Asian carp evidence came too late for Supreme Court (*Greenwire*)

01/21/2010
The U.S. Army Corps of Engineers received DNA testing results Friday suggesting the presence of Asian carp in Lake Michigan, but officials did not announce those results until Tuesday, just before the Supreme Court declined to issue an injunction that was requested to hold the fish at bay.

The delay drew criticism yesterday from Michigan Attorney General Mike Cox (R), who filed a lawsuit on the state's behalf last month asking the nation's highest court to reopen a decades-old case and force Illinois to close locks in Chicago-area waterways linking Lake Michigan to the Mississippi River. The lawsuit was joined by Wisconsin, Minnesota, Ohio, New York and Ontario, which fear that invasive Asian carp could damage fisheries and other industries dependent on the lakes.

"It is troubling the Corps of Engineers did not give this information to the Court in a timely manner, and it is clear their attorneys at the Department of Justice saw the importance of this new evidence as well," Cox said in a statement.

Although the Supreme Court denied the injunction, it has not yet decided whether to reopen the case.

U.S. Solicitor General Elena Kagan sent a letter to the court Tuesday explaining why her office had not sent the latest data to the Supreme Court. She said her office was not given the results until 8 a.m. Tuesday, two hours before the Supreme Court made its decision known.

"As we prepared to inform the court about them, the court issued its order denying the preliminary injunction motion," Kagan wrote (Jim Lynch, *Detroit News*, Jan. 21). **-- GN**

Mississippi River diversion to be closed (*Greenwire*)

01/21/2010

Federal and Louisiana officials agreed yesterday to shut down the state's first major freshwater diversion project for the Mississippi River, citing concerns that the project's budget would require additional millions of dollars every three years to dredge a nearby shipping anchorage.

The decision of the task force does not represent a threat to seven other major freshwater diversion projects under design farther up the river, officials said. Such projects are seen as one of Louisiana's best hopes for preventing further erosion of its coastline.

"This is adaptive management, making decisions based on science and the performance that's occurring on the ground to assure the resources of the river are being used to their highest priority," said Col. Alvin Lee, chairman of the task force and commander of the Army Corps of Engineers' New Orleans District.

The West Bay diversion was the first project to be built, in 1991, under the Coastal Wetlands Planning, Protection and Restoration Act. It was supposed to showcase the ability of diversion to generate new wetlands and land, but a compromise struck with the shipping industry meant the diversion was built too close to the river's mouth, decreasing its effectiveness.

The diversion could be shut down by as soon as this fall.

The task force's members include the Army Corps of Engineers, U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Environmental Protection Agency and the state Coastal Protection and Restoration Authority (Mark Schleifstein, New Orleans *Times-Picayune*, Jan. 20). **-- PV**

High levels of tritium found at Vt. plant (*Greenwire*)

01/21/2010
Water containing high levels of the radioactive isotope tritium was found for the second time in as many weeks on Vermont Yankee nuclear power plant property, officials said yesterday.

Tests conducted on a sample of 150 gallons of water in a tunnel that connects a radioactive storage room to outside tanks found 2.1 million picocuries of tritium last week, said Neil Sheehan, spokesman for the Nuclear Regulatory Commission. Neither the standing water nor the tritium is supposed to be there, he said. U.S. EPA's safety limit for tritium in drinking water is 20,000 picocurie per liter, but no tritium has been detected at drinking wells tested near the plant.

On Jan. 7, a separate groundwater sample at the plant had tested positive for the radioactive isotope, though the amount detected at that site was still 3,000 picocuries below the safety limit set by EPA. That initial finding raised concerns because Vermont Yankee executives had told state officials that pipes such as those where the leak occurred did not exist.

Yesterday Vermont legislative leaders called for the state to conduct its own testing of on-site wells to monitor tritium levels. "Vermonters have lost confidence in Entergy Louisiana," said Senate President Pro Tempore Peter Shumlin (D), referring to the corporation that owns Vermont Yankee.

The level of tritium found in the tunnel is 100 times higher than the picocurie levels found in the first monitoring well, but the tunnel is a contained space, Sheehan said, whereas the monitoring wells are measuring groundwater surrounding the plant. "It's not out in the environment," he said, making the radioactive water less of a health risk to the public.

Based on the experiences of other nuclear power plants around the nation, Sheehan estimates that finding the source of the leaks could take months or even years, though he said, "It's more typical that they find it in many months."

Vermont Yankee has agreed to dig 11 monitoring wells around the plant over the next few weeks to bolster its testing efforts (Hallenback/Hemingway, *Burlington Free Press*, Jan. 21). **-- DFM**

Oversight panel sees biofuel crops helping cleanup (*Greenwire*)

Allison Winter, E&E reporter

01/21/2010

Farming more cellulosic biofuel crops in the Chesapeake Bay watershed could help improve water quality, according to a report released today by an intergovernmental panel overseeing the bay cleanup.

The Chesapeake Bay Commission and the state of Pennsylvania sponsored the report showing that the watershed's farms, forests, unused fields and landfills could produce about 500 million gallons of fuel -- enough to replace the gasoline consumed in the Washington metro area for about six weeks.

The estimate assumes no conversion to biofuel crops of land now used for forestry products, food or livestock production. It also assumes the use of land-management practices to curb nutrients washing off farmland into the bay.

The study, conducted by Pennsylvania State University, found that biofuel crops combined with traditional agriculture could help clean up the bay. Next-generation biofuel crops -- switchgrass, barley, rye and fast-growing willow and poplar trees -- could reduce erosion and pollution.

The report -- the third examining biofuel crop potential in the watershed -- also predicts that the new industry could create as many as 18,600 jobs in the region.

"An emerging biofuels industry has the potential to significantly impact the Chesapeake Bay region," the report says. "If handled correctly -- in a way that promotes the growth of the industry and also protects the bay's ecosystem -- the economic, energy and environmental benefits could be significant."

The commission recommends that governments in the watershed adopt a "conservative" next-generation biofuels production target of 500 million gallons per year from a mix of agricultural and forest feedstocks. Next-generation biofuels crops are not currently cost-competitive with ethanol or oil because their production is too expensive.

Agriculture in the bay watershed has long been under fire for contributing to nutrient and sediment pollution. U.S. EPA Administrator Lisa Jackson said earlier this month that she plans to craft and enforce tougher restrictions on agriculture and development in the watershed (*Greenwire*, Jan. 12).

The commission is urging farmers to plant more winter crops for biofuel production on fields that otherwise lie fallow. The crops could act as a nutrient "sink," soaking up nitrogen and phosphorus that could otherwise get into the water and feed algae blooms.

The report also recommends planting switchgrass and other fast-growing cellulosic crops on idle land. Its estimates for potential future plantings would include putting biofuel crops on land enrolled in the Conservation Reserve Program (CRP), the U.S. Agriculture Department's largest land retirement program for conservation.

That recommendation did not sit well with Julie Sibbing of the National Wildlife Federation. CRP land is planted in grasses to improve water quality and provide wildlife habitat.

"The idea that CRP is sitting there idle and you can put it into monoculture and it would be just as good for wildlife -- it won't," said Sibbing. "It would be devastating."

Sibbing said the report makes some good recommendations for how to develop biomass in the watershed, but it fails to consider wildlife and biodiversity.

Company paying $1.3 M for SoCal oil spill (*ABC Eyewitness News 7*)

Thursday, January 21, 2010
LOS ANGELES (KABC) -- Pacific Pipeline Systems LLP, Long Beach has agreed to pay $1.3 million in civil penalties and to stop using an oil pipeline through an unstable section of the Tehachapi Mountains.

The U.S. Justice Department and the U.S. Environmental Protection Agency (EPA) said the agreement was to resolve a violation of the Clean Water Act.

The EPA says it filed the federal lawsuit against the oil transport company to protect Pyramid Lake, an important body of water.

Ignacia S. Moreno, Assistant Attorney General for the Justice Department's Environment and Natural Resources Division says the settlement protects Pyramid Lake from future oil spills.

The federal court case filed in Los Angeles alleged Pacific discharged crude oil into Pyramid Lake, located about 60 miles northwest of downtown Los Angeles.

In March 2005, a landslide caused a portion of Pacific's Line 63, an underground pipeline that runs from Bakersfield, California to Los Angeles, to fail. The break discharged 3,393 barrels of oil. Most of it flowed into Pyramid Lake, which is part of the California Aqueduct and is a potential drinking water supply.

As part of the agreement, Pacific will discontinue use of about 70 miles of Line 63 that travels through the Tehachapi Mountains. Pacific could re-use the pipeline, but only after relocating it into a more stable area. The consent decree is subject to a 30-day public comment and approval by the federal court.

A copy of the decree is available on the Justice Department Web site.

Pipeline firm penalized for oil discharges (*WaterTech Online*)

1/21/2010 11:50:04 AM
WASHINGTON — The Justice Department and the US Environmental Protection Agency (EPA) announced that Pacific Pipeline Systems LLP, a California-based oil transport company, has agreed to pay $1.3 million in penalties and discontinue the use of a section of pipeline through an unstable section of mountains to resolve a Clean Water Act violation, according to a press release.

The settlement is a result of a March 2005 landslide that caused an underground pipeline to fail, resulting in the discharge of approximately 3,393 barrels of oil into Pyramid Lake, the release stated.

“Californians expect, deserve and are entitled to clean water. When these environmental laws are violated, EPA will always be vigilant,” said Jared Blumenfeld, regional administrator of EPA’s Pacific Southwest region. “Today’s successful enforcement settlement addresses multiple flaws in Pacific Pipeline’s system and also provides for a substantial penalty.

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