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EDITORIAL / OP-ED / COMMENTARY / LETTERS

‘National Mission' (*New York Times*)

To anyone watching the oil spew into the Gulf of Mexico, the argument for curbing this country's appetite for fossil fuels could not be clearer. President Obama was right last week when he called on America to unify behind a “national mission” to find alternative energy sources, sharply reduce its dependence on oil and cut its greenhouse gas emissions.

We were disappointed, however, that Mr. Obama's address failed to insist that the best way to do all of these things is to establish a broadly based, economywide cap-and-trade system that would put a price on carbon emissions. He opened the door far too wide to alternative policies that aren't real alternatives — and to more stalling.

A House bill approved last year would set up such a system. Action in the Senate has been delayed for months, as Republicans, and some Democrats, have argued without any real proof that capping and pricing carbon emissions would cripple the economy by driving up the cost of energy.

On Wednesday, Democratic leaders, who have promised to bring an energy bill to the Senate floor after the Fourth of July recess but are nowhere near agreement on what should be in it, will troop down to the White House. This time, Mr. Obama must stress, explicitly and emphatically, that a conventional energy bill will not do — and that attaching real costs to older, dirtier fuels now dumped free of charge into the atmosphere is the surest way to persuade American industry to develop cleaner fuels.

Mr. Obama also needs to push back a lot harder against critics who claim, wrongly, that such an approach will raise electricity and fuel prices to unacceptable levels.

A new analysis from the Environmental Protection Agency shows that the most ambitious bill before the Senate, sponsored by John Kerry and Joseph Lieberman, would cost American households at most an additional $150 a year. That does not seem too high a price to pay for helping to avoid dangerous climate change. A simpler if less ambitious carbon cap proposal offered by Senators Susan Collins, a Maine Republican, and Maria Cantwell, a Washington Democrat, is designed to cost consumers even less, and is worthy of attention.

There are other honorable bills out there that have much to recommend them but fall short because they do not include mandatory greenhouse gas reductions or a price signal. A measure sponsored by Senator Jeff Bingaman, Democrat of New Mexico, would require utilities to generate 15 percent of their power from renewable sources by

2021.

A bill from Indiana's Richard Lugar (one of the few Republicans to have stepped forward with genuinely positive ideas) seeks tighter fuel economy standards for cars and stricter efficiency standards for buildings — two huge sources of carbon emissions.

Those are good ideas that should be part of a comprehensive bill. By themselves they are not enough to reduce the country's dependence on fossil fuels or combat the dangers of climate change.

The politics won't be easy. Some big oil and power companies will push back hard, as will nearly all Republicans and many Rust Belt Democrats. But Americans are rightly outraged by the spill in the gulf. This is clearly the moment for President Obama and Senate leaders to deliver a tough and ambitious energy bill capable of protecting the environment and the nation's security.

A version of this editorial appeared in print on June 21, 2010, on page A28 of the New York edition.

O-blah-blah-blah-ma's green-energy crusade (*Washington Times*)

THE WASHINGTON TIMES
President Obama's Oval Office address to the nation was little more than what has become meaningless "O-blah-blah-blah-ma" talk - this time promoting the administration's "never let a crisis go to waste" mantra to further his economy-busting green-energy plan by telling us to alter our ways. Yet he is exacerbating the Gulf oil-leak crisis.

Mr. Obama said nothing about waiving the Jones Act to attract all the outside help we can get to clean up and control the BP oil disaster in the Gulf of Mexico. And nothing was Nor did he say anything about using the underground nuclear option the Russians have used to seal similar uncontrolled gushers. The intention appears to be to demonize BP and big oil while riding out the growing calamity on environmental rhetoric and saddling the nation with energy legislation and the regulatory whip of the **Environmental Protection Agency.**

If the president and Congress blindly pursue green energy at the expense of suppressed domestic oil production and refineries, our reliance on imported oil - which has doubled from 30 percent of our total supply in 1972 to 60 percent today - will continue to increase along with the price of gas. Indeed, instead of calling on the nation to alter its ways, President Obama must alter his, lest we all suffer the long-term consequences.

DANIEL B. JEFFS
Apple Valley, Calif.

REVIEW & OUTLOOK
JUNE 21, 2010

The 'Paralyzing' Principle (*Wall Street Journal*)

The Gulf disaster rehabilitates a discredited idea.
The Gulf oil spill is having all sorts of nasty consequences well beyond damage to the regional environment and economy. Not least, the resulting political panic seems to be rehabilitating the thoroughly discredited theory of regulation known as the precautionary principle.

This principle holds that government should attempt to prevent any risk—regardless of the costs involved, however minor the benefits and even without understanding what those risks really are. Developed in the late 1960s, this theory served as the intellectual architecture for the Environmental Protection Agency, which is still required to eliminate certain environmental risks no matter how expensive or pointless the effort is.

This same mentality is now prompting not merely tighter safety standards, but President Obama's moratorium on all new deep water drilling, shutting down dozens of Gulf and Alaskan projects, maybe permanently. Last month, 26 Democrats demanded that the government fold up BP's other major Gulf operation, Atlantis, "to ensure that the explosion and mishap of the Horizon platform are not replicated."

Meanwhile, Governor Charlie Crist and other Florida politicians want a Gulf drilling ban unto eternity, and the California, Washington and Oregon Senate delegations want one for the West Coast too. "Without a permanent ban on drilling off our shores," said Dianne Feinstein, "there is no guarantee whatsoever that this will not happen again."

In other words, the precautionary principle is back with a vengeance. The irony is that the figure most responsible for dismantling its premises, Cass Sunstein, is now a member of the Obama Administration.

Formerly of the University of Chicago and Harvard, and now the regulatory czar in the White House budget office, Mr. Sunstein calls the precautionary principle "incoherent" and "paralyzing," as he put it in an essay in the journal Daedalus two years ago.

"Precautions cannot be taken against all risks," Mr. Sunstein elaborated in his 2005 monograph "Laws of Fear," "not for the important but less interesting reason that resources are limited, but simply because efforts to redress any set of risks might produce risks of their own."

Mr. Sunstein's insight is that there are risks on all sides of a question—doing nothing can be dangerous, but acting might be more dangerous—so the only rational way to judge regulation is to quantify the costs and benefits. If the Food and Drug Administration took a harder line in approving new medicines, it might protect the public from a future thalidomide disaster. But it could also deprive the public of cures for disease or expose it to serious peril, like having no recourse in a pandemic.

In a 2002 book, "Risk and Reason," Mr. Sunstein pointed out that the best way to prevent automobile pollution would be to eliminate the internal combustion engine. Should the EPA ban that too? "If these would be ridiculous conclusions—as I think they would be—it is because the costs of the bans would dwarf the benefits. Pollution prevention is not worthwhile as such; it is worthwhile when it is better, all things considered, than the alternatives."

All of this puts into context the ex-post-facto claims that government and industry should have done more to avert a low-probability but high-severity event such as the BP disaster. Is a drilling ban better than the alternatives? These would include more imports even though tanker accidents are more common than large oil well blowouts, the last one of which in U.S. waters was 40 years ago. (The Exxon Valdez was relatively minor in the world-wide context.) And they would include severe economic damage to the oil-and-gas business when one in every 10 Americans is out of work.

Mr. Sunstein has rarely been heard in public since he joined the Administration, and his "nudge" philosophy to encourage better choices in no way influenced the health-care bill. Perhaps he'd care to speak up now? With the reinvigoration of the precautionary principle, the country could use a little empiricism.

Carroll: An imperial EPA (*Denver Post*)

Coloradans may be worried about public debt and the burden of government on the economy. They may be anxious about their jobs and their long-term financial security. And U.S. companies may meanwhile be "holding more cash in the bank than at any point on record," according to The Wall Street Journal, because of fears over another recessionary dip.

No matter. Our two U.S. senators, bless their buoyant hearts, apparently believe that the private sector can withstand a lot more uncertainty and stress. So Michael Bennet and Mark Udall voted the other day to protect what is likely to become the most costly,

comprehensive regulatory initiative in history.

They gave their blessing to the Environmental Protection Agency's intention to set climate policy for the nation, with no input from Congress, which happens to exist in order to rule on such momentous matters.

By the time the EPA is through, it is likely to impose new regulations not only on such major emitters of greenhouse gases as utilities but also on millions of small businesses, apartment buildings, hotels, schools and farms. The agency will have little choice given the path it has chosen.

Last December it issued an official finding that greenhouse gases endanger public health and welfare under the Clean Air Act, and now that law's extraordinary provisions kick in. They require permits for any facility that emits 100 tons of pollutants per year — which is a decent threshold, say, for chemicals that cause ozone but a low threshold for carbon dioxide.

Enter the so-called Murkowski Resolution, which basically would have vetoed the EPA ruling and put the authority for climate policy back in the hands of Congress where it belongs. Yet 53 senators, including Bennet and Udall, voted it down.

Bennet issued a peculiar statement in which he acknowledged the primacy of Congress — "The best way to limit carbon pollution is for Congress to pass a comprehensive climate and energy bill" — but went on to allege that the "resolution would leave the government powerless to move forward, even if Congress doesn't act."

In short, Congress should act, but if it doesn't then Bennet wants to have his way through bureaucratic fiat. The senator also said the resolution "would gut the Clean Air Act."

Yet how would the assertion of congressional authority to regulate an area of air quality that has never been addressed before "gut" that act? To the contrary, the Clean Air Act is far more likely to be discredited by the EPA's attempt to use it to address greenhouse emissions.

Why? Because Congress never contemplated that law covering anything as common as greenhouse emissions. And if the EPA followed the act to the letter, it would wreak havoc on the economy, as the agency admits. Permits alone would cost tens of thousands of dollars each. So the agency has basically decided to rewrite the act on its own.

In a "tailoring rule," the agency said it would exclude smaller sources from permitting requirements until at least 2016 because to do otherwise would impose "undue costs" on them.

However, as the Legal Times' blog pointed out, "The key question is whether the

agency has the authority to make such a change to the statute." Is the law simply whatever the EPA says?

Activists will seek to force the EPA to speed up the timetable for cracking down on the millions of smaller- scale carbon emitters. If they succeed, the compliance costs will be horrendous. If they fail, it's probably still only a matter of time before this federal bureaucracy ends up micromanaging carbon emissions across the full economy, without any direction from our elected representatives.

And that, incredibly, is just fine with Colorado's senators.

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Don't forget the climate bill (*Los Angeles Times*)

June 21, 2010 Monday
Home Edition
MAIN NEWS; bad desk code; Editorial Desk; Part A; Pg. 14

So much for the climate bill. President Obama's big speech last week on the BP oil spill was expected to mark the start of a major White House push for legislation aimed at clean energy and climate change, but the second part of that package went down like a crude-coated pelican. Obama's failure to mention cap-and-trade, or any other scheme to price greenhouse-gas emissions, suggests he doesn't intend to pursue it.

You can't fault Obama's political instincts. He can count votes as well as anybody, and it's clear that the 60 votes needed to overcome a Senate filibuster on a climate bill just aren't there. Yet the president's habit of leading from the rear is in part responsible for that. By using his considerable oratorical gifts to explain the reality of **climate change** and the urgency of taking action before it causes an environmental and economic catastrophe that would dwarf what's happening in the Gulf of Mexico, Obama might be able to pressure some senators into his camp. Indeed, there is evidence that the public would back him.

Obama's pollster Joel Benenson recently found that 63% of likely 2010 voters support charging energy companies for the carbon pollution released in electricity production or gasoline use. Another recent survey by Pew Research had strikingly similar results, with 66% of Americans supporting a bill that would put limits on greenhouse-gas pollution. And Stanford communications professor Jon Krosnick reported poll results in the New York Times earlier this month showing 76% approval for government limits on business' greenhouse-gas emissions.

The problem with polls like these is that they also show that Americans are pretty clueless about what such carbon limits would entail. In Krosnick's poll, large majorities

opposed taxes on gasoline and electricity, while in the Pew poll, 68% favored expanded exploration and development of coal, oil and gas. It's inconsistent to back carbon limits on businesses while opposing taxes on fossil fuels, because any scheme for pricing carbon will ultimately lead to higher prices for electricity and gasoline -- in other words, it will have the effects of a tax, even if it's a hidden one. That can be offset by refunding the taxes (or the proceeds from carbon auctions under a cap-and-trade system) to consumers, but there's no practical way to avoid them. It's equally silly to support expanded exploration for fossil fuels while trying to cut fossil-fuel emissions.

What the polls really show is that Americans want the government to solve our energy problems, but don't want to have to pay anything for the solution. That's not unusual, and it doesn't just apply to energy. It's also probably unrealistic to expect Obama to reverse such entrenched attitudes. Yet we suspect that a concerted campaign to explain the scientific conclusions on climate, spell out the expected effects and clearly define the economic costs and benefits would win a lot of hearts and minds.

We don't actually expect Obama to save the world single-handedly. But it would be nice if he'd make an effort.

Sen. Johnson chose truth over claims by lobbyists (*Argus Leader*)

Sioux Falls
Sen. Tim Johnson makes me proud to come from South Dakota. He stood up against the big oil corporation lobbyists who wrote Alaska Sen. Lisa Murkowski's amendment to gag the U.S. Environmental Protection Agency from doing its job to protect us from polluters.

Johnson chose the truth of science over partisan politics, and he chose to put our national security and public health ahead of the lobbyists.

I'm repulsed by the BP disaster in the Gulf, which is the product of lax supervision and oil lobbyists getting their way for the past 10 years. That's why the overwhelming majority of Americans support reforms to give us a clean-energy policy that controls polluters instead of another big oil bailout.

After two OPEC oil embargoes, 9-11, Hurricane Katrina, oil price spikes and contrived shortages, the Exxon Valdez (among many oil spills), climate change and now BP's disaster, I hope America gets the message that our love affair with oil and oil corporations just isn't working out.

On behalf of South Dakota's children and future generations, thanks Sen. Johnson.

For Democrats, Internal Dissent Could Stop an Agenda Cold (*New York Times*)

June 21, 2010 Monday
Late Edition - Final
Section A; Column 0; National Desk; THE CAUCUS; Pg. 17
For Democrats, Internal Dissent Could Stop an Agenda Cold
By JOHN HARWOOD
As Democrats try again this week to fight through their election-year storm, Job No. 1 is settling on a common destination.

For instance, they will need to make order out of chaos on energy, the issue President Obama elevated from the Oval Office last week. Two days later, three Senate Democrats presented different plans to a party caucus that failed to settle on one approach.

"We are not going today to tell you what we're going to have in this legislation," the Senate majority leader, Harry Reid, acknowledged afterward, "because that's a work in progress."

So is a major tax and spending bill, which has split Senate Democrats over conflicting imperatives to aid Americans suffering from a weak economy and to prevent higher deficits. In the House, Speaker Nancy Pelosi delayed action on campaign finance legislation after a compromise struck with the National Rifle Association to win over moderates upset the Black Caucus.

All Democratic factions exulted in the Republican public relations disaster of Representative Joe L. Barton of Texas, who apologized to BP before retracting his words under orders from party leaders. Yet that provided only temporary respite from intra-Democratic battles after a 17-month roller-coaster ride in which their reward for advancing Mr. Obama's agenda is near-10-percent unemployment and ominous pre-election polls.

"This is a difficult moment for Democrats," said William A. Galston, who was domestic policy chief in the Clinton White House. "Under this kind of pressure in an election year, it's inevitable."

Competing Priorities

For much of the 20th century, when the Democratic Party contained white Southern conservatives, Northern liberals and African-Americans, the party had a reputation for fractiousness and ideological diversity. That diversity faded in recent decades as conservatives moved toward the Republicans.

Democratic gains in 2006 and 2008 swept in a raft of new members from conservative-leaning states and districts. But internal fissures in the Obama era have generally paled alongside those of earlier times. On issues like economic stimulus, health care and new financial regulations, Democratic lawmakers have displayed remarkable unity of purpose.

That is why the Democratic infighting now rising with the summer temperatures poses such problems for the White House. With Republicans maintaining near-unanimous opposition, even a moderate amount of internal dissent could stop Mr. Obama's agenda cold.

"You have one party that has taken a pass on governing," said Dan Pfeiffer, the White House communications director. "Our system's not set up for that."

Most vexing are the colliding priorities on the economy. Many Democrats consider it self-evident that spending billions of dollars more on unemployment benefits, Medicaid assistance and state aid to avoid teacher layoffs makes economic and political sense.

But more deficit-conscious Democrats, including vulnerable first-term members elected with Mr. Obama, consider it equally obvious that Congress must curb federal borrowing and answer public concerns about debt and deficits. Mr. Obama's answer for reconciling those impulses, short-term spending and long-term austerity, has been hard to sell.

"The challenge is doing both without sending conflicting messages," said Representative Chris Van Hollen, the Maryland Democrat who is chairman of the party's House campaign committee. "That's the balance you see members struggling with."

Avoiding Risks

Energy presents another huge challenge as midterm elections draw closer.

Mr. Obama says only capping and putting a price on carbon dioxide emissions can accomplish three fundamental goals: lessening America's dependence on oil, turning renewable alternatives into viable sources of energy and jobs, and curbing **global warming.**

But energy-state Democrats fear the economic effects, and vulnerable Democratic candidates fear Republican attacks on the administration's "cap and tax" proposal. Even Democrats with common policy goals diverge on strategy.

Some environmentalists want to use outrage over the Gulf of Mexico oil spill in a last-ditch push for Mr. Obama's carbon cap, which has passed the House but stalled in the Senate.

Others say the idea has already proved politically untenable; they want Democrats to

settle for energy-efficiency legislation, then let Mr. Obama use his executive authority to regulate carbon through the **Environmental Protection Agency.**

Advocates of a cap "keep driving themselves into the wall," said Timothy E. Wirth, a former Democratic senator from Colorado, who is now president of the United Nations Foundation. "It's insane."

Caution on energy fits with Mr. Galston's suggestion for the unifying Democratic principle until Election Day: Avoid any further risks for incumbents in trouble.

But even that least-common-denominator strategy is not easy. The same polls that show voters upset about joblessness also show them upset about deficit spending, which Democratic leaders consider their only short-term method of reducing joblessness.

"There are moments in which the dominant premises of public argument are pretty clearly not true," concluded Mr. Galston, who is now a Brookings Institution scholar. "But if you work in a democracy, you've got to pay some attention to what the public believes."

This article is a more complete version of the one that appears in print.

URL: http://www.nytimes.com

Air pollution rules could cost (*DesMoines Register*)

Iowa plants millions
By PERRY BEEMAN • pbeeman@dmreg.com • June 21, 2010

The federal government's decision to tighten limits on air pollution could force millions of dollars' worth of improvements at plants around Iowa.

The motive is simple: The Environmental Protection Agency's review of the latest science shows that pollution limits for some chemicals are too lenient to adequately protect people from lung problems and other illnesses, said Jim McGraw of the Iowa Department of Natural Resources' air bureau.

"On many days, we enjoy pretty darn good air across the state," McGraw said. "Some days, we have some issues."

The EPA on June 3 announced a final rule tightening limits on sulfur-dioxide emissions. The agency listed Muscatine County as the only place in Iowa likely to violate the new rule.

But the agency also is revisiting limits on ozone and small-particle pollution, which could affect other parts of the state.

The range of ozone concentrations the EPA is considering would, based on data from 2007 to
2009, put these counties at risk of violations:
Bremer, Clinton, Harrison, Linn, Montgomery, Palo Alto, Polk, Scott, Story, Van Buren and Warren.

Ozone is an ingredient of smog that can damage lungs severely at ground level.

In the past, there have been at least brief violations of small-particle limits around Iowa, including in Des Moines, Waterloo, Davenport and Emmetsburg.

Sulfur dioxide is a health-threatening ingredient of acid rain. Based on the past three years of data, Muscatine County would violate the new standard, McGraw said. That eventually could lead the state to order changes at major emitters such as Grain Processing Corp. and Muscatine Power and Water.

"They made the standard more stringent because health data show the need for more public health protection," McGraw said. The EPA changed the limit for the first time in almost 40 years, setting a one-hour standard of 75 parts per billion. That replaced a 24-hour limit of 140 parts per billion.

Records show concentrations in Muscatine averaged more than twice the new limit, at 185 parts per billion. Other Iowa communities appear to be within the standard. Linn County was the next highest at 59, Clinton County averaged 38 and Scott County, 13.

Muscatine had sulfur-dioxide problems in the 1990s, too. Changes at plants brought the area into
compliance, only to have today's tougher regulations push it out again.

The sulfur-dioxide issue means the Iowa Department of Natural Resources will work on a plan
to get the area into compliance and keep it there. That will take up to a year, McGraw said.

The area would have several years to comply, by having major plants install pollution control
equipment or change operations.

McGraw said a reviving economy could make it even harder to meet limits because more production can mean more emissions.

The EPA uses three years of data from each area to average readings. The readings could fall within the allowable range in coming years, McGraw said.

Grain Processing Corp. and Muscatine Power and Water are among the biggest emitters of sulfur
dioxide in the area. They also in the past couple of years have struggled to keep the area's small-
particle pollution - also a danger to lungs - under federal limits.

Don Pauken, manager of environmental affairs for Muscatine Power and Water, a city utility, said he expects his plant will need to reduce emissions of both sulfur dioxide and small particles. Over the years, the plant has switched to low-sulfur coal, and it was one of the first in Iowa to install smokestack equipment that removes chemicals before they get to the atmosphere.

The plant is looking into buying and producing renewable energy to replace some of the electricity from coal. Pauken declined to elaborate, but some Iowa utilities get power from wind turbines, hydroelectric dams, methane-burning generators at landfills and nuclear power plants, for example.

"We would expect the more stringent standard to have an impact on us ultimately," Pauken said. "We need to evaluate what things are available to us to make further reduction. That may be a fuel switch or additional control changes."

The work could increase consumers' electric bills, but that's not certain, Pauken said.

Janet Sichterman, a Grain Processing spokeswoman, said the new rules "will have a major economic impact not only on GPC but on numerous sources in Muscatine." Her firm already plans to change processes, modify stacks and add pollution-control equipment. Some of that work will address rules that are not yet final.

She called the work "a significant commitment to improve air quality."

President George W. Bush's EPA angered environmental groups by setting an ozone standard
that didn't protect Americans' health as much as the limit proposed by scientists would have.

The most likely scenario being looked at by President Barack Obama's administration would put a
half-dozen areas out of compliance in Iowa, McGraw said. The tightest standard on the table

would mean all but the northwest part of the state likely would be in violation.

Posted: June 21, 2010

Michigan scolded over drop-off in air quality monitoring (*Detroit Free Press*)

BY TINA LAM
FREE PRESS STAFF WRITER
Sharp cuts in the state budget for environmental regulation, down 75% since 2002, have hurt its ability to monitor air quality, putting the health of Michiganders at risk, environmental groups say.

The Sierra Club and others filed a complaint with the Environmental Protection Agency in March, asking it to investigate. "The state is failing to implement significant portions of the Clean Air Act," they said.

• PHOTO GALLERY: Most polluted ZIP code 48217

• DATABASE: Toxic ZIP code rankings

• RELATED CONTENT: Cancer rate in Detroit outpaces statewide figure

• RELATED CONTENT: Firms try to offset pollution with jobs

Too many large polluters are being issued new five-year permits to release air pollutants without full evaluations by state regulators, their letter said.

Legislators haven't raised fees on polluters since 2001, which help pay staff. There are now 10 state staffers who do the work 50 once did in Wayne County's air quality division.

"The general public thinks someone must be looking at polluters' operations to make sure they're complying, but that's just not the case anymore," said James Clift, policy director of the Michigan Environmental Council.

State officials say they're doing the best they can.

Asked whether he agrees that Michiganders' health is at risk, Vince Hellwig, the state's air quality chief, responded: "No comment."
Air monitors can't keep up

Last week, state air quality inspector John Lamb got up at 4 a.m. and went out into a southwest Detroit neighborhood to see whether he could detect odors neighbors were complaining about.

That shows how dedicated her staff is, said Teresa Seidel, southeast Michigan air quality supervisor for the Department of Natural Resources and Environment.

The problem is there aren't enough of them.

When the state took over air quality monitoring from Wayne County in 2001, the county had more than 50 people who wrote permits for major polluters, inspected those polluters' operations to make sure they were in compliance, responded to citizens' complaints about them, and issued violation notices to companies.

Seidel now has 10 people doing all that for Wayne County, plus some help from Lansing staff in writing permits -- Wayne County, with large numbers of industrial plants, generates 38% of the citizen complaints in the state, around 500 a year, she said. The staff tries to respond to each one.

"These people are passionate and they want to protect the environment," she said.

But whether they are doing it well enough is at issue.

Across Michigan, 1,900 industrial plants are required to report their emissions of air pollutants to the state. It's an honor system, Seidel acknowledges. "We are the auditors who verify, but when we only have 10 staff to do thousands of facilities, it's tough."

The state also has an air monitoring network of 44 air monitors statewide, including seven in Detroit. The system meets federal requirements, and the number of monitors in Detroit makes it one of the region's best-monitored cities, said Alan Walts, an air quality official with the Environmental Protection Agency in Chicago. But those monitors only capture some of what's in the air, some of the time.
What gets monitored

Some monitor only weather data; just four statewide measure lead. Some tests for toxic chemicals are done only every six days. The monitors measure overall air quality, averaged over days or months. They don't capture hotspots or accidental releases from industrial plants. Companies are supposed to report those, but not all do.

"The monitoring system averages the problems away," said Denny Larson, director of Global Community Monitoring, a California-based nonprofit that is helping residents do their own air-monitoring in southeast Detroit's 48217 ZIP code, the state's most polluted. "It's not meant to tell what the specific toxic threats and exposures are to people in a particular area."

The 48217 ZIP code has no state air monitor.

"You would hope to see more monitoring in areas where there is a disproportionate industrial burden," said James Clift, policy director of the Michigan Environmental Council.

"If we had more resources, we'd have more monitors," DNRE spokesman Bob McCann said.

Budget shortfalls have forced cuts in the monitoring system since 2007. DNRE said threatened federal cuts of $400,000 to Michigan next year could mean the state would have to cut back further on monitoring.

Environmental groups allege the state is doing a poor job monitoring air quality because of a lack of funds. The Michigan Environmental Council and others filed a complaint with the Environmental Protection Agency in March. The EPA has asked the state to respond by September. If the EPA finds the state is not carrying out its responsibilities, it could take over enforcement of the Clean Air Act in Michigan.

"The question is, are the permits the state grants protecting people in Michigan?" asked Clift.

He said the state doesn't have enough staff to be sure companies are following their permits or to work with them to reduce their pollution.
Frustration all around

Some residents agree. People who live in the 48217 ZIP code are training themselves to do air sampling, with the help of Global Community Monitoring, because they say they believe their air is unhealthy and causes health problems.

Federal rules and regulations say companies shouldn't have excess emissions, yet residents photograph dust clouds wafting overhead, find metallic dust on their porches and yards, and smell odors from large numbers of industrial plants in the area.

"We feel abandoned," said resident Teresa Landrum.

The chief of air quality statewide, Vince Hellwig, said his division's budget has been cut $2 million or 14% in the past three years. He acknowledged that hurt the division, but said it still responds to complaints and violations as best it can. More cuts could reduce its enforcement staff. "We're already not able to do as much enforcement as we'd like," he said.

Fees for major polluters, which pay for staff who regulate them, haven't been raised since 2001. Some legislators have said they are reluctant to raise fees on companies in tough times and that the state needs to cut spending.

To get fee increases passed, the DNRE needs to become more customer-friendly, said Doug Roberts Jr., director of environment and energy programs for the Michigan Chamber of Commerce. Roberts said companies realize fees need to go up, but they want reforms, too.

"We need speedier time lines for renewing permits and more customer satisfaction," he said. The state is working on those issues, he said, and he expects new fees to be approved, possibly next year.

McCann pointed to a consumer satisfaction study Michigan State University did last year of companies that got permits from the DNRE. Only 14% of the 716 firms who responded to the survey were dissatisfied, and among those who got air quality permits, 100% felt they were treated well by staff; just 6% felt it took too long to get air permits.

In the meantime, Seidel has lost staff and can't replace people who leave.

"We do a really good job with what we have," she said. "Would we like more? Most definitely."
Cleaner air -- in general

Hellwig and the Southeast Michigan Council of Governments say the state's air is cleaner now than it has been in decades, because of tougher federal standards and new pollution controls at some plants.

There have been significant declines in bad air quality in the state, including a 33% drop during the past three years in pollution from steel plants in Detroit that installed new pollution controls, McCann said.

Clift said the state's air may be cleaner now only because plants have been idle or run at lower capacity due to the economic downturn. "It may be temporary," he said. Southeast Michigan alone lost 229,000 manufacturing jobs between 2000 and 2009, according to SEMCOG.

Michigan meets national air standards except for fine particulates, microscopic particles of soot that can lodge deep into the lungs. However, six counties in southeast Michigan -- Wayne, Oakland, Macomb, Monroe, St. Clair and Livingston -- violate the federal standard for fine particulates because of high readings at an air monitor in Dearborn, near a steel plant and rail yard.

McCann said the state is working on lowering those numbers by getting companies to pollute less.

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Court freezes bids to return 'endangerment' to EPA (*Greenwire*)

(06/18/2010)
Gabriel Nelson, E&E reporter
A panel of federal judges in Washington, D.C., has set aside 17 challenges that seek to force U.S. EPA to review its scientific finding that greenhouse gases endanger human health and welfare.
The motions from industry groups, state attorneys general and members of Congress ask the U.S. Circuit Court of Appeals for the District of Columbia to remand the finding to EPA in light of recent controversies involving the climate science that provided much of the basis for the agency's decision. The 17 motions were combined into a single case, *Coalition for Responsible Regulation Inc. v. EPA*.

At stake are the agency's plans to regulate emissions of greenhouse gases from automobiles and stationary sources, which hinge on the "endangerment" determination. That finding was developed in response to the Supreme Court's 2007 decision in *Massachusetts v. EPA*, which held that the agency was required to decide whether the gases qualify as pollutants under the Clean Air Act.

Three judges issued an **order** Wednesday that the motions for remand be placed on hold as EPA considers numerous petitions asking it to reconsider the finding.

The order freezes the motions for remand until two weeks after the agency makes a decision, or until Aug. 16, whichever comes first. That was the action sought by EPA, which has said it expects to decide on the petitions for reconsideration in late July.

The order was issued *per curiam* -- "by the court" -- making it unknown whether there was any disagreement among the three judges.

Virginia had argued that "there can be no realistic expectation that EPA will actually grant reconsideration," since the agency went on to issue a final rule that would limit greenhouse gas emissions for cars and light-duty trucks. The endangerment finding provided the basis for the tailpipe rule, which itself triggered regulation of greenhouse gases from stationary sources.

Public statements by agency administrators have made it seem unlikely that the agency would voluntarily reconsider its finding.

"We have heard nothing yet that significantly undermines the decision that we have made," said EPA air chief Gina McCarthy during an April event hosted by the Johns Hopkins School of Advanced International Studies. Still, she added, "we're going to keep looking at it, and we will have an open mind until those legal decisions are finalized" (*Greenwire*, April 16).

JUNE 21, 2010

3:51 A.M. ET UPDATE:

BP Says Gulf Oil Spill Response Costs Up To $2 Billion (*Wall Street Journal*)

By Jeffrey Sparshott Of DOW JONES NEWSWIRES LONDON (Dow Jones)--BP PLC (BP) shares fell as much as 4.2% Monday morning amid continuing uncertainty about the long-term financial and environmental damages from the Gulf of Mexico oil spill.

At 0733 GMT, BP's shares were down 12 pence, or 3.2%, at 346 pence, making it the worst-performing company in the FTSE100 index.

BP Monday morning said costs for the Gulf spill response had reached $2 billion as it continues work to contain the leak and to pay claims for damages.

To date, more than 65,000 claims have been submitted and more than 32,000 payments made, totaling about $105 million, BP said.

"It is too early to quantify other potential costs and liabilities associated with the incident," the company said in a statement.

BP last week struck a deal with the White House to set up a $20 billion claims fund over 3 1/2 years. The agreement initially bouyed the company's shares, though investors are now weighing new information on the size of the spill and potential costs to respond.

U.S. Representative Ed Markey (D., Mass.) said Sunday that BP's worst-case scenario for the Deepwater Horizon oil spill estimated a potential leak of 100,000 barrels of oil a day. The well is now estimated to be leaking between 35,000 and 60,000 barrels of oil a day into the Gulf's waters.

And press reports over the weekend indicated that BP plans to raise about $50 billion to cover the cost of the Gulf of Mexico oil spill.

BP downplayed both reports.

On Monday the London-headquartered company said it was progressing with plans to capture more oil gushing from the well. Two systems are now in place and on Saturday captured 11,050 barrels of oil.

A third system remains on schedule to begin first operations around the end of June or early July.

"Plans also are being developed for further options to provide additional containment capacity and flexibility. These projects are currently anticipated to begin operations around mid-July," BP said.

By mid-July, BP hopes to be able to capture 60,000 to 80,000 barrels of oil a day, the company said in a June 13 letter to the U.S. Coast Guard.

Longer-term, BP hopes to stop the leak entirely with relief wells, though they are not expected to be completed before early August.

-By Jeffrey Sparshott, Dow Jones Newswires; +44 (0)207 842 9347; jeffrey.sparshott@dowjones.com

Oil spill stirs study, debate over health impacts (*Associated Press*)

Story also appeared: *Washington Post*

By MIKE STOBBE
The Associated Press
Monday, June 21, 2010; 3:03 AM
ATLANTA -- When an Associated Press reporter went scuba diving in the oil-streaked Gulf of Mexico this month, people commenting on websites worried about his health. But at the same time, the oil sure didn't bother some beachgoers in Alabama.

"I was in the water two hours yesterday," said Robert Theil, a French visitor to Orange Beach, as his sister acted as translator. "I'm not worried. It would take a lot before it could hurt you."

Health officials say there seems to be little reason to worry at this point. But some note that health effects months or years from now remain a question mark, particularly for the workers who are in the thick of it, cleaning up oil from the BP spill in the Gulf.

Public health officials and scientists will take up the topic at a two-day meeting beginning Tuesday in New Orleans, organized by the Institute of Medicine at the request of the Department of Health and Human Services. The group will also talk about how best to watch for any potential problems.

HHS has already set aside $10 million to study cleanup workers and Gulf residents over time.

In the meantime, some questions and answers:

Q: Has anyone gotten sick from the oil spilled in the Gulf?

A: Yes, there have been reports of illnesses, but relatively few among people not involved in the spill cleanup. Most of the reported illnesses were related to odors or fumes. Almost all were mild and temporary, and many were in early May, within the first few weeks of the April 20 explosion. The reports are based on a doctor's assessment, not on lab testing.

All but 35 of the 109 spill-related illnesses in Louisiana have been workers; Alabama has 27 reports of illnesses, and Florida and Mississippi have had none.

Q: So, what about the air? It safe to breathe?

A: For those along the coast, for the most part, yes. The Environmental Protection Agency has been monitoring the air since shortly after the spill; readings posted Friday show mostly good air quality. Some earlier results have found low levels of pollutants that can cause temporary problems like headaches, nausea or irritation of the eyes, nose and throat.

The pollutants have periodically pushed an industrial smell onshore in some place - one beachgoer compared it to a machine shop. But an oily odor does not necessarily mean it's harmful, said LuAnn White, director of Tulane University's Center for Applied Environmental Public Health.

Officials continue to test. "We are still concerned," said John Howard, director of the National Institute for Occupational Safety and Health.

And out on the water, tests have detected vapors from benzene, one of the chemicals in the oil that scientists say can cause cancer. The good news is that benzene can evaporate or burn off quickly, so the concentrations are much lower toward land.

Q: What about all those tar balls and splotches of oil on some beaches?

A: It's best to avoid them. Oil on bare skin should be washed off as soon as possible, health officials say. Soap and water, baby oil or petroleum jelly are the best way to remove it. Longer contact can cause skin to redden, swell and burn. The problem can get worse if the skin is exposed to the sun.

White compared it to spilling motor oil on your hands.

"Are you going to get sick? Probably not. But do you want to do it. I don't think so," she said.

But another expert cautioned that some chemicals in the oil and dispersants used in the cleanup can be easily absorbed through the skin. "People aren't paying close attention like they should," said Robert Herrick, an industrial hygiene expert at the Harvard School of Public Health.

Q: Can I swim in it?

A: Better not. You could get oil on your skin, and there's the added possibility of accidentally swallowing whatever's in the water. Louisiana beaches have been closed in Grande Isle and Fourchon, but because of cleanup efforts, not for health reasons.

Q: Are people along the Gulf coast worried they'll get sick?

A: Some are. Most aren't. There apparently haven't been any surveys asking Gulf residents if they're concerned about their health. But calls to poison control centers have been lower than expected, and officials in some Gulf states say they've heard more angst over the impacts on the environment and local business than about health.

"I look at it this way: It's from the Earth. If you drank it in your drinking water every day it would hurt you. But spend a week in the water on vacation and it's not going to," said Elaine Fox, who visited Orange Beach, Ala., with a group from Family Church in West Monroe, La.

She spent time photographing her pregnant daughter-in-law Christi Fox, 25, who lounged in the surf draped in a white cloth covering a white bikini. A few tar balls stuck to her bathing suit as she walked back to their condominium.

Q: How about the seafood? Is it safe to eat?

A: The president thinks so. Barack Obama ate Gulf seafood during his last visit to Mississippi. He declared that seafood from the region is safe, and also announced stepped-up inspections.

Parts of the Gulf with oil have been closed for fishing. The National Oceanic and Atmospheric Administration and the Food and Drug Administration are sampling fish from the Gulf and are to begin checking fish that come in to docks.

However, inspectors have yet to make an appearance at docksides, and some restaurants have been putting up signs saying they do not sell Gulf seafood. Some critics say testing needs to improve.

Q: Will there be long-term health effects?

A: They don't know. Some health officials say they don't think long-term illnesses are likely. But they've never seen pollution of this scale, and there are just too many unknowns to say for sure.

"It's theoretically possible, but at this point of time not something people are predicting will happen," said Dr. Thomas Miller, an assistant state health officer with Alabama's health department.

Some chemicals in the oil are associated with a cancer risk. But it can take decades for an environmental trigger to result in cancer. And when cancers do occur, it's difficult to sort out the real cause - for example, whether oil fumes inhaled over two months played a greater role than cigarette smoke inhaled in bars over the course of a lifetime.

While the oil is often described as toxic and poisonous, Tulane's LuAnn White said that can give the wrong impression.

"As a toxicologist, when I think of toxic, I think of something that will cause harmful effects at very low concentrations. Some of these components could cause effects - usually mild effects - but at very high concentrations," she said. "So when we look on a toxicity scale, these are not very toxic compounds."

AP writers Stephanie Nano in New York and Jay Reeves in Orange Beach, Ala. contributed to this report.

Online:

EPA:http://www.epa.gov/bpspill/

Record of BP's worker-testing firm raises conflict-of-interest questions (*Greenwire*)

(06/18/2010)
Elana Schor, E&E reporter
The private contractor hired by BP PLC as the primary monitor of offshore workers in the Gulf of Mexico is no stranger to environmental calamity.

After a million gallons of oil spilled on a Louisiana town in 2005, after a flood of toxic coal ash smothered central Tennessee in 2008 and after defective Chinese drywall began plaguing Florida homeowners, the same firm was on the scene -- saying everything was fine.

Now that the Center for Toxicology and Environmental Health (CTEH) has a high-profile role in the Gulf spill, local community groups and other chemical testing veterans see a troubling pattern at work. As BP continues to claim that the leaking oil has caused "no significant exposures," despite the hospitalization of several workers and the sparse release of test data, these observers of CTEH's work say the firm has a vested interest in finding a clean bill of health to satisfy its corporate employer.

"It's essentially the fox guarding the chicken coop," said Nicholas Cheremisinoff, a former Exxon chemical engineer who now consults on pollution prevention.

"There is a huge incentive for them to under-report" the size of the spill, Cheremisinoff added, and "the same thing applies on the health and safety side."

Another toxicologist familiar with CTEH, who requested anonymity to avoid retribution from the firm, described its chemical studies as designed to meet the goals of its clients. "They're paid to say everything's OK," this source said. "Their work product is, basically, they find the least protective rules and regulations and rely on those."

When CTEH was hired by Murphy Oil Corp. to test for contamination from its post-Hurricane Katrina refinery spill in Chalmette, La., the company collected composite soil samples from multiple locations. U.S. EPA's plan for soil sampling in the area, however, specified that "grab" samples from one area should be used to ensure accuracy.

Even those broad details of methodology are unavailable for CTEH's efforts in the Gulf. The Occupational Safety & Health Administration (OSHA) has released the frequency and locations of its tests taken at 10 on-shore and near-shore sites, but BP has provided bar graphs that summarize ranges of workers' chemical exposures in general locations.

Not even federal health officials have seen CTEH's complete testing information.

John Howard, director of the National Institute for Occupational Safety and Health, told Greenwire this week that he wants to see a "centralized, coordinated, transparent database" of health data on Gulf workers.

"Not only government-collected data, but private contractors," Howard said.

After examining a list of past CTEH work, Rep. Lois Capps (D-Calif.) -- who has asked President Obama to formally relieve BP from the duty of protecting the health of Gulf workers and locals -- concluded that the firm's name "belies what they've really been [doing] ... protecting industry."

Capps said she believes lawmakers can pry loose more testing data from BP and the total amount of CTEH's contract with the oil company: "We're going to be getting into areas this company is not going to want to talk about."

CTEH's Arkansas headquarters did not return several requests for comment. The company's website states that it has worked for EPA and the Department of Homeland Security. CTEH does not appear on EPA's roster of active contractors, but records of the agency's Clean Air Act Advisory Committee show a CTEH employee serving as an "industry" member.

A spokeswoman for the Joint Incident Command Center in New Orleans confirmed that CTEH and Total Safety, a BP contractor specializing in monitoring equipment, are the primary monitors of offshore worker exposure during the ongoing oil disaster. She

asserted that government plays a role in "a checks and balances system" for worker monitoring but did not provide more details on that system.

From Ecuador to Appalachia
Public health advocate Anne Rolfes, director of the nonprofit group Louisiana Bucket Brigade, led independent chemical testing after the 2005 Chalmette spill. In a report released as Murphy Oil was using CTEH data to dissuade locals from filing lawsuits, the Brigade cited videotapes that showed one of the firm's employees smacking a soil sample against the pavement to dilute any possible chemical contamination before testing.

"I'm not surprised" that BP has hired CTEH for post-spill testing, Rolfes said. "Just look at their fingerprints."

The group's fingerprints extend as far as the Amazon, where Chevron Corp. has waged a long legal battle after its Texaco affiliate closed down operations that left lingering pollution in Ecuadorian rain forests. Indigenous tribes filed a class-action lawsuit linking the company's chemicals to health hazards from birth defects to cancer.

CTEH's work with other companies
Among other companies that have hired CTEH after chemical-release events:

• Teris, a hazardous waste incinerator, after a 2005 explosion at its facility in El Dorado, Ark.

• BNSF and Koppers after residents of Somerville, Texas, filed lawsuits alleging chemical contamination from the companies' railroad-tie plant caused higher cancer risks.

• CSX in 2007 after ferric chloride from one of its railroad tankers spilled in Oneida, N.Y.

• Barton Solvents in 2007 following a fire at its Des Moines chemical plant.

• Norfolk Southern in 2005 after two of its trains collided, releasing chlorine gas in Graniteville, S.C.

• Environmental Quality, which stores industrial waste, after a 2006 fire and explosion at its facility in Apex, N.C.

-- Elana Schor

David Hewitt, then CTEH's occupational health director, reported in a 2005 analysis that "a causal relationship between residence near the [Ecuador] oil fields and the reported health effects simply cannot be supported." Among the factors complicating the cases, he said, was recall bias that made women "more likely to recall a spontaneous abortion" if they believed a chemical exposure had occurred.

When Chevron later cited CTEH and other paid reviewers in an Ecuadorian newspaper ad criticizing studies that linked its oil fields to health hazards, 50 scientists wrote a protest letter warning the oil company's consultants to "not be surprised if they are called to task for serving the interests of corporations."

Cheremisinoff, the former Exxon chemical engineer, said he is "100 percent certain" that CTEH would appear as an expert witness on BP's behalf in lawsuits filed by workers or residents who suffer adverse health effects from the Deepwater Horizon spill.

CTEH's study of chemical odors from Chinese drywall, commissioned by manufacturer Knauf Plasterboard Tianjin in 2006, found that none of the product contained elevated levels of hydrogen sulfide or other gases. The Consumer Product Safety Commission disagreed, ranking Knauf products No. 1 and No. 4 on its top 10 list of "problem drywall" contaminated with hydrogen sulfide.

"I am pleased to report that according to the CTEH testing results there are no health risks associated with Knauf Tianjin's plasterboard," the company's CEO wrote in 2006 to an importer who had raised concerns with the product.

Matt Landon, a staff member at the anti-mountaintop removal mining group United Mountain Defense, encountered CTEH in the wake of the 2008 breach in a coal ash dam run by the Tennessee Valley Authority (TVA). Landon said his group began its own air monitoring after finding CTEH employees installing low-volume monitors that community advocates believed were not strong enough to measure air quality in compliance with EPA standards.

"People were getting sick," Landon recalled, "eyes swelling up, rashes, ear aches, wedding bands tarnishing. They said it was taking them time to get high-volume monitors out there."

EPA audited TVA's air monitoring of the coal ash site in January and found that low-volume sampling procedures fell short of quality assurance standards agreed to by both agencies.

"I definitely do not have any faith in them at this point," Landon said of CTEH.

That Tennessee audit also found seven deficiencies at Bureau Veritas, one of the laboratories used to process TVA air samples. This month, BP cited Bureau Veritas as one of the companies helping to process tests of the oil giant's Gulf Coast workers.

FUEL

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EPA Puts Off E15 Decision (*Dakota Farmer*)

The EPA announced that they will delay making a decision on whether it will okay the use of E15 in automobiles. The agency had said earlier that it would make an announcement in July. Now it has pushed back the date to September, and said that the decision would only apply to vehicles made after 2007.

The announcement produced a strong negative response from Brian Jennings, Executive Vice President of the American Coalition of Ethanol, a pro-ethanol lobby.

He issued the following statement:

"EPA is required by law to make a decision on the request to allow the use of cleaner burning blends of up to 15% ethanol, and by the time they actually make a decision, it will be a full year later than the law requires. Every addict needs enablers, but frankly we could not have imagined the Environmental Protection Agency would be one of the major defenders of the status quo that is now fouling beaches from Louisiana to Florida.

"We also have to wonder who is influencing EPA when they agree it will be impossible to meet the Renewable Fuels Standard but refuse to remove the requirement that fuel contain a minimum of 90% petroleum. That decision can only be good news for the likes of BP and ExxonMobil, and anyone else who chooses to ignore the dangers of relying on unstable and hostile foreign regimes for our fuel, or the dangers of drilling two miles below the ocean.

"EPA could be accused of slow-walking this E15 decision, but that would imply that progress is being made. This decision has been pushed back an entire year, and has gone from making cleaner burning E15 available to all cars, to only 2001 and newer cars, and now possibly to only those made after 2007. Those vehicles were practically fresh off the assembly line when the data was submitted proving blends beyond E10 are safe for all vehicles, and now two years and millions of dollars have been wasted as EPA defends the status quo. Meanwhile, oil has been spilling from the Gulf of Mexico for 60 days and counting. What do government bureaucrats need to see to be convinced that our nation desperately needs take action to reduce our use of oil?

"When ACE met with EPA in March of this year, we were told that by mid-year EPA was planning to approve E15 for 2001 and newer vehicles, a commitment the Agency put in writing in a December 1 letter. While there are many practical challenges to implementing E15 for only 2001 and newer vehicles, it may have been better than the status quo of being limited to only E10. But to add insult to injury, EPA is now indicating that they will consider E15 for only vehicles made after the 2007 model year – only 20% of the U.S. fleet. Even if every single vehicle made after 2007 used E15 every time it

filled up, it would barely allow the U.S. to meet the 2012 Renewable Fuels Standard requirement.

"As oil is ruining livelihoods and closing businesses, the economic and job-creation benefit of ethanol is being told it must wait in the wings. With the price of ethanol being almost a dollar less per gallon than gasoline today, EPA's approval of a 5% increase in the ethanol content could save the U.S. more than $19 billion in fuel expenditures every year – almost as much as BP has committed so far to clean up the damage that oil has done in the Gulf.

"ACE is encouraging all ethanol supporters to contact their Members of Congress to urge their support of legislation for more flexible fuel vehicles and blender pumps, such as S. 1627, the Harkin-Lugar 'Consumer Fuels and Vehicles Choice Act.' More FFVs and blender pumps would bring flexibility into the U.S. fuel system and give consumers greater fuel choice, while bypassing the bureaucracy that is preventing the cleaner alternative fuels from reaching the marketplace."

EPA delays irk ethanol backers (*Associated Press*)

Story also appeared: *Argus Leader*

Hopes still high for approval of 15% fuelblend
Joe Sneve • jsneve@argusleader.com • June 21,2010

South Dakota ethanol supporters say they are disappointed to hear that the Environmental Protection Agency once again is delaying a decision on whether the American public can use higher concentrations of ethanol in their vehicles.

The EPA was expected to make a decision this month after an initial delay in December on whether to increase the allowable amount of ethanol in gasoline to 15 percent. The ethanol "blend wall" currently is at 10 percent.

But now the EPA says its call won't come until November because the Department of Energy still is testing to see how higher ethanol levels would affect 2007 and newer model automobiles. The agency also will test 2001 to 2006 models after the tests on newer models are complete.

The ethanol industry has maintained that the use of a 15 percent blend would not be detrimental to car engines.

Tom Buis, president of Growth Energy, the company that issued the petition for the increase, said the delay is unacceptable because the EPA has reneged on the terms of testing.

"We've been told that the (EPA) has modified and added more tests after they had made the
commitment," he said, referring to the separation of older- and newer-model vehicles.

The EPA has yet to provide a sufficient explanation for the method of testing, Buis said.

U.S. Sen. Tim Johnson said the EPA's delay is "regrettable" but maintains hope for approval of the 15 percent blend.

"The sooner we get the EPA to come around to a higher standard, the better," he said.

Tom Vilsack, secretary of the Department of Agriculture, said the announcement actually is a
good sign for ethanol producers as discussion of a timeline is an indicator of forward movement in the process of increasing ethanol concentrations.

"With this green light, USDA is surging ahead on our work to provide support to feedstock producers, biofuel refiners and infrastructure installers, such as blender pumps, to ensure that all pieces of the ethanol supply chain are ready to supply the market demand," he said.

Others think the delay is a result of the EPA and DOE dragging their feet.

Political agendas are getting in the way, U.S. Sen. John Thune said.

"I think the ball is getting dropped here. There is some bias at work here, too," he said. "(Energy)
Secretary Chu is not a supporter of corn-based ethanol, and he, obviously, is in a position to slow- walk this thing and make it more difficult to get this done."

Thune said he and his colleagues in support of a swift decision are "going to turn up the heat ... to force some action" by holding meetings with the EPA, DOE and USDA, staging news conferences and sending letters to the president.

Despite the delay, Thune said he still is confident that the 15 percent blend will be approved by fall.

But American Coalition for Ethanol Vice President and Director of Market Development Ron Lamberty said he wouldn't be surprised if the EPA came up with another excuse to push the decision back.

"If we learn anything from history, that's what we should probably expect," he said. "It's one thing to kick the can down the road, and it's another thing to just stand on the can."

The Associated Press contributed to this story.
Reach reporter Joe Sneve at 331-2370.

EPA delays decision on ethanol blend until fall (*Greenwire*)

(06/18/2010)
U.S. EPA has delayed making a decision on whether to increase the blend of ethanol in gasoline from 10 to 15 percent.
The agency said yesterday that although initial tests look promising, it has not yet decided whether U.S. car engines built after 2007 will be able to handle the higher concentrations. The agency was expected to arrive at a decision on the matter this month.

The Energy Department is conducting tests that will take until the end of September to complete, EPA said.

The ethanol industry has said that the engines can handle a blend of gasoline that contains 15 percent ethanol. The group expressed disappointment with the delay and asked that levels be increased to 12 percent in the interim.

The Renewable Fuels Association has also criticized EPA's decision to restrict tests to vehicles produced after 2007.

Opponents to the increased blend include the refining industry, some environmental groups and small engine manufacturers, who say that smaller engines used in lawn mowers and boats cannot handle higher concentrations of ethanol.

The U.S. Department of Agriculture welcomed the announcement, saying that it was moving ahead to provide support to producers of ethanol to make sure that they can meet increased demand. Agriculture Secretary Tom Vilsack characterized EPA's publication of a timeline as good news (Jalonick/Daly, *San Francisco Chronicle*/AP, June 17). **--GV**

PESTICIDES

Roundup resistant weeds pose environmental threat (*Washington Post*)

Story also appeared: *Kansas City Star, Seattle Post Intelligencer, Morning Call, Orlando Sentinel*

When the weed killer Roundup was introduced in the 1970s, it proved it could kill nearly any plant while still being safer than many other herbicides, and it allowed farmers to give up harsher chemicals and reduce tilling that can contribute to erosion.

But 24 years later, a few sturdy species of weed resistant to Roundup have evolved, forcing farmers to return to some of the less environmentally safe practices they abandoned decades ago.

The situation is the worst in the South, where some farmers now walk fields with hoes, killing weeds in a way their great-grandfathers were happy to leave behind. And the problem is spreading quickly across the Corn Belt and beyond, with Roundup now proving unreliable in killing at least 10 weed species in at least 22 states. Some species, like Palmer amaranth in Arkansas and water hemp and marestail in Illinois, grow fast and big, producing tens of thousands of seeds.

"It's getting to be a big deal," said Mike Plumer, a 61-year-old farmer and University of Illinois agronomist who grows soybeans and cotton near the southern Illinois community of Creal Springs. "If you've got it, it's a real big deal."

When Monsanto introduced Roundup in 1976, "it was like the best thing since sliced bread," said Garry Niemeyer, who grows corn and soybeans near Auburn in central Illinois.

The weed killer, known generically as glyphosate, is absorbed through plants' leaves and kills them by blocking the production of proteins they need to grow. At the same time, the U.S. Environmental Protection Agency considers it to have little toxicity to people and animals, and aside from the plants it's sprayed on, it's less of a threat to the environment because it quickly binds to soil and becomes inactive.

Monsanto's introduction of seeds designed to survive Roundup made things even better for farmers because they could spray it on emerging crops to wipe out the weeds growing alongside them. Seeds containing Monsanto's Roundup Ready traits are now used to grow about 90 percent of the nation's soybeans and 70 percent of its corn and cotton.

With increased reliance on Roundup, herbicide use on corn decreased from 2.76 pounds an acre in 1994 to 2.06 in 2005, the most recent year for which the U.S. Department of Agriculture has data. Spread that out over the 81.8 million acres planted in 2005, and it's a decrease of more than 57 million pounds of herbicides annually.

Farmers also found they could cut back or in some cases eliminate tilling, reducing erosion and fuel use.

But with any herbicide, the more it's used, the more likely it'll run into individual plants within a species that have just enough genetic variation to survive what kills most of their relatives. With each generation, the survivors represent a larger percentage of the

species.

St. Louis-based Monsanto maintains the resistance is often overstated, noting that most weeds show no sign of immunity.

"We believe that glyphosate will remain an important tool in the farmers' arsenal," Monsanto spokesman John Combest said.

That said, the company has started paying cotton farmers $12 an acre to cover the cost of other herbicides to use alongside Roundup to boost its effectiveness.

The trend has confirmed some food safety groups' belief that biotechnology won't reduce the use of chemicals in the long run.

"That's being reversed," said Bill Freese, a chemist with the Washington, D.C.-based Center For Food Safety, which promotes organic agriculture. "They're going to dramatically increase use of those chemicals, and that's bad news."

The first weeds in the U.S. that survived Roundup were found about 10 years ago in Delaware.

Agricultural experts said the use of other chemicals is already creeping up. Monsanto and other companies are developing new seeds designed to resist older herbicides like dicamba and 2,4-D, a weed killer developed during World War II and an ingredient in Agent Orange, which was used to destroy jungle foliage during the Vietnam War and is blamed for health problems among veterans.

Penn State University weed scientist David Mortensen estimates that in three or four years, farmers' use of dicamba and 2,4-D will increase by 55.1 million pounds a year because of resistance to Roundup. That would push both far up the list of herbicides heavily used by farmers.

Dicamba and 2,4-D both easily drift beyond the areas where they're sprayed, making them a threat to neighboring crops and wild plants, Mortensen said. That, in turn, could also threaten wildlife.

"We're finding that the (wild) plants that grow on the field edges actually support beneficial insects, like bees," he said.

In Australia, weed scientist Stephen Powles has been a sort of evangelist for saving Roundup, calling it a near-miraculous farming tool.

Australia has been dealing with Roundup-resistant weeds since the mid 1990s, but changes in farming practices have helped keep it effective, Powers said. That has included using a broader array of herbicides to kill off Roundup resistant weeds and employing other methods of weed control.

Those alternative methods, such as planting so-called cover crops like rye to hold back weeds during the winter and other times when fields aren't planted with corn, soybeans or cotton, are the key, said Freese, the Center For Food Safety chemist.

Otherwise, he said, "We're talking a pesticide treadmill here. It's just coming back to kick us in the butt now with resistant weeds."

SUPERFUND

EPA to push for restoration of Superfund cleanup tax (*Washington Post*)
Story also appeared: *Pittsburgh Post Gazette , Denver Post*

WASHINGTON -- There is no question that the Superfund program, first established 30 years ago to clean up sites around the country contaminated with hazardous waste, is facing a budget crunch.

For 15 years, the government imposed taxes on oil and chemical companies and certain other corporations. The money went into a cleanup trust fund, which reached its peak of $3.8 billion in 1996. But the taxes expired in 1995, and because Congress refused to renew them, the fund ran out of money.

Now the Obama administration will push to reinstate the so-called Superfund tax. The Environmental Protection Agency, which rarely urges passage of specific bills, will send a letter to Congress as early as today calling for legislation to reimpose the tax.

The move will spark an intense battle on Capitol Hill, with Democrats and the administration lining up against oil companies and chemical manufacturers. The measure's proponents say it will ease the burden on taxpayers, who are currently funding the cleanup of "orphaned" sites, where no one has accepted responsibility for the contamination. Opponents suggest that it amounts to an unfair penalty.

"This is really about who should pay for the cleanup," said Mathy Stanislaus of the EPA's Office of Solid Waste and Emergency Response. "Should it be the taxpayer, who has no responsibility for contaminating the sites, or should it be those individuals who create hazardous substances that contaminate the site?"

Since the fund ran out of money at the end of fiscal 2003, the federal government has appropriated public dollars each year to pay for orphaned sites, which account for 606 of the 1,279 sites across the nation. But that has slowed the rate of cleanup. The program completed just 19 sites last year, compared with 89 in 1999, the EPA says.

"It's clearly slowed down as the money's dried up," said Mike Charles, senior manager

for government relations at the American Society of Civil Engineers.

Superfund sites are found in Washington, D.C., and every state except North Dakota (whose one site was restored).

Rep. Earl Blumenauer, D-Ore., a member of the House Ways and Means Committee who has been pushing to reinstate the Superfund tax for more than three years, said the recent oil spill in the Gulf of Mexico might encourage lawmakers, even some Republicans, to embrace a new tax on oil and petrochemicals.

Mr. Blumenauer's bill would raise about $18.9 billion over 10 years by imposing excise taxes of 9.7 cents a barrel on crude oil and refined oil products, excise taxes of 22 cents to $4.87 a ton on certain chemicals, and an income tax of 0.12 percent on certain corporations' modified alternative minimum taxable income above $2 million.

"I think the stars have aligned to make it not only possible for the first time in 15 years but likely that we will reinstate the Superfund tax," Mr. Blumenauer said in an interview. He added that for industries facing the tax, "it's a golden opportunity to demonstrate their environmental responsibility and their willingness to solve problems."

House Speaker Nancy Pelosi, D-Calif., also supports the reinstatement of what her spokesman Drew Hammill called the "polluter pays" tax.

But a similar measure in the Senate, sponsored by Sen. Frank Lautenberg, D-N.J., could face a greater challenge, given Republicans' inclination to filibuster any measure that lacks the support of 60 senators.

Oil producers and refiners, now facing the prospect of Congress raising the Oil Spill Liability Fund tax from 8 to 49 cents a barrel, are furious at the idea of another tax burden.

"Policymakers -- Congress and the administration -- have simply got to stop using the domestic refining and petrochemical industry as an ATM machine," said Charles Drevna, president of the National Petrochemical and Refiners Association. "They seem to think we're an endless supply of cash for other programs."

Chemical manufacturers are just as opposed, and they note that the chemicals in question are used in everything from plastics to public water treatment. Former Rep. Cal Dooley, D-Calif., president of the American Chemistry Council, said members of his association "have invested literally billions of dollars" in sites that they have taken responsibility for cleaning up.

"It is blatantly inequitable and unfair for the administration or Congress to reinstate a Superfund excise tax," Mr. Dooley said in an interview. He said it would undermine the goal of "an economic recovery in the manufacturing sector in the United States"

because it would result in "shifting jobs outside the United States to chemical manufacturers that would not be subject to this tax."

Tire-pile cleanup effort rolling along in Virginia (*Charlottesville Daily Progress*)

Times Dispatch / Luz Lazo
Published: June 21, 2010
NEW KENT—Virginia is getting closer to eliminating millions of abandoned tires that for decades accumulated at hundreds of locations across the state. And now many of them are put to better use.

The state has been working since the early 1990s to clean up the tire piles, which have long been a major environmental and health problem because they pose a fire hazard and are breeding grounds for mosquitoes. The old tires can be recycled, with the material used as a landfill cushion, mulch and as a fuel source.

Since 1983, the Virginia Department of Environmental Quality has identified 25 million tires at more than 1,200 locations across the state. About 130 locations, with an estimated 2 million tires, still need to be cleaned up, said Allan Lassiter, the DEQ's Waste Tire Management Program manager. About half of them are in the Richmond area, he said.

"Richmond has always had a big proportion of tire piles," said Lassiter, noting that when people were dumping tires in the 1960s and'70s in the Richmond area, the tires stayed in Virginia, while in other parts of the state such as Northern Virginia, tires could have been transported to sites in Maryland or Washington.

"It is a very big problem," said Lassiter, who has worked on the tire-pile prevention and cleanup effort for 20 years. "It is a problem of the past, but we are still dealing with it now."

At a long-closed auto-repair shop on Golden Wheel Road, off state Route 106 South in New Kent County, the piles of tires have been slowly disappearing.

Just a few months ago, there were about 200,000 of them scattered across the 25-acre site. They had accumulated there for years. But last week, only a few remained and those would soon be gone, too.

A large piece of equipment would load and deposit them into a shredding machine—a $500,000 machine larger than a commercial dump truck. The machine would tear them into pieces. Then they would be hauled to The East End Landfill in eastern Henrico County, where the shredded tires are used in place of gravel as a drainage layer.

"When we started, there were literally piles and piles of tires," Mathew P. Appelget, president of The East End Landfill, said last week as he walked in the nearly emptied

muddy lot. The Henrico landfill has been cleaning up the New Kent site as part of a state tire pile cleanup program.

The tires now have a better use, a pleased Appelget said.

They were likely dumped there in the 1960s and '70s, when it was common for people to dump tires anywhere, Lassiter said. Efforts to stop the practice began in the 1980s, after a tire fire in Frederick County burned for nine months and became a 17-year Superfund site, which means it was contaminated by hazardous waste and identified by the U.S. Environmental Protection Agency as a candidate for cleanup because it poses a risk to human health and/or the environment. The state began cleaning up tire piles in 1993.

"In the'90s, we had no recycling of tires; none were recycled," Lassiter said, noting as a comparison that the recycling of glass and paper has been around for decades. "Now all are re-used or recycled. Particularly the cleaner tires, there are a lot of uses."

The state can handle about 7 million new waste tires each year. Most of the largest abandoned tire piles have been cleaned up, he said. But the goal is to remove the remaining tire piles and ensure that no new ones emerge.

The program, which started in the 1990s, was funded initially by a tax of 50 cents on each tire sold, which generated about $2.5 million a year. The 2003 General Assembly raised the tax to $1 per tire, effective July 1, 2003 through June 30, 2011, with all extra revenue dedicated to tire pile cleanups.

Currently, two companies have contracts with the DEQ to clean up the piles. A Maryland company is handling the cleanup of about 20 small tire piles in Northern Virginia, and the Henrico landfill is finishing up the New Kent site and starting at a Gloucester County site today. The state pays the company $100 per ton of the recyclable tires.

Jody LoMenzo, a company spokeswoman, said The East End Landfill removed more 225,000 tires from one of the state's largest tire dumps in Hanover County in 2009. The company's goal is to have recycled a half-million tires in 2010, she said.

"This is a win-win for [The East End Landfill] and a way to reduce the blight on Virginia's landscape," she said.

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TOXIC

Industry Looks To GOP Gains In House For 'Moderate' TSCA Reform Bill (*Inside EPA*)

Posted: June 18, 2010
As House Democrats push ahead with a pending bill to reform the Toxic Substances Control Act (TSCA), industry officials say Republican gains in the November election -- including a possible takeover of the House -- could have a "moderating influence" on the legislation that some claim is a "non-starter" for industry in its current form. Groups on both sides of the debate are ramping up efforts to influence the bill, with the Society of Chemical Manufacturers & Affiliates hosting a June 15-16 fly-in to visit more than 50 congressional offices to pitch their preferred approach to TSCA reform to lawmakers including House energy panel ranking member Joe Barton (R-TX). Activists meanwhile launched a new web initiative to encourage the public to lobby Congress for TSCA reform.

Many in industry are pointing to potential GOP gains in the House in November's mid-term elections as one way to influence the legislation and address their concerns. A Republican House takeover, or significant GOP gains, could make it harder for Democrats to pass TSCA reform without moderating it to win sufficient votes from the GOP.

But sources caution that even with GOP gains, industry must "be smart enough to support a good alternative" to the draft bill that would still be able to win the support of the GOP and moderate Democrats. The industry fly-ins also include meetings with key Democrats, including energy panel member Rep. Gene Green (TX).

House Energy Commerce & Committee Chairman Henry Waxman (D-CA) and Rep. Bobby Rush (D-IL) floated the draft bill, which was set for introduction and markup sometime before the summer recess. But the Gulf of Mexico oil spill and subsequent congressional focus on that disaster may have complicated the timing of the legislation. An energy panel spokesperson says "next steps in the legislative process will be made in due course."

In comments to Energy & Commerce leadership, chemical makers and downstream industries have questioned the draft's approach to expedited action on chemicals, registration of new chemicals, regulation of articles and mixtures, and more strict confidential business information (CBI) rules.

While activist groups are largely supportive of the House draft with some changes, industry has so far been more critical of the approach taken in the House draft and a similar Senate bill introduced by Sen. Frank Lautenberg (D-NJ), which is yet to receive an Environment & Public Works Committee hearing.

If Republicans make large gains in the House following the November elections, one industry source says that even while it might help them moderate some text of the bill, industry will have to avoid pushing for special provisions for specific industry sectors

and support a "moderate bill only focused on identified problems" with TSCA, such as those outlined in past reports by the Government Accountability Office and others.

Legislative Changes

But even with more GOP members of Congress, one legal source questions how much the actual bill would change, particularly taking into account the steep learning curve for staffers on toxics issues.

And other sources note that the draft House bill has not been formally introduced and the final version of the legislation could be altered to address some of the concerns already raised by industry in the groups' recent comments and also during stakeholder meetings held on Capitol Hill in April and May.

A second legal source who has worked with industry says the stakeholder process has been useful in getting industry to think about the bill and to define the dynamic between industry, activist groups and other key players. "I think [the House process] has had a lot of utility for eventually getting a bill," the source says.

Industry sources also say there could be some use for House Democrats to begin work on a formal bill as a marker for the next session, particularly if the Democrats retain control of the chamber. "They may perceive it as a benefit," the industry source says. "They may perceive it as creating momentum."

The industry sources also say that to date there has been little action from moderate House Democrats, who could also play a key role in crafting TSCA reform legislation. The second legal source says a moderate Democrat could take the lead on hotly contested issues in the bill, such as CBI. "None of the moderates have been engaged on the subject," according to the second legal source. But the source says Waxman is "smart about negotiation" and could work with moderate energy committee members in an effort to convince Barton to support a bill.

Other stakeholder groups could be waking up to the impacts of a reauthorized TSCA and becoming engaged in the issue, sources say. The industry source also says there could be increased reaction from non-chemical industry sectors, particularly manufacturers who may be impacted by some of the proposed changes to chemicals law.

The definition of a mixture under the draft bill is expanded to include mixtures in articles, which could further stretch TSCA authority, sources say. Even if coverage of articles is dropped from the legislation once it is introduced, the bill could still have an impact on the ability of automotive and aerospace companies to use new materials, like coatings and adhesives, the source says. "They're going to come out of the woodwork on this."

Meanwhile, the Environmental Defense Fund (EDF) -- a member of the key Safer Chemicals, Healthy Families coalition that advocates TSCA reform -- launched a new web initiative June 15, titled "I Am Not a Guinea Pig," to encourage the public to lobby Congress for TSCA reform. EDF launched the effort alongside the coalition and other

members, including the Autism Society, the Learning Disabilities Association of America and Moms Rising.

"Chemicals should meet a standard of safety for all people, and especially vulnerable populations like children and pregnant women," Andy Igrejas, director of the coalition said in a statement. "That can only happen when Congress hears from fed-up Americans tired of being treated like Guinea pigs." -- *Aaron Lovell*

WATER

EPA Seeks To Strengthen Adequacy Of Clean Water Compliance Schedules (*Inside EPA*)

Posted: June 18, 2010
EPA is moving to strengthen the adequacy of compliance schedules contained in state clean water permits, putting new pressure on industry to comply with strict permit limits -- even as activists are challenging the legality of such schedules.

In the latest action, EPA Region III May 27 sent letters objecting to 13 draft permits for West Virginia mining operations that seek to extend the deadlines for the mines to comply with strict state selenium limits, a move sources say could be a test of the amount of time EPA will allow compliance deadlines to be extended. EPA in the past has also urged California to tighten its compliance schedule policies to ensure they comply with the law.

But even as EPA clamps down on the adequacy of state-issued compliance schedules, activists are challenging the broader legality of compliance schedules in a lawsuit against an EPA-issued permit in New Mexico. While EPA and environmental groups are currently in settlement talks that could bypass a novel legal precedent on the issue, activists argue that the agency is statutorily barred from approving extensions to established compliance schedules that occur after July 1, 1977, although states allow extensions for compliance schedules and EPA frequently approves them.

EPA's actions on state-issued compliance schedules may indicate what the agency will require before new permitting in impaired waters can go forward, sources say. In some cases, possibly including the West Virginia mines, EPA's stance may allow compliance schedules to expire, allowing activists to file lawsuits against the facilities for permit violations.

One industry source says EPA's objection to the draft West Virginia permits will be a test of the amount of time states are allowed to give industry to meet strict permit limits, which could potentially impact the length of compliance schedules for any water

standard for any industry sector. "I think EPA is taking a legal position on the issue of whether compliance schedules can be extended indefinitely," the source says.

One informed source agrees. Many states abuse compliance schedules and use them as a way to avoid complying with water limits, but the Region III letters show EPA is willing to intervene, the source says. "Compliance schedules are abused by states and this is a great step that EPA has taken in reeling in the way that states use them," the source says.

EPA, states, environmentalists and industry have long disagreed about the use of compliance schedules in clean water permits, which give facilities additional time to meet limits in their National Pollutant Discharge Elimination System Permits (NPDES) rather than requiring immediate compliance.

EPA policy allows their use if they are consistent with state law. And further boosting the use of the schedules, the U.S. Court of Appeals for the 9th Circuit in Friends of Pinto Creek, et al. v. EPA ruled in 2007 that compliance schedules for discharges in impaired waters are required before new sources in the waters can be permitted. Industry sources say the ruling effectively blocked new permits in impaired waters.

Challenging EPA Schedules

But activists are challenging EPA's use of the schedules. In a case before EPA's Environmental Appeals Board, In re: Los Alamos National Laboratory, the Western Environmental Law Center argues that EPA lacks authority to issue compliance schedules in the permit for the New Mexico Lab because they say the water act bars EPA from issuing compliance schedules after 1977. EPA and environmentalists are in settlement talks, and any agreement could allow the agency to sidestep a legal test on whether the schedules are legally allowed.

Activists also argue that states often abuse the schedules as a way to avoid enforcing strict water quality limits.

In the West Virginia case, EPA Region III's recent letters regarding the state's mines, addressed to the state Department of Environmental Protection (DEP), object to draft modifications to the permits that would give the mines until mid-2012 to comply with the state's standard for selenium, rather than the current deadline set for April 5, 2010.

Many of the mines at issue in the Region III letters have had since 2004 or 2005 to come into compliance with the standard, according to the letters. The mines' original compliance schedules were set to expire in 2007 and 2008, but DEP extended them until 2010, the informed source says.

"EPA acknowledges the challenges of building treatment for selenium," a naturally occurring element that is harmful to humans and aquatic life, but says that the mines have had a number of years to meet the standard and have proven no "unexpected

intervening event" that would prevent the mines from meeting the standard, according to the letters. The region notes that the mines have not installed controls on some points of discharge and says out that ongoing tests have shown experimental technology used at other points of discharge is not consistently effective.

In a letter regarding the Mingo Logan Coal Company Left Fork No. 2 Mine in West Virgina, EPA notes that selenium discharge rates have actually increased. "While the permittee submits some data to show a decreasing trend in selenium discharges from outlet no. 1, when the data is corrected for flow, the data shows an increasing trend on selenium discharges," the region says.

Mingo Logan has already come under scrutiny by the Obama EPA, which took the rare step of proposing to veto a permit that had already been issued to another of the company's mines in West Virginia due to concerns about its possible adverse environmental impacts. Industry is challenging the proposed veto, saying it could undermine industry's "faith" in the water permitting process (see related story).

In the case of the West Virginia mines, EPA's objection to the extensions could allow the compliance schedules to expire, allowing activists to file suits against the mines, the informed source says.

Three Lawsuits

Environmental groups have already filed three suits against West Virginia mines that had compliance schedules for selenium that expired earlier.

And the Ohio Valley Environmental Coalition, Sierra Club and other environmental groups June 17 filed lawsuits in district court in West Virginia against subsidiaries of Massey Energy Company and Arch Coal Inc. for a number of mines that are violating permit selenium limits, including several that are the subject of EPA's objection letters.

In response to a request for comment on whether the letters could be a test of the amount of time states are allowed to meet permit limits, an EPA Region III spokeswoman says, "EPA is enforcing the Clean Water Act, we are seeking compliance with NPDES permits that were to come into compliance for selenium at least three years ago."

Regarding the length of compliance schedules, the spokeswoman cites the NPDES rules that provide that compliance schedules must lead to compliance with water quality based effluent limitations "as soon as possible." If the schedules are longer than one year, the schedule must set interim requirements, the spokeswoman says.

The letters are not the first time EPA has cracked down on states' compliance schedules. For example, EPA Region IX in 2007 conducted an audit of California's compliance schedules in response to a settlement agreement with environmentalists.

The audit of 12 randomly selected permits with compliance schedules found that some or all of them fell short on a number of legal requirements.

None of the 12 permits adequately explained why the state allowed a compliance schedule rather than immediate compliance with the permit limit and none of the permits included a finding that the compliance schedule ensured compliance "as soon as possible," the audit says.

While most of the permits included interim steps toward compliance, such as developing plans to meet the limits, some never required that the plan be implemented, the audit says. Some of the schedules allowed time for the state to come up with a total maximum daily load or other standard, which is not an appropriate use of compliance schedules, the audit says. -- Kate Winston

Activists Tout Benefits Of Water Trading To Push Chesapeake Bay Bills (*Inside EPA*)

Posted: June 18, 2010

Environmentalists and others are touting the economic benefits farmers could reap from the nutrient trading provisions in pending legislation to clean up the Chesapeake Bay, but it is unclear whether their arguments will persuade farmers who fear the legislation will ramp up EPA regulation of farms.

The World Resources Institute (WRI) June 17 released a new paper that argues Maryland farmers could earn more than $10,000 in additional income per year from selling nutrient credits in interstate markets that would be set up in pending Chesapeake Bay bills, S. 1816, introduced by Sen. Benjamin Cardin (D-MD), and H.R. 3852, introduced by Rep. Elijah Cummings (D-MD).

A source with WRI says the economic benefits of trading could help bolster the pending bills and possibly counter concerns among farmers that the bills' new rules will be onerous. “I think one of the bottlenecks has to do with agriculture the perception that either the EPA process or the legislative process would impose undue burden,” an economist with WRI says, adding, “But from an economic standpoint, the trading program actually creates investment opportunities for farmers that they wouldn't otherwise have.”

The companion bills would codify an Obama administration executive order to clean up the Bay, including a requirement to establish a Bay-wide pollution limit, or total maximum daily load (TMDL). Activists say the TMDL mandate will help the cleanup effort, protecting EPA from industries that argue the agency does not have authority to move forward with the TMDL.

A new discussion draft of the Cardin bill shows that the trading provisions in the bill have changed little since a March draft. Both versions would require EPA to establish interstate trading programs for the nutrients nitrogen and phosphorous and leave

existing intrastate trading in place. The new draft would require EPA to set up interstate trading for sediment pollution if a task force finds it is feasible and effective and gives the Agriculture Department a consultative role in the establishment of the task force. The previous version of the bill allowed EPA to establish sediment trading, but did not require it to do so.

However, industry so far has opposed the bills, raising concerns about provisions in the bill that allow states and EPA to require Clean Water Act section 402 permits for previously unregulated non-point sources like farms and allow EPA to take over the TMDL process in some areas if states fail to develop the limits.

Industry is instead supporting a competing bill, H.R. 5509, introduced June 10 by Reps. Tim Holden (D-PA) and Bob Goodlatte (R-VA) (*see related story*). The bill would preserve existing intrastate trading programs and create a voluntary interstate trading program, according to a speech Goodlatte gave on the floor June 10.

The bill would also give the Agriculture Department authority to set guidelines for trading in the agriculture and forestry industries and give EPA authority to set trading guidelines for other industries.

“Unfortunately, proposals like the Presidential Executive Order, and legislation that would codify this order, would force more mandates and overzealous regulations on all of those who live, work, and farm in the Chesapeake Bay Watershed. This strategy will limit economic growth and unfairly overregulate our local economies,” Goodlatte said.

Anxiety rises over costs of river cleanup (*Boston Globe*)

By Leah Burrows, Globe Correspondent
June 20, 2010
One little letter on the periodic table is causing a world of trouble for three towns at the head of the Charles River: P, for phosphorus.

In the right quantities, phosphorus is a relatively innocuous element. Along with nitrogen and sunlight, phosphorus helps plants grow strong and healthy. Too much, however, and it can destroy entire ecosystems by nurturing plant growth until it chokes out all other life.

It’s happening in the Charles River, according to the US Environmental Protection Agency, which wants Bellingham, Franklin and Milford to start a cleanup targeting storm-water runoff that could cost the towns and local businesses hundreds of millions of dollars.

It’s a cost that many in the area say they are unwilling to pay.

“If the EPA moves forward with this plan, it will devastate the businesses in Milford, Franklin and Bellingham,’’ said Jack Lank, president of the United Regional Chamber of Commerce, which includes Franklin and Bellingham. “The cost is going to kill small businesses.’’

The EPA is calling for local businesses to cut the levels of phosphorus in runoff by 65 percent in five years.

The agency is holding a public hearing on its proposal Tuesday at the Tri-County Regional Vocational Technical School in Franklin. Officials will summarize the program from 6 to 7 p.m., and at 7:30 p.m. will take testimony from audience members, according to an EPA announcement.

There are many sources of excess phosphorus in the environment, including car exhaust, dead leaves, grass clippings, and fertilizers. It accumulates on roads and roofs and parking lots until it’s washed away by rain. Phosphorus can be safely absorbed in soil, but the residue on pavement often is washed into storm-water drains, and storm-water drains in the target communities often send the overflow into the Charles River.

The EPA’s requirement calls for businesses in the three towns with more than 2 acres of impervious surface — rooftops or pavement — to divert the runoff and filter it in the ground.

The cost per acre for the businesses could be anywhere from $6,000 to $120,000, according to Bill Walsh-Rogalski, in the EPA’s New England office. “It’s not going to be free but there are ways to minimize the cost,’’ he said.

Walsh-Rogalski said reducing phosphorus in runoff could be as simple as changing the type of fertilizer used in landscaping or farming, or moving drainage pipes a few feet from pavement to soil.

But for many in the business community, even the lowest estimates are still too much.

“Small businesses have a hard enough time making ends meet,’’ said Bob Kilroy, chairman of the Milford Chamber of Commerce. “You add thousands of dollars to that and they just can’t make it.’’

Community and business officials are also worried that the costs of retrofitting buildings with new drainage systems would discourage new companies from moving into town.

“This timing could not be worse,’’ said Barry Feingold, the Milford chamber’s president. “Things were starting to turn in the economy and now you have this looming over your head. We are trying to promote development and we’re going to be hard pressed to get new people to set up businesses if they have to pay thousands of more dollars.’’

The municipalities also have to comply with the new storm-water regulations, although they have 10 years to reduce the levels of phosphorus in runoff by 52 to 57 percent.

Milford Selectman Bill Buckley, the board's chairman, estimated it would cost Milford up to $50 million to retrofit the town's roads and buildings with new drainage systems — a lot for a community with a $77 million annual budget.

The towns and their business communities are asking federal officials to intercede with the EPA to reduce the cost or stop the project entirely. The towns have until June 30 to submit public comments, and then the EPA will determine the steps to take next, according to Mark Voorhees, an environmental engineer with the agency.

There are federal grants to help with the cost of the project but the money just isn't enough, according to town and state officials.

"It's a small carrot insignificant to carrying the cost of the work,'' said state Representative John Fernandes, a Milford Democrat.

Moreover, Fernandes said, the towns don't have proof that the project will work.

"The EPA is experimenting not at their expense but at the expense of the taxpayers and the towns,'' Fernandes said.

The EPA has used these techniques to reduce phosphorus levels before, but not on the scale of the project proposed for the Charles River. Voorhees and Walsh-Rogalski said they are confident, however, that the program will work.

"This has all been tested and we've seen results in other communities,'' Walsh-Rogalski said.

Sal Perla, a vice president at Milford Regional Medical Center, said he will attend Tuesday's meeting in Tri-County's auditorium to learn more about the regulations.

The medical center, one of Milford's largest employers, has a 15-acre campus, 80 percent of which is impervious services.

"There is a big difference between $6,000 per acre and $120,000 per acre,'' Perla said. "We need more information to know how to proceed.''

Perla, like many in the communities, acknowledged the importance of protecting the environment, but wants the federal agency to consider the cost.

"Milford is very responsible when it comes to the environment,'' Perla said. "But this is a major financial concern.''

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