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ADMINISTRATOR JACKSON

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EPA tightens standards for sulfur dioxide emissions (*Associated Press)*

07:54 AM CDT on Friday, June 4, 2010
The Associated Press
COLUMBUS, Ohio – The Environmental Protection Agency on Thursday issued a new health standard on sulfur dioxide emissions, a pollutant linked to smog and acid rain blamed for aggravating asthma and other respiratory difficulties.

The EPA said the health benefits of the new rule, the first crackdown on sulfur dioxide emissions in nearly 40 years, range from $13 billion and $33 billion annually. These include preventing 2,300 to 5,900 premature deaths and 54,000 asthma attacks a year, according to the agency. The estimated cost in 2020 to fully implement this standard is about $1.5 billion.

"We're taking on an old problem in a new way, one designed to give all American communities the clean air protections they deserve," EPA Administrator Lisa Jackson said.

About three-quarters of the SO2 emissions come from coal-fired power plants and 20 percent from other industrial facilities.

The rule probably means higher costs for some utilities that may need to install equipment, such as scrubbers, to control emissions of SO2 and other pollutants from coal-fired power plants.

How the rule will affect utilities with coal-fired plants is not exactly clear since states will be able to develop plans to bring areas into compliance with the rule.

Some utilities with older coal-fired units have opted to shut them down instead of investing in new emissions controls because of pending rules.

Progress Energy said last year that by 2017 it will close 11 coal-burning power plants in North Carolina that don't have scrubbers. The company said that the cost to retrofit and operate these plants, more than 50 years old, will increase dramatically because of expected new environmental regulations.

The company plans to build a massive power plant fueled by cleaner natural gas.

Annual average SO2 concentrations have decreased by more than 71 percent since 1980, the EPA said.

The new standard will be 75 parts per billion, measured per hour. The current standard is 140 parts per billion over 24 hours.

States will have until 2014 to develop plans to bring areas that don't meet the new standard into compliance.

EPA Advisers Urge 'Strategic' Use Of Stewardship To Boost Agency Rules (*Inside EPA*)

Posted: June 4, 2010
An EPA advisory panel tasked with evaluating voluntary programs is urging agency Administrator Lisa Jackson to “strategically” incorporate stewardship -- a concept of non-mandatory steps to improve environmental performance not limited to voluntary programs -- into the agency's core regulatory work to boost environmental protection.

Among the suggestions by the advisory panel is for EPA to analyze ways to incorporate stewardship in rules, and offer incentives within the confines of environmental laws to boost companies' environmental performance. However, the panel also cautions that stewardship should not be used as a way to relax regulatory requirements.

The push for EPA to look at ways to promote stewardship rather than solely voluntary programs as a complement to regulations comes as a long-awaited third-party study into the agency's Performance Track voluntary program found that while the program had flaws, the agency should continue to consider the benefits of voluntary programs.

The National Advisory Committee for Environmental Policy & Technology's (NACEPT) subcommittee on promoting environmental stewardship has been assessing stewardship at the agency, not limited to strictly voluntary programs. For example, Jackson told the panel's first meeting in July that they should look at ways to encourage a “better job of educating people” on how to improve the environment, rather than focusing on voluntary programs.

The subcommittee sent a May 28 letter to Jackson saying the administrator should issue a statement saying stewardship “is fundamental to EPA's mission” and incorporate the concept in the agency's mission statement. The panel said there are “untapped opportunities” to protect the environment through stewardship.

Among the recommendations are for EPA to make stewardship an agency priority; use stewardship to promote environmental justice; evaluate voluntary programs to determine whether they need to be modified or updated; and use stewardship to encourage companies to “go beyond the minimum requirements” of rules.

The panel's letter is the culmination of a lengthy review of EPA stewardship efforts at Jackson's request. She convened the subcommittee after scrapping the Clinton-era Performance Track program.

Performance Track was a voluntary program that offered companies regulatory incentives such as a lower enforcement inspection priority in exchange for facilities agreeing to three-year, non-binding environmental protection goals beyond what they had to meet in EPA rules. However, the program drew criticism from Democrats and activists who said some companies fail to meet their goals and that it achieved few benefits.

Industry Concerns

Industry sources had raised concerns about the panel's lack of focus on voluntary programs. The letter to Jackson focuses heavily on promoting stewardship, which it says is an ethic whereby actors conduct their business in such a way as to consciously avoid harm to the environment, not limited to voluntary programs.

Still, the letter says that “strategic application” of stewardship could help encourage companies to go beyond the minimum requirements of regulations on environmental protection.

Within the constraints of environmental laws, EPA could “seek opportunities to inspire the regulated community to invest in sustainable practices that go beyond the minimum requirements of the law.” For example, rules could be written encouraging companies to invest in pollution prevention and discouraging the transfer of pollutants from one medium to another, according to the letter.

Alternatively, EPA could use market incentives “where allowed by law” to encourage stewardship. For example, EPA could offer some sectors plant-wide emission limits that would encourage companies to develop “more holistic, long-term strategies to reduce emissions across a wide range of processes,” NACEPT says.

“Such approaches must be based on accurate monitoring and should not be used to relax standards,” NACEPT warns. The subcommittee also says EPA should create a process through which stewardship experts would be drawn into initial rule development to offer their input early in the rulemaking process to achieve this goal.

At a May 25 meeting of the subcommittee, co-chair David Paylor was asked whether the letter would encourage alternative mechanisms for companies to prove compliance with EPA rules. Paylor, director of Virginia's environment department, said the controversy over Performance Track's alternative compliance measures meant the panel would not advocate them. “It is my sense that alternate compliance measures were the lightning rods that for Performance Track that led to a lot of the criticism that it took,” Paylor said.

NACEPT suggests EPA also further environmental stewardship through a number of specific measures, including building up the agency's capacity to develop stewardship opportunities through focusing staff resources and accepting outside suggestions; increasing the breadth and effectiveness of existing stewardship programs -- such as the Energy Star efficiency labeling program -- and to combine stewardship with regulatory obligations to more effectively protect the environment, for example by encouraging industry to adopt sustainable practices.

RAND Report

NACEPT agreed to the letter one day after the RAND Corporation's May 24 publication of its long-awaited report into the effectiveness of Performance Track. The evaluation characterizes the program as a “mixed success” but points to EPA's incomplete implementation of the program as the cause the program's uneven success.

“While Performance Track’s concepts, design, and implementation each had mixed success, we believe that the significant environmental challenges that the United States faces require that EPA continue to seek out new approaches that can complement and enhance traditional regulatory approaches,” the report concludes.

The evaluation, which was commissioned by EPA in the waning days of the Bush administration, pointed at a set of 37 metrics by which facilities could judge their environmental protectiveness as an example of an inconsistent guidance offered to regulated industries by the agency. Under the program, EPA offered too many different metrics that an individual facility could use to judge their performance, which made comparing one facility to another impossible.

The report also concluded that, despite incomplete implementation -- including, for example, the discontinuation of a companion Stewardship Track program -- the program was a step forward in environmental improvement and the concept of voluntary efforts should be reconsidered within the agency.

Because the limitations of the command-and-control framework in which most environmental laws were written remain in place, the agency should reevaluate its stance on voluntary measures and use the study's detailed findings to improve the Performance Track framework, according to the study.

Specifically, the report suggested developing narrower voluntary programs that are more clearly laid out, rather than the broader program as attempted with Performance Track. The report also suggested EPA be more judicious in its use of the EPA brand, and should develop methods of independently verifying environmental performance and evaluating effectiveness of programs to determine which ones are working and which are not.

“EPA ought to continue experimenting with [voluntary programs], since they may offer substantial long-run opportunities to improve the quality of the environment in the United States,” the report says.

“Some experiments will succeed and others will fail, but each should add to the knowledge base about how EPA can most effectively motivate firms, facilities, and, ultimately, individuals to so what they can to improve the nation's environmental quality,” according to the report -- John Heltman

Troubled Shore security project facing new delays (*Baltimore Sun*)

Environmental review now due July 30, at earliest
By Paul West, The Baltimore Sun
6:08 PM EDT, June 3, 2010
WASHINGTON —

A controversial plan to build a State Department security facility on Maryland's Eastern Shore is facing further delays of weeks or months, federal government officials disclosed Thursday.

The proposed anti-terrorism training center for diplomats, where an explosives pit, firing range, tracks to practice evasive drivingand mock urban neighborhood would be built on 2,000 acres of privately owned land in Ruthsburg, has been under attack by area residents and environmentalists, who have questioned whether it is the best site for the more than $100 million project.

In April, federal officials said they expected to release a draft environmental assessment by "late spring," blaming weather and other factors for the initial delay.

Now, in response to a query from The Baltimore Sun, the State Department and the General Services Administration say the environmental review won't be finished until at least late July.

Gina Blyther Gilliam, a GSA spokeswoman, said "additional studies and analysis" had prolonged the process. Her statement said the draft environmental assessment is now planned for completion this summer, but "no earlier than July 30th."

In March, the Environmental Protection Agency urged federal planners to abandon their current assessment and move immediately to a more thorough environmental impact study of the proposed Foreign Affairs Security Training Center.

That process, far more time-consuming and stringent than the one the government is now conducting, would likely create further delays of months, if not years.

Officials of the State Department and the GSA, the government's real estate arm, initially hoped to fast-track the project, and the current environmental review avoids formally involving the EPA.

When plans for the facility were announced late last year, federal officials said privately that they expected to begin acquiring land by this spring or early summer.

The government has described rural Queen Anne's County as the best location within a 150-mile radius of Washington for the center. But opponents say federal officials failed to consider existing federal property for construction of the facility.

Last month, a local environmental group went to federal court in a new effort to slow or block the project. It demanded the release of internal government documents in advance of another public comment period that will follow completion of the draft environmental assessment.

Federal officials are "hurrying ahead with their abbreviated review," the Queen Anne's Conservation Association said in its May 19 filing. A spokesman for the group protested Washington's "rush to a pre-determined judgment" on a project financed with $70 million in stimulus money "that is not close to shovel-ready."

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EDITORIAL / OP-ED / COMMENTARY / LETTERS
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Move over, global warming (*Washington Times)*

June 7, 2010 Monday
B, COMMENTARY; Pg. 1
Move over, global warming;
Biodiversity is the next central organizing principle of human civilization
By E. Calvin Beisner SPECIAL TO THE WASHINGTON TIMES
Al Gore, call your office. Elite environmentalists and global- ists appear to be preparing to dump global warming as their cause celebre.

For at least the past 18 years (since Mr. Gore published "Earth in the Balance"), greens have touted saving the Earth from catastrophic, man-made **global warming** as the "central organizing principle of human civilization." One would think that was because it was perceived as the greatest threat facing us - which indeed it has been called, over and over.

But last month, the United Nations celebratedits annual International Day for Biodiversity by releasing a report that says the case for saving species is "more powerful than **climate change.**"

Oops. Wait a minute. The report's not out yet. The U.N. just announced that it will release it this summer. Just as with all the hoopla before releasing the U.N.'s 2007 **global-warming** assessment, this allows for lots of public buildup before the report actually appears and is subject to critical examination. The familiar green tactic is known as "science by press release."

The announcement compares the forthcoming report with the 2006 Stern Review on the economics of **climate change,** which claimed that the benefits of drastic reductions in greenhouse gas emissions to reduce **global warming** would be five to 20 times the costs. **Global-warming** alarmists celebrate the Stern Review because it seems to justify the deindustrialization and permanent impoverishment of the world that they promote.

Yet the Stern Review has been shown to be economic nonsense, reaching its wild conclusions only by means of vastly exaggerated potential **global-warming** damages and adoption of a near-zero-time discount rate that is the stuff of fantasy, not serious economic analysis.

Although true believers won't have their faith shaken, the U.N.'s forthcoming report is likely to be debunked as quickly and compellingly as the Stern Review.

According to an article in the United Kingdom's Guardian newspaper, the U.N. document will say that "if the goods and services provided by the natural world are not valued and factored into the global economic system, the environment will become more fragile and less resilient to shocks, risking human lives, livelihoods and the global economy."

But, of course, natural resources already are valued and factored into the global economic system - by the pricing mechanism of the market, which spontaneously reflects supply and demand all around the world in a near-miraculous way that the self-appointed economy managers neither understand nor appreciate. They want authority to set the value of all things - i.e., to replace the market's valuing mechanism with their own choices.

In other words, they want the price-setting power of the various committees that brought collapse to all the countries in the world in which they operated precisely because, by determining prices by fiat, they made economic calculation impossible.

Pavan Sukhdev, an Indian economist with Deutsche Bank India and the forthcoming report's author, told the Guardian the changes called for in the report "will involve a wholesale revolution in the way humans do business, consume and think about their lives." When you hear that language, hang onto your hat - and everything else you own.

It's all targeted.

The Guardian says the report will claim "the potential economic benefits" of the major overhaul of the world's economy "are huge. Setting up and running a comprehensive network of protected areas would cost $45 billion a year globally ... but the benefits of preserving the species richness within these zones would be worth $4-5 trillion a year." If you can believe there's an investment opportunity that will return $100 on every dollar invested, and that the only way to get anyone to invest in it is by government mandate, please come and talk to me about a bridge.

Apparently relying on statements from the International Union for the Conservation of Nature (IUCN), the U.N. report assumes hyperrapid rates of species extinction - 1,000 to 10,000 times faster than the natural background rate. But the claim is devoid of empirical foundation. Like warmists' predictions of future climate catastrophe, it depends not on empirical observation but on computer models. It's not evidence. It's not data. It's hypothesis.

When in the 1980s, the IUCN, pressed to rebut a 1984 critique by the late Julian L. Simon and Aaron Wildavsky that pointed out there were no empirical data to back such claims, commissioned a field study in rain forests (thought to have the highest rates of species extinction) around the world, the rather embarrassing result was the IUCN's book, "Tropical Deforestation and Species Extinction" (1992). Every chapter in the book reported extinction rates from empirical observation only a tiny fraction of the claimed rates. As V.H. Heywood and S.N. Stuart put it in their chapter, the "data indicate that the number of recorded extinctions for both plants and animals is very small" and, "Known extinction rates are very low."

Nonetheless, as **global warming** fears collapse in the face of Climategate, the green socialist machine is scrambling to be ready to switch gears. Perhaps the new rationale for global wealth redistribution and deindustrialization will be preserving biodiversity. It's a good candidate: It has all the flaws of **global warming** - bad science, bad economics and totalitarian politics.

E. Calvin Beisner is with the Cornwall Alliance for the Stewardship of Creation.

Published: June 04. 2010

Erie Coke Corp. created its own crisis (*Erie Times News*)

Erie Coke Corp. has shown this community -- week after week, month after month, year after year, fine after fine -- that it is a polluter.
It is a terribly prolific polluter, and the videos illustrate it, again and again.

Almost as badly, the actions of Erie Coke Corp. have been purely arrogant. It won't talk to its neighbors. It won't talk to the news media. It broke off negotiations with the government. Even in its last-gasp effort in court to avoid being shut down for continually flaunting state and federal air-quality laws, it wouldn't admit it's a polluter. It questioned how those conclusions could have been reached.

To the community, that claim is answered pretty easily: Most of us have eyes, nostrils and memories. Oh, and those pesky data collectors from the state Department of Environmental Protection and the federal Environmental Protection Agency have been watching and recording this debacle for at least five years. The report card is ugly.

So here we are. An environmental judge, subject to appeal, must decide whether Erie Coke Corp. gets one more chance. The company suddenly is talking. Its main argument -- persuasive to some -- is that shutting it down would shut off the supply of rare foundry coke to some of the nation's most important clients. Not only would Erie Coke Corp. not be able to recover from closing, many of its clients, including some in Erie, such as the Zurn Industries plant, might face layoffs.

Here's how we see it. Erie Coke Corp. has been a terrible corporate citizen. Nothing less.

It has behaved badly to the community and the company's more than 120 workers -- at least that's how many there appears to be, because the company doesn't want to disclose the number to the public. And this company has been terrible to Erie's industrial community, which plays by the rules. It follows the laws, sometimes at great expense.

Given its stalling and other unsavory tactics here and elsewhere, Erie Coke Corp. deserves to be shut down. There's no doubt about that. Its actions are indefensible. Period.

We do hope that if Judge Thomas W. Renwand decides to give it an opportunity to continue operating, he require conditions that compel its immediate shutdown if they are not met.

Conventional wisdom says we need coking coal if we are to be a steel-making economy. If J.D. Crane can't run Erie Coke properly, the state should condemn it and sell it to a firm that can.

If it is not possible to do this, we need to search for other solutions. If it is not possible to produce coke at a reasonable price in an environmentally acceptable way, the state and national governments and, if possible, the private sector should work to find a way to produce coke without poisoning the air we have to breathe.

Posted on Fri, Jun. 4, 2010

A vision for a Delaware River recreational area (*Philadelphia Inquirer*)

By Don Sapatkin
Inquirer Staff Writer
When Mark Lorenzini told his ex-brother-in-law he was going fishing below the Burlington Bristol Bridge, the response was: "What are you going to catch, a body?"

In fact, 40-inch striped bass can be caught in the much-improved waters of the Delaware River. And misguided stories like this frustrate Patrick Starr, who sees the river as an overlooked gem - cultural, historical, and recreational - that is badly in need of a sponsor.

His vision: a Tidal Delaware River National Recreation Area, 72 river miles from Trenton to Delaware City, managed by the National Park Service.

"We have treated the river as a backyard for decades. If you go back to the 1700s it was the front door," said Starr, senior vice president of the Pennsylvania Environmental Council and a kayaker who says he could rent or store a boat near the Hudson River right in New York City but not here.

On Thursday, Starr led a tour - by van, since river access is poor - of some of the cultural and historical sites for park service officials and others, who responded with murmurs of awe. On Friday, he will lead a briefing for several dozen movers and shakers around the region. U.S. Reps. Robert E. Andrews (D., N.J.) and Allyson Y. Schwartz (D., Pa.) are expected to begin the lengthy process any day with an official request for a park service study.

The goal would not be new federal lands or substantial rules changes; dredging of the river, for example, would be unaffected. But the National Park Service could bring under one umbrella dozens of sites in three states and promote them as a single resource. It could provide money to build more river access. It could bring in rangers to run tours and other educational programs.

There are 17 national recreation areas around the country, from the Golden Gate in San Francisco to Gateway in North Jersey and New York City. Some are largely federal land and others almost none. Each is managed very differently.

"There is no cookie cutter," said Paul Labovitz, superintendent of the Mississippi National River and Recreation Area, which he described as an "overlay" of 25 units of state, county, and local government along 72 river miles in and around Minneapolis-St. Paul. Rangers lead bike, canoe, and birding trips. There is no entry gate, and the park's interpretive center is in a science museum.

Labovitz developed his love of the outdoors as a kid growing up in Northeast Philadelphia, where he watched water birds and fished for eels in the river from atop a big sewer pipe off Unruh Street. The river has grown dramatically cleaner since the 1960s and 1970s.

"The Delaware has a lot of recreational opportunities to offer that just need to be further developed," Labovitz said Thursday at a stop on Starr's van tour - a New Jersey observation platform with a view of the Tacony-Palmyra Bridge, which he said was "awesome."

The tour gave him a perspective that would be hard for most people to get. The Delaware, he realized, "is not just a community here, a community there. It's a river."

William Penn knew that, of course, as did Philadelphians through the centuries that followed.

"Philadelphia and Camden were the same economy," said Tom Corcoran, president of the Delaware River Waterfront Corp. in Philadelphia who held a similar position on the New Jersey side.

"Back in the heydays, there were 15 or 20 different ferry companies running all sorts of routes. Every two or three blocks in Camden there was a ferry station and in Philadelphia there was a ferry station and the river was just alive with people going back and forth."

Ironically, Corcoran said, it was the opening of the bridges across the river that killed people's connection with it. The last real ferry, not counting the tourist version that now runs, crossed on March 1, 1952.

The decline of the ports and construction of I-95 further divorced the region from the waterway that created it.

Indeed, tourists sometimes are surprised to hear that Philadelphia sits along a river at all, said Meryl Levitz, president and CEO of the Greater Philadelphia Tourism Marketing Corp.

To Levitz, a Delaware River natural recreation area has a brand-name potential similar to that of Independence Mall.

"Tourists used to hear 'Indpendence Mall' and they would say, 'What stores are there?' " she said. After more than a decade of planning, improving and themed marketing, she doesn't hear that question anymore - visits to the 27 attractions that are part of the national park are up more than 70 percent.

To Congressman Andrews, a natural recreation area designation would be about jobs.

"Recreation is a major source of employment. And a river is a major source of recreation," he said.

The idea is far from a slam-dunk. Three out of the last five "reconnaissance" studies done by the National Park Service - the step that Andrews is requesting - resulted in recommendations for further action, a spokesman said, and five of the last 10 that got to the next step resulted in positive recommendations. Decisions on new parks are ultimately made by Congress, which could take years.

Still, Rich Weideman, the park service's chief of partnerships, saw a good fit after Thursday's tour. Mark Lorenzini, the fisherman who surprised his ex-brother-in-law, sees potential as well.

"A lot of people don't know what's here," Lorenzini said Thursday morning at the Frankford Arsenal public boat access, ticking off his catches - bass (smallmouth and largemouth), perch (yellow and white), catfish (all kinds) - in the Delaware River.

Just the other day he baited his hook with herring for striped bass and reeled in a 60-pound snapping turtle. (He let it go.)

AIR

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At Annual Triathlon on Mobile Bay, the Swimmers Beat Out the Tar Balls

(*New York Times*)

June 7, 2010 Monday
Late Edition - Final
Section A; Column 0; National Desk; Pg. 15
By JOHN LELAND
FAIRHOPE, Ala. -- Any triathlon is a contest of speed and endurance. But for the competitors who gathered in this manicured waterfront community on Mobile Bay, donning rubber bathing caps and goggles on a sticky Alabama morning, this year's race had another potential challenge: the risk of tar balls.

"We're athletes, we have strong bodies," said Rachel Zellner, one of 545 swimmers who prepared to get in the bay early Saturday morning. "Just try not to drink any."

Ms. Zellner, 24, works for an insurance company. "So I've got good insurance," she said.

The Grandman Triathlon, a fund-raiser for a local environmental group, embodies the excruciating waiting game that has afflicted coastal Alabama since oil began to leak from a well after the Deepwater Horizon rig explosion. While Louisianians are seeing their worst fears come true, Alabamians are still waiting to see how severely the spill damages their waters and shoreline. The tar balls came last week, but the large quantities of oil remained miles offshore.

Until the day of the event, the organizers did not know whether they would be able to include the third-of-a-mile swim, limiting the race to bicycling and running. The previous day, state officials banned fishing in the southern part of Mobile Bay and off the barrier islands at the mouth of the bay, issuing a swimming advisory for the islands. Field observers reported spotting tar balls and dead fish in the bay.

"I got down here and it was awful," said Casi Callaway, executive director of Mobile Baykeeper, the environmental group that sponsors the annual triathlon. "The smell of petroleum was so strong."

Officials from the Environmental Protection Agency tested the air and found no dangerous levels of chemicals.

"We were definitely nervous," said Tim Kant, the mayor of Fairhope.

Ms. Callaway said the race had been held under riskier conditions, when rain had washed sewage into the bay. (In a typical summer, the beach closes as many as 15 times because of sewage.)

"I would get in that water," Ms. Callaway said. "But I wouldn't put my kid in it."

In the end, the triathlon went off without a tar ball. Chad Hon, 40, was the first across the finish line. "It's been frustrating," he said. "But not nearly as bad for me as for the people who depend on the water."

Afterward, at 9:30 a.m., there was beer and pizza. "We are Alabama," Ms. Callaway said.

Down the bay, on the barrier island of Gulf Shores, tempers were hotter at a BP news conference on Saturday, where three local officials vented their frustration at Bob Fryar, a senior vice president of BP. Mayors Robert Craft of Gulf Shores and Tony Kennon of Orange Beach complained that the company had taken six hours to send crews to pick up tar balls on their beaches and was slow to reimburse businesses hurt by the spill.

Edward Carroll, a member of the Orange Beach City Council, proposed a solution: "We can put you in our jail, and you can sit there until you figure it out."

"Next question," Mr. Fryar said.

URL: http://www.nytimes.com

Sen. Murkowski invokes rarely used law in attempt to rein in EPA regulation (*News Miner*)

by Chris Freiberg / cfreiberg@newsminer.com
3 hrs 49 mins ago | 363 views | 2 | 3 | |
FAIRBANKS — The U.S. Senate will vote this week on a resolution that would stop the EPA from regulating greenhouse gases under the Clean Air Act.

Alaska's senior senator, Lisa Murkowski, is the leading sponsor of the resolution, called a disapproval resolution, which is scheduled for 10 hours of debate Thursday on the Senate floor.

Murkowski, a Republican, said she is chiefly concerned with the negative economic impact EPA regulation of carbon dioxide could have on Alaska, a position that has brought protests from environmental groups.

"There has been a great deal of misinformation spread about my effort by groups — almost all of which are based outside of Alaska — who want to cut the emissions blamed for climate change no matter what the cost," Murkowski said in a statement released last week.

"My only interest is protecting my constituents. Alaskans know that TAPS is vital to our economy, we know that construction of a natural gas pipeline figures hugely into our future as a state, and it's becoming clear that both of these projects are threatened by EPA efforts to unilaterally expand the Clean Air Act."

Murkowsk energy spokesman Robert Dillon said the resolution is not about debating the science behind climate change, but stopping an "out of control" government agency.

In 2007, the Supreme Court ruled that the EPA was violating the Clean Air Act by not regulating greenhouse gases, but the agency did not finalize its endangerment finding — necessary before it begins regulating the gases — until December.

Officially, the EPA found levels of carbon dioxide and five other greenhouse gases in the atmosphere "threaten the public health and welfare of current and future generations."

That finding could lead to regulation of everything from automobile emissions to fish processors and power plants.

However, under the Congressional Review Act, Congress can disapprove of the finding and block it if Murkowski's resolution passes the Senate and House with majorities and is signed by the president. Murkowski introduced the resolution in January.

But even if the resolution gets through the Senate, it is expected to have a much harder time in the House.

So far, the disapproval resolution has gained 40 co-sponsors, including three Democrats. Alaska Democratic Sen. Mark Begich is not one of them. Begich has said he does not plan to support the resolution.

Begich spokesman Max Croes said the senator received assurances from the EPA that the agency will not begin regulating large greenhouse gas emitters until late 2011, and those who put less than 75,000 tons of carbon dioxide into the air will not be regulated by the EPA until 2016 at the earliest.

"In the long run, EPA regulation will not be the most cost-effective way of addressing the problem," Croes said. "The timeline presented by the administrator allows Congress to make considered decisions to balance climate change remedies with their effect on our economy. (Begich) supports Congressional legislation which can more effectively balance these two concerns."

Such legislation could create incentives to develop natural gas resources, bolster national security and also create millions of jobs, Croes said.

However, Dillon said even if the EPA delays regulating greenhouse gases for years, any regulation could severely impact the Alaska and U.S. economies.

And even if the U.S. were to cut greenhouse gases, he said that will do little to stop global warming by itself.

"The key is that it has to be global," he said. "Unless every country agrees to cut emissions, it doesn't matter we do as a country."

Contact staff writer Chris Freiberg at 459-7545.

Battle lines formed over Texas air quality (*Houston Chronicle*)

Biggest polluters find they'll now be dealing with environmentalists
By R.G. RATCLIFFE
HOUSTON CHRONICLE
June 6, 2010, 7:52PM

AUSTIN — The Texas air quality war — a conflict pitting environmental health against money — now is fully engaged because of a rare crosscurrent of political timing.
The companies that produce gasoline for our cars, electricity for our lights, gas for our stoves and noxious fumes as a byproduct have held sway over Texas regulators for almost two decades.
Now, environmentalists appear to have the upper hand:

• • The Obama administration named as regional Environmental Protection Agency administrator a longtime critic of the Texas Commission on Environmental Quality, TCEQ. That administrator, Al Armendariz, is threatening to take over aspects of Texas air quality permitting at the end of this month.

• • Democrats nominated environmentally oriented former Houston Mayor Bill White to challenge industry-friendly Republican Gov. Rick Perry in November.

• • The TCEQ faces a sunset review by the Legislature next year, scrutiny that has potential to overhaul the agency or to receive lawmakers' approval for business as usual.

“This has been brewing for about 15 years,” said Tom “Smitty” Smith, state director of Public Citizen. “But what's happening now is you've finally have an EPA administrator who's got enough guts to stand up to the polluters.”

Perry is presenting the battle as another attempt by the federal government to tell Texas what to do.

“Texas' common-sense approach to air quality permitting works because it avoids the damage caused by Washington's command and control approach, while cleaning the air, helping create jobs and growing our state economy,” Perry said at a Deer Park news conference last week.

Environmentalists are excited by the EPA's new aggressive posture and hope it prompts an overhaul of the TCEQ and Texas environmental regulation in the sunset process.

Fear of a backlash

Former TCEQ Commissioner Larry Soward, who is helping environmentalists prepare for the fight, fears the opposite is about to occur.

“I'm almost concerned that there's going to be a legislative backlash and the Legislature is going to join the governor and the agency and say, ‘Hell, no!’” Soward said.

He may be right.

State Sen. Glenn Hegar, R-Katy, chairman of the Sunset Commission, said he wants the process to be about agency operations and efficiency, not about state

environmental regulations. Hegar said he is deeply concerned that the EPA is attempting to “federalize” a state program.

“The sunset process cannot resolve this very disturbing position we've been put in,” Hegar said. “I'm very suspicious. What's the real agenda?”

Flexible permits targeted

While the fight could escalate to all aspects of state environmental regulation by the TCEQ, the initial contest is over the state's policy of issuing so-called flexible air quality permits.

There are fewer than 140 such permits, but they cover some of the largest petrochemical refineries and power plants in the state.

The permits cap noxious emissions for an entire site rather than individual units within that site. Environmentalists argue that permits for individual units would force operators to upgrade equipment. State officials say the permits brought plants built before the 1990 federal Clean Air Act into the state regulatory system by giving operators flexibility to manage their overall emissions.

The Texas Clean Air Act creating the permitting system was passed under Gov. Ann Richards in 1993, and the state began using the law to issue permits in 1995. Perry and TCEQ officials say the EPA never formally objected to the state's process.

However, more than once, EPA officials wrote the state complaining about the process. In 2007, EPA Bush administration regional administrator Richard Greene sent a letter to all the flexible permit holders notifying them they may be out of compliance with federal clean air laws.

In response, a consortium of Houston-area refiners, the Texas Oil and Gas Association and the Texas Association of Business sued the EPA, demanding it follow federal law and issue a ruling on 30 state permitting rules.

Business won, and the court set a schedule that EPA now is following for ruling on the programs.

‘Eco-warrior' at meeting

Last June, members of the Texas environmental community met in Dallas with new EPA Administrator Lisa Jackson, whom Rolling Stone magazine described as an “eco-warrior” and the most activist agency administrator in history.

The environmentalists told Jackson the state's system of regulation favored polluters and how on more than one occasion TCEQ regulators had left the agency to work for the companies they had regulated. While air quality had improved in Texas over the

past decade, they said it was due to EPA enforcement actions and lawsuits, not state regulation, recalled Neil Carman, clean air director for the Sierra Club of Texas.

Jackson, as a result, named Armendariz the new regional administrator.

Armendariz was an engineering professor at SMU with a history of challenging the TCEQ over air pollution from gas wells in North Texas. As one of his top aides, Armendariz chose Layla Mansuri, a former EPA lawyer pushing the agency to be more aggressive in enforcing environmental laws.

Suddenly, an activist administrator was in place with the industry-demanded schedule to rule on the legality of Texas' permitting process. Armendariz took it a step further last month by declaring the air quality permit for the Flint Hills refinery in Corpus Christi invalid and indicating he may do the same for other permit holders after a June 30 deadline.

Matthew Tejada, executive director of Air Alliance Houston, said the industry in its lawsuit may have outsmarted itself.

“They were trying to get in on the back end of the Bush EPA,” Tejada said. “It was a grand miscalculation on their part.”

Soward, a former Perry aide, said the fundamental problem of the TCEQ is that state law set it up to favor industry. He said he often had to vote for permits he did not like because state law does not allow the agency to change a permit up for renewal without the operator's agreement.

“We have a culture at the agency and in the state that economic interests are more protected … than the environment,” Soward said.

Texas as battleground

Because the state has about 60 percent of the nation's refining capacity, Soward said he believes the Obama administration is going to make an example out of Texas to bring other states in line on clean air issues.

TCEQ Chairman Bryan Shaw said the fight already is having economic impact on Texas.

Shaw said Motiva and Total refineries in Port Arthur, a Southwestern Public Service Co. power plant in Amarillo and a Conoco Phillips refinery in Borger all have state permits to expand, but cannot do so as long as their permits are in question. He said that threatens 7,160 jobs at two plants and halts the installation of modern pollution control equipment at two others.

Armendariz's staff earlier this year sent TCEQ a presentation arguing there is an environmental cost to not replacing the program.

The debate already has become a core part of the governor's race.

White said Perry has mismanaged the agency on behalf of polluting industries that have contributed to his political funds and now wants to turn his own failings into part of his campaign against Washington.

“Perry has politicized the commission,” White said. “The governor has played chicken with the EPA to create a new chapter in his book on states rights.”

r.g.ratcliffe@chron.com

Sen. Murkowski invokes rarely used law in attempt to rein in EPA regulation (*Fairbanks Daily News Miner*)

by Chris Freiberg / cfreiberg@newsminer.com
06.07.10 - 02:27 am
FAIRBANKS — The U.S. Senate will vote this week on a resolution that would stop the EPA from regulating greenhouse gases under the Clean Air Act.

Alaska’s senior senator, Lisa Murkowski, is the leading sponsor of the resolution, called a disapproval resolution, which is scheduled for 10 hours of debate Thursday on the Senate floor.

Murkowski, a Republican, said she is chiefly concerned with the negative economic impact EPA regulation of carbon dioxide could have on Alaska, a position that has brought protests from environmental groups.

“There has been a great deal of misinformation spread about my effort by groups — almost all of which are based outside of Alaska — who want to cut the emissions blamed for climate change no matter what the cost,” Murkowski said in a statement released last week.

“My only interest is protecting my constituents. Alaskans know that TAPS is vital to our economy, we know that construction of a natural gas pipeline figures hugely into our future as a state, and it’s becoming clear that both of these projects are threatened by EPA efforts to unilaterally expand the Clean Air Act.”

Murkowsk energy spokesman Robert Dillon said the resolution is not about debating the science behind climate change, but stopping an “out of control” government agency.

In 2007, the Supreme Court ruled that the EPA was violating the Clean Air Act by not regulating greenhouse gases, but the agency did not finalize its endangerment finding — necessary before it begins regulating the gases — until December.

Officially, the EPA found levels of carbon dioxide and five other greenhouse gases in the atmosphere “threaten the public health and welfare of current and future generations.”

That finding could lead to regulation of everything from automobile emissions to fish processors and power plants.

However, under the Congressional Review Act, Congress can disapprove of the finding and block it if Murkowski’s resolution passes the Senate and House with majorities and is signed by the president. Murkowski introduced the resolution in January.

But even if the resolution gets through the Senate, it is expected to have a much harder time in the House.

So far, the disapproval resolution has gained 40 co-sponsors, including three Democrats. Alaska Democratic Sen. Mark Begich is not one of them. Begich has said he does not plan to support the resolution.

Begich spokesman Max Croes said the senator received assurances from the EPA that the agency will not begin regulating large greenhouse gas emitters until late 2011, and those who put less than 75,000 tons of carbon dioxide into the air will not be regulated by the EPA until 2016 at the earliest.

“In the long run, EPA regulation will not be the most cost-effective way of addressing the problem,” Croes said. “The timeline presented by the administrator allows Congress to make considered decisions to balance climate change remedies with their effect on our economy. (Begich) supports Congressional legislation which can more effectively balance these two concerns.”

Such legislation could create incentives to develop natural gas resources, bolster national security and also create millions of jobs, Croes said.

However, Dillon said even if the EPA delays regulating greenhouse gases for years, any regulation could severely impact the Alaska and U.S. economies.

And even if the U.S. were to cut greenhouse gases, he said that will do little to stop global warming by itself.

“The key is that it has to be global,” he said. “Unless every country agrees to cut emissions, it doesn’t matter we do as a country.”

Contact staff writer Chris Freiberg at 459-7545.

AWARDS

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Mount Sidney man on EPA-award-winning Va. Tech team (*Staunton News Leader*)

Staff Report • June 7, 2010

BLACKSBURG — A team of undergraduate students from Virginia Tech's Department of Biological Systems Engineering in the College of Agriculture and Life Sciences and the College of Engineering was one of 14 teams to win an Environmental Protection Agency (EPA) P3 Award at the sixth annual National Sustainable Design Expo.

Winners of the EPA's People, Prosperity, and the Planet (P3) awards developed sustainable projects and ideas that protect the environment, encourage economic growth, and use natural resources more efficiently.

Virginia Tech's award-winning design was a combined effort of two senior design teams' projects. During the two-course senior design sequence, students gain experience working in a
team environment, and then apply their course work to real-world problems faced by the private sector.

The two teams collaborated to develop a design for a combined riparian zone with a stream denitrifying biofilm for nitrate reduction in aquatic ecosystems. The design includes a buffer zone of plants, shrubs, and trees along the stream that will help to filter the water and remove nitrates before they enter the stream. The bioreactor provides an environment within the stream for the denitrifying bacteria to grow, which helps to remove nitrates directly from
the stream.

The team was awarded $75,000, which will be used to further refine the design and to implement a pilot-scale model at Stroubles Creek in Blacksburg.

Virginia Tech's P3 Team was composed of seniors majoring in biological systems engineering. Team members are:

Koren Breighner of Roanoke

Jennifer Downs of Richmond

Joshua Flickinger of Westmoreland

Scott Kesecker of Mount Sidney

Michael McAnulty of Blacksburg

Jessica Palazzolo of Luray

Melissa Thies of Hampton

Alex Tucker of Pennington GapJustin Barone, associate professor of biological systems engineering, served as the team's faculty advisor.The competition consisted of two phases. In the fall, teams submitted proposals for a Phase I grant of $10,000 to develop its design project. The students worked during the academic year on the research and subsequent proposals. In the spring, they submitted their project reports, which included a summary of their Phase I activities and their Phase II proposals.Teams brought their designs, prototypes, and other exhibition materials to the National Mall in Washington, D.C., for the National Sustainable Design Expo on April 23-25. During the expo, teams were evaluated by a series of judges. Scores from the project reports as well as the presentations on the Mall were combined into a final overall score for each P3 team.Based on these scores, the American Association for the Advancement of Science made recommendations to the EPA about which teams should receive P3 Awards and the opportunity for Phase II funding.

BJ SPILL

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Obama says he'll push BP to fully compensate oil spill victims (*Platts*)

Washington (Platts)--7Jun2010/554 am EDT/954 GMT

US President Barack Obama on Friday questioned BP for spending $50 million on an advertising campaign in the wake of the Gulf of Mexico oil spill and paying $10.5 billion in shareholder dividends, saying his administration will make sure the company compensates victims of the disaster.

In remarks to reporters after a meeting with Gulf Coast state governors and state and federal spill response officials in Louisiana, the president also said he believes it is "way too early to be optimistic" about the odds of success of BP's latest effort to contain the spill, adding how well the containment system is working won't be clear for another 24 to 48 hours.

While Obama said he "does not have a problem with BP fulfilling its legal obligations" to shareholders, he said the company "has legal and more obligations here. I don't want to hear that they've been nickel-and-diming" fishermen and other parties whose livelihoods have been damaged by the spill.

The president said he would make sure BP doesn't "lawyer up" when presented with claims. "They say they want to make it right and we want to make sure they make it right," he added, saying that he does not want to see delays in processing compensation claims and "cutting checks" to those affected.

"The key point here is that this has been a disaster for this region and people are rightfully concerned about the next few months and the next few years."

Obama said he believes the fact that BP can pay $10.5 billion in dividends "is indicative of how much money they are making," particularly given that the company did not fully consider the risks of its operations in the Gulf. "I want to make sure they pay the costs."

BP on Friday afternoon said in a statement that it will be sending "a second advance payment" this month to individuals and businesses along the Gulf Coast who have suffered loss of income or profit because of the spill.

The company said the payment will bring to $84 million what it has spent to compensate victims for economic losses, adding that "this number will grow as additional claims are filed."

"We deeply regret the impact the oil spill has had on individuals and businesses, and understand the need for quick and reasonable compensation," BP Exploration and Production Chief Operating Officer Doug Suttles said. "We hope these payments will assist individuals, businesses and the communities impacted."

The president also said he is aware that some in the Gulf region have criticized his administration's decision to halt new deepwater drilling until an independent commission chaired by former Florida Governor and US Senator Bob Graham and former Environmental Protection Agency Administrator Bill Reilly completes an investigation

into the causes of the massive oil leak. A number of those critical of the policy said the moratorium is further hurting the Gulf's already damaged economy.

Obama said he has asked the pair to "front-load" their investigation so that if they determine before six months have passed what caused the accident and how it can be prevented in the future, they inform the White House, which may then act on that information.

"But I won't cut corners because I don't want to see this happen again. It's important to do this right and if we don't it will even be worse for the oil industry."

--Jeff Barber, jeff_barber@platts.com
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See more information at
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Microbes developing appetite for oil (*Gainesville Sun*)

Evolugate seeks approval to use its life forms to help clean up the Gulf oil spill.
By Anthony Clark
Business editor
Published: Monday, June 7, 2010 at 6:01 a.m.
A Gainesville startup company is developing "designer microbes" specially tailored to the Gulf oil spill in hopes of helping cleanup efforts.

Evolugate LLC has developed a technology to speed the process of evolution in microbes used to create biofuel and to control insects. In recent weeks, it has turned its attention to cleaning the Gulf oil spill.

The process of developing effective microbes could take "weeks or months," said Tom Lyons, the company's principal research scientist.

"That might sound like that's pretty slow, but if you think about the fact that oil is going to be in the environment 10 years if we just let it sit there, a couple months in development that make it faster is not that problematic," he said.

Once the microbes are ready, Evolugate will need approval from the Environmental Protection Agency.

Then it will need a customer. That could be BP, a state agency or a local municipality with a cleanup site, Lyons said.

The company says its technology will create more effective methods of oil cleanup than current methods.

Those methods include dumping nutrients such as nitrogen, phosphorous and iron into the environment to feed naturally occurring microbes that eat oil.

That method speeds the natural breakdown of oil threefold, Lyons said. The problem is it also feeds microbes that don't eat oil, including some that are pathogens.

Another method is to introduce microbes that are not natural to a particular area but have worked with oil spills in other areas. Lyons said that is less effective since nonindigenous microbes often don't grow because they are not adapted to that area's temperature, salinity or oxygen levels.

Evolugate has sampled the Gulf oil spill and is gradually adapting microbes native to the Gulf to that specific environment.

Once the oil is gone, depriving the microbes of their food source, other native flora will out-compete them and they will likely become extinct, Lyons said.

The microbes also are learning to eat the chemical dispersant being used on the oil spill.

"Not only is the composition of this dispersant a mystery, no one knows how it will biodegrade," he said.

The microbes would have to be adapted separately for each contaminated site.

"What works in open ocean is not going to work on the bayous of Louisiana," Lyons said. "Our ultimate goal is to go around collecting samples from all over the place."

The company was founded by French inventor and entrepreneur Eudes DeCrecy in 2005 and is housed in the Gainesville Technology Enterprise Center business incubator.

DeCrecy's wife, Valerie Decrecy-Lagard, is a microbiology professor at the University of Florida.

CLIMATE CHANGE / GLOBAL WARMING

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Policy and Politics Collide On the President's Path (*New York Times*)

June 7, 2010 Monday

Late Edition - Final
Section A; Column 0; National Desk; CAUCUS; Pg. 11
By JOHN HARWOOD
President Obama, struggling for balance on a political oil slick, gave a speech last week that seemed to contradict itself.

One part was ferociously partisan. He criticized Republicans for obstructionism, ascribing that stance to crass electoral strategy and a "sincere and fundamental belief" that every problem's solution involved tax cuts for the wealthy and less regulation for corporations.

Another part called for legislative compromise. He asked Republicans to join, in the wake of the Deepwater Horizon disaster in the Gulf of Mexico, in salvaging comprehensive energy legislation that both parties had largely given up for dead.

"The votes may not be there right now, but I intend to find them in the coming months," Mr. Obama declared. "I will work with anyone to get this done -- and we will get it done."

Onto that fresh pile of presidential poker chips, Senator Harry Reid of Nevada, the majority leader, threw a few more. Citing the need to hold "BP and other oil polluters" accountable, Mr. Reid directed committee leaders to offer ideas for energy legislation by July 4 with the goal of Senate action this summer.

If the mix of political and policy imperatives makes the road map for Mr. Obama and his party appear unclear, that is because it is.

Looking to 2011

Mr. Obama has long advocated comprehensive legislation as critical for creating a new "green energy" economy, ending dependence on foreign oil and curbing global warming. But prospects had dimmed well before the oil rig exploded on April 20.

Fights over economic stimulus, health care and financial regulation had exhausted Democratic lawmakers, many battling to survive midterm elections.

The administration's energy centerpiece -- a system to limit carbon dioxide emissions that opponents deride as "cap and tax" -- appeared harder to achieve than the health bill. The oil spill made it harder still, undercutting Mr. Obama's effort to woo Republicans through support for expanded offshore drilling.

Senator Lindsey Graham, Republican of South Carolina, who this spring abandoned negotiations on a comprehensive bill with Senator John Kerry, Democrat of Massachusetts, and Senator Joseph I. Lieberman, independent of Connecticut, said in an interview that he would remain on the sidelines.

Mr. Graham expects Democrats to focus on oil companies in a revamped Kerry-Lieberman proposal, then dare Republicans to oppose it as tar balls wash onto gulf beaches.

"I could easily accept that dare," Mr. Graham said. Noting that energy-state Democrats also have reservations, he dismissed Mr. Obama's renewed push as "all politics" -- a "head fake" in response to pressure from environmentalists over the oil spill.

The real action on energy, Mr. Graham predicted, will come in 2011.

With a weaker hand in Congress after expected Democratic midterm losses, Mr. Obama could use his authority to regulate carbon through the Environmental Protection Agency. Republicans could counter with more limited steps: capping emissions for utilities only, an idea Senator Lamar Alexander, Republican of Tennessee, has discussed, and enhancing auto fuel efficiency, as Senator Richard G. Lugar, Republican of Indiana, plans to propose on Monday.

The question then: whether a Republican caucus strengthened by anti-government Tea Party activists would countenance compromise.

"The people who come in 2011 will have ridden a tiger to get here, and they'll be worried the tiger will turn on them," Mr. Graham said. But to protect American jobs, achieve energy independence and preserve credibility with environmentally sensitive younger voters, he added, Republicans must "tame the tiger."

Hoping for 2010

Obama advisers insist comprehensive legislation this year, if a long shot, is not yet a lost cause.

Rahm Emanuel, the chief of staff, cited potential ingredients: the Kerry-Lieberman bill; Mr. Lugar's plan; a proposal by Senator Jeff Bingaman, Democrat of New Mexico, to increase utilities' use of renewable energy; a plan by Senator Susan Collins, Republican of Maine, and Maria Cantwell, Democrat of Washington, to tie carbon curbs to consumer rebates.

"There's enough in each," Mr. Emanuel said, to assemble "a serious and comprehensive energy bill. And you can do it this year."

Mr. Kerry, who has sought a Senate counterpart to the broad-ranging bill that has passed the House, expressed receptiveness to a more incremental approach if necessary.

"We have to get started, and I'm open to discussions on how to do that," he said. "Maybe we can't get the full regime of pricing carbon in one fell swoop -- but we get started."

About the prediction from his erstwhile partner Mr. Graham, Mr. Kerry said, "I don't know how he thinks we're going to change the bill." Democrats themselves have not decided.

Besides, Mr. Kerry noted, a "new coalition" including leading industries he has pursued needs "an opportunity to work its will." Among three major oil companies in that coalition: BP.

URL: http://www.nytimes.com

EPA Review Of Voluntary Climate Programs Could Spur International Focus (*Inside EPA*)

Posted: June 4, 2010
EPA's clean air advisers are launching a sweeping review of the agency's voluntary air pollution programs, including its industry partnerships to cut greenhouse gas (GHG) emissions, which could spur a shift to focusing voluntary climate efforts on reducing international GHGs to complement new EPA rules to cut domestic GHGs, observers say.

EPA May 26 held a meeting in Washington, DC, to initiate the process for establishing a Clean Air Act Advisory Committee (CAAAC) workgroup to evaluate voluntary and “community-based” partnership air programs at the request of agency air chief Regina McCarthy. The panel is working on an accelerated four-month schedule to report back to the agency on any recommended changes.

The CAAAC review will run concurrently with an informal interagency review on spending with the agency's Office of Air & Radiation (OAR), EPA officials said at the panel's first meeting. But EPA air official Jay Benforado said McCarthy does not yet have any plans to change funding allocations for voluntary programs, despite strained resources.

McCarthy wants the CAAAC panel to conduct the review to find an appropriate balance between regulatory and voluntary programs, Benforado said at the meeting. The air chief also wants the panel to assess how non-mandatory air programs -- many of which are focused on achieving voluntary GHG reductions in various industrial sectors -- should respond to new EPA climate rules and other regulatory priorities, Benforado said.

“I think Gina, to her credit, did not come in knowing the answer to this issue,” he said at the meeting, adding that EPA believes that “the current set of programs do align in several ways with OAR priorities.”

Some CAAAC members said EPA should look into which voluntary programs are not working, but agency officials said that quantifying some programs' benefits is still a major challenge for EPA.

A key issue discussed at the meeting is the extent to which voluntary programs should be affected by shifting regulatory priorities, given that voluntary programs have traditionally been used to address areas of pollution that EPA either could not, or did not, regulate. For example, in the absence of any EPA climate rules the agency for the past several years has focused on reducing GHGs through a number of voluntary climate programs.

Among such programs is Climate Leaders, through which companies work with EPA to commit to reduce corporate-wide GHGs and set “aggressive” reduction goals, according to the agency's website. Other efforts include a voluntary outreach program to cut emissions of the GHG methane, and a Voluntary Aluminum Industry Partnership to reduce perfluorocarbon emissions, which have high global warming potential.

But the Obama EPA has started the process of regulating GHGs, including its first-time vehicle GHG emission standards and its recently finalized “tailoring” rule for establishing GHG permit limits in stationary sources. EPA staff said at the meeting that these efforts raise questions over the fate of voluntary climate programs.

“A whole host of our voluntary programs have been focused on GHGs,” EPA official Keith Mason said, asking, “What happens to all this capacity that we built up” now that there are climate rules in place?

Shifting To International Focus

Several stakeholders at the meeting suggested that the voluntary programs -- which to date have focused on reducing GHGs from domestic industrial emission sources -- shift their focus to an international approach, because they could fill a regulatory gap given that there are currently no binding international GHG reduction mandates.

Alternatively, EPA may need to reassess the primary purpose behind its voluntary programs or use the programs as a means to complement the domestic GHG rules.

“Climate Leaders started with the big corporations,” Benforado said. “Do we need to work more with small businesses? Do we need to work more internationally?” he asked the CAAAC panel.

Some commenters cited EPA's SmartWay program as a voluntary effort that could be updated -- for example, by expanding to an international focus -- given the climate vehicle rules issued and under development at the agency. “SmartWay has grown rapidly and been very successful, and we are seeing that other countries are interested in emulating that program,” John Guy of EPA's Office of Transportation & Air Quality said in an interview at the meeting.

SmartWay “identifies products and services that reduce transportation-related emissions,” according to EPA's website. Under the program, EPA tests and promotes transportation technologies that cut GHGs and other emissions. EPA's mandatory efforts on vehicle GHG emissions include its recently finalized vehicle GHG limits for model years 2012-2016 and has begun work on standards for post-2016 model year vehicles. The Obama administration is also starting work on first-time GHG and fuel economy limits for model year 2014 trucks.

Terry Goff of Caterpillar Inc. said that SmartWay also continues to have domestic relevance, despite the agency's vehicle GHG rules. Goff said that aside from promoting low-emission vehicle technology, the program can also drive changes in freight infrastructure and systems, which continue to rest largely beyond EPA's regulatory authority, and can also “build capacity in the agency to understand how a regulation can be built in an effective way.”

Benefits And Shortcomings

Another key question CAAAC is reviewing is how to quantify the benefits and shortcomings of voluntary programs. EPA's Benforado said there has been a push over the past five to ten years to conduct more formal evaluations of voluntary programs, though many have not been evaluated in that way and several -- particularly those with multiple environmental goals or those with significant unquantifiable benefits -- would be particularly challenging to assess.

OAR's Rob Brenner said Community Action for a Renewed Environment, an agency-wide grant program to cut toxic pollution, would be difficult to quantify for benefits. This is because the benefits from the grants could continue to occur years after EPA doles out the grant money, and those benefits are near-impossible to quantify.

EPA's Benforado said that the agency lacks tools that could help it assess the qualitative benefits of voluntary programs, for example the benefits of the educational aspects of Climate Leaders.

Bill Becker of the National Association of Clean Air Agencies said at the meeting it is also important to assess the degree to which voluntary programs are not succeeding. Becker told the advisory workgroup that it should address whether the programs are wasting money by codifying or promoting changes that companies would do anyway, simply because those steps are what he described as “just good business sense.”

Brenner said that voluntary programs are not the only air programs that will be scrutinized for effectiveness. “Every corner of the air programs, every piece of it, is going to be going through some pretty strong reviews in the next few years,” he said. He cited resource constraints from impending regulatory deadlines stemming from court cases, as well as comprehensive effort to develop climate change regulations, as driving the need to make sure all air programs -- not just voluntary programs -- are

operating in a cost-effective manner, particularly given the Obama administration's vow to keep discretionary spending flat for non-emergency or defense programs.

Avoiding Redundant EPA Efforts

Becker said in an interview with *Inside EPA* at the meeting that the agency should avoid redundancies with voluntary clean air programs duplicating mandatory air pollution reduction efforts. Becker also said that voluntary agency programs should be "integrated appropriately and coordinated consistently with mandatory programs."

Becker said that an example of poor coordination between voluntary and mandatory efforts is EPA's new source performance standard (NSPS) for wood stoves and a voluntary agency effort to promote replacement of older, dirtier wood stoves with cleaner models that meet the NSPS. EPA established the NSPS in 1988 but did not launch its voluntary program until 2004, meaning stoves are still only meeting a decades-old standard, he said. A better approach would have been for EPA to base its voluntary program on an updated standard.

"EPA, to its credit, is finally getting around to promulgating that NSPS," he said. According to EPA's website the agency intends to publish a notice of proposed rulemaking for the NSPS in April 2011.

A May 21 EPA "Open Government Outreach" presentation says EPA has not yet recommended specific emission limits because it is still analyzing data, but intends to streamline certification and improve compliance assurance in its proposal. "A tighter, more comprehensive NSPS will reduce environmental impacts for all," according to the presentation, which is unnamed but lists David Cole and Gil Wood as agency contacts. -- *Molly Davis*

HAZARDOUS WASTE

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Posted on Mon, Jun. 07, 2010

EPA faults Waste Management's lab results (*Modesto Bee*)

The Fresno Bee
last updated: June 06, 2010 11:27:13 PM
KETTLEMAN CITY -- A hazardous-waste landfill suspected by residents of causing birth defects has been inaccurately testing treated contaminants for five years, the U.S. Environmental Protection Agency says.

Waste Management officials at the site in Kettleman Hills said they immediately began using an independent testing laboratory when the EPA notified them of the problem with their lab.

But the company disagrees that its laboratory was producing flawed results.

"We believe the findings in the EPA letter are inaccurate and based on a misinterpretation of test results," said Brian Bowen, Waste Management's director of environmental protection.

It is the second time this year that the EPA has announced a serious problem at the landfill. In April, the agency ordered Waste Management to correct flawed disposal practices for PCBs (polychlorinated biphenyls, found in transformers and coolants).

The laboratory problems are significant, EPA officials said.

"When we see a problem repeated over time, it's something of serious concern to us," said Jared Blumenfeld, EPA administrator for the Pacific Southwest region.

Waste Management could face penalties up to $37,500 per day for violations.

The problem presents another obstacle to the Waste Management's efforts to expand the landfill about three miles from Kettleman City.

Kings County supervisors approved an expansion permit in December, but state and federal agencies have not signed off.

PESTICIDES

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Proposed pesticide rules get scrutiny (*The Register Guard*)

Proposed pesticide rules get scrutiny | The EPA can expect plenty of feedback regarding its push to limit toxics near water
By Susan Palmer
The Register-Guard
Appeared in print: Monday, Jun 7, 2010

The U.S. Environmental Protection Agency has published a draft of new rules regarding pesticide use, but the federal agency wants a lot more public input before setting them in stone.

The proposed rules, which were released Friday and will be finalized by the end of the year, are designed to limit pesticides in or near water and are a reversal for the EPA, which in 2007 concluded that pesticides were exempt from the permitting requirements of the Clean Water Act.

Environmental groups disagreed and sued the EPA, and the courts ruled against the agency, saying it must regulate the pollutants.

Under the Clean Water Act, discharging any pollutant — garbage, sewage, even dirt and heat — into waterways is illegal. But there are exceptions.

Government agencies, water treatment plants and industries such as gravel companies and manufacturing facilities that first get permission in the form of a National Pollutant Discharge Elimination System permit can release pollution into the nation's waterways.

Now, pesticides will be included among those things for which a discharge permit will be required.

Anyone using pesticides to control mosquitoes and other flying insects that spend part of their life cycle in water, or who control aquatic weeds and algae or nuisance animals such as shellfish, or those doing forest canopy pest control, will need formal permission.

The draft permit is a good start but the rules should do more, said Charlie Tebbutt, the Eugene attorney who argued the case in the Sixth Circuit Court on behalf of several environmental organizations.

"The main beef we have with this permit is that it doesn't require an analysis of whether pesticides are necessary in the first place," Tebbutt said.

The Clean Water Act was intended to eliminate the discharge of pollutants, and Tebbutt would like a requirement that pesticide users show they have no other altneratives to pesticides before they get the permit.

In the current draft, the permit excludes land applications, said Allison Wiedeman, the EPA's permits division branch chief.

That means farmers and forest land owners applying pesticides on the ground don't need a permit, she said.

But Wiedeman emphasized that the EPA expects to make revisions based on public comments in response to the draft.

She noted that the EPA has specifically asked people to address whether the regulations should require permits for ground uses of pesticides.

Most groups with concerns about the proposed permit system are still reviewing it.

Oregonians for Food and Shelter, an organization representing pesticide users, expects to hear from members in the agriculture, forestry and mosquito control districts before weighing in, said Executive Director Terry Witt.

“Looking at it from our perspective, the waters of the state are not being unduly impaired (by pesticides). The only thing this could potentially do is to ratchet that down even further,” Witt said.

But a Eugene organization opposed to pesticide use said the draft misses the mark by not requiring permit applications from forest landowners who often spray for weeds over areas that include creeks and streams.

“As currently proposed, the rule is wholly inadequate,” said Lisa Arkin, executive director of the Oregon Toxics Alliance.

While farmers and foresters may be primarily applying pesticides to land, the chemicals regularly migrate into the water, Arkin said.

Pesticides show up in increasing amounts after rainstorms, said hydrologist Chauncy Anderson, who works for the U.S. Geological Survey, an agency that monitors water quality.

But there is no comprehensive testing for pesticides throughout the state, Anderson said. That’s because there are so many different pesticides used and testing for them is expensive.

The USGS regularly monitors for pesticides in the Willamette River at locations in the Portland area, and consistently finds them, he said.

In Oregon, the departments of Environmental Quality and Agriculture are authorized by the federal goverenment to oversee implementation of the Clean Water Act and will complete their own version of the proposed permit system sometime in the fall, said Annette Liebe, the DEQ’s manager of surface water management.

The Oregon permit system will be at least as stringent as the federal one, and could be more so, depending on Oregon’s specific water quality needs, Liebe said.

There will be several public hearings throughout the state before Oregon’s permit is finalized, she said.

PESTICIDE PERMIT

The EPA’s proposed rule is available for review and comment

Read it: at www.epa.gov/npdes/pubs/proposed_pgp.pdf

Hear about it: on a Webcast scheduled from 10 a.m. to noon on June 17; register online at www.epa.gov/npdes/training.

Comment: Online at www.regulations.gov or by e-mail at ow-docket@epa.gov or by regular mail at Water Docket. U.S. Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave. NW, Washington DC 20460, Attn: Docket ID No. EPA-HQ-OW-2010-0257

TOXICS

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June 7, 2010

Contractors given break from penalties (*Eagle Tribune)*

By Doug Ireland direland@eagletribune.com

Contractors who have not complied with new federal lead paint regulations have received a temporary reprieve from harsh penalties that could have put many of them out of business in a single day.

If two U.S. senators from Massachusetts and New Hampshire win their fight, the contractors may receive a second break and avoid fines of up to $37,500 a day for not being certified if they do lead paint removal work.

Nearly seven weeks after the Environmental Protection Agency regulations took effect, no contractors have been fined, according to David Deegan, spokesman for the agency's New England office.

"I'm not aware of any enforcement action thus far," he said. "Typically, in most cases, it takes a fair amount of more time."

While many contractors have not received the certification needed to work on homes, schools and day-care centers built before 1978, Deegan said the EPA's main goal right now is to make sure they are properly trained.

"Our focus has been trying to promote compliance and help get contractors the training they are supposed to have," he said.

There are so many contractors across the country struggling to become certified, several U.S. senators are trying to stop the EPA from penalizing them until after Sept. 30 — as long as they have registered for the daylong classes.

They have introduced an amendment to an emergency spending bill that would delay the fines, noting that there are not enough certified trainers in most states to educate the contractors.

This includes Tennessee, where U.S. Sen. Lamar Alexander is concerned the new regulations would slow building repairs after flooding recently devastated the state, killing 22 people and causing millions of dollars in damage. Sponsors of the amendment

include Republican Sens. Judd Gregg of New Hampshire and Scott Brown of Massachusetts.
Both senators said in statements that although they support efforts to protect people from lead poisoning, the EPA regulations are too restrictive.
"This amendment will provide contractors with additional time and education to adjust to the new EPA requirements," Brown said, "and will go a long way toward ensuring that small businesses, which are the key to our economic growth, are not adversely impacted."
Gregg agreed.
"In today's difficult economic climate, we should not be implementing fines that will cripple small businesses because the EPA cannot meet its own certification quotas," he said. "Our amendment will still protect the safety of children and pregnant women, while ensuring that small contractors aren't unfairly hit with these hefty fines."
Gregg spokesman Laena Fallon said New Hampshire contractors are clearly upset.
"I think they are aware there is a problem," she said of the EPA. "We have heard from a lot of contractors with concerns."
Contractors say rules add cost
Contractors from the Merrimack Valley and Southern New Hampshire say while the new regulations help protect their customers, complying with them is both burdensome and expensive. The special equipment — such as vacuums and filters — and time-consuming procedures required add thousands of dollars to project costs, they said.
Any work areas more than 6 square feet in size must be properly sealed to prevent the spread of lead paint chips or dust.
While weeks have passed since the EPA's April 22 deadline, the leaders of home builders associations in both states said many contractors still aren't trained and the classes are booked.
"We have classes that are full through the middle of July," said Larry Kady, president of the North East Builders Association of Massachusetts. "There are so many who don't realize that they need the requirement."
He estimated it would take two years to train the state's approximately 45,000 contractors.
Kendall Buck, executive vice president of the National Home Builders and Remodelers Association of New Hampshire, said many Granite State contractors remain uncertified and will avoid accepting jobs at homes built before 1978 to avoid the fines.
"We have some who are going to stay away from the older projects," he said.
Mixed response to enforcement delay
The EPA's delay in punishing those caught in violation drew a mixed response from contractors, including Kevin McCann of Finish Painting in East Hampstead.
Although McCann said he is certified, the potential penalties contractors face are a hot topic of discussion in the industry.
"A lot of them aren't certified yet," he said. "Everybody talks about it."
Delaying enforcement of the regulations would help contractors, McCann said.
"The longer they put it off, the better for everyone else," he said. "I think it's a very good idea."
"It's kind of a bummer in a way," said Allan Marcus.

Marcus, owner of Allan Painting in North Andover, said delaying enforcement just means unscrupulous contractors will do work they are not certified to perform.
"I've turned down a lot of houses because of the penalties," he said. "That's unfortunate."
Like many contractors, Marcus is staying away from the older projects because work that involves the removal of lead paint can be hazardous, time-consuming and expensive — for homeowners and contractors.
"I don't want to jeopardize getting fined and also underestimate the time it takes jumping through hoops," he said.
Socrates Stamateas, owner of Alpha Painting in Haverhill, said while the regulations are beneficial in the long run, enforcement is needed to keep violators in check. Stamateas also said he had to turn down certain jobs until he and his crew became certified.
"That cost us some jobs," he said. "Now, I see we lost opportunities for no good reason."

EPA Poised To Broaden Use Of New Test For Measuring Waste Leaching (*Inside EPA*)

Posted: June 4, 2010
EPA is poised to broaden its use of new test methods for determining the extent of contamination that leaches from reused waste material -- referring to the new method for the first time in a regulatory sense in its recent coal ash proposal but saying it will not use the new method for regulatory purposes but rather as a tool alongside other methods on a site-specific basis.

According to EPA's website, the agency is in the final process of establishing protocols to include the new leaching environment assessment framework (LEAF) in its waste analytical methods guidance, known as SW-846, which is the waste office's protocol of sampling methods.

EPA earlier this year distributed samples to laboratories to ensure that the LEAF tests are replicable, and those tests are still under way, sources say, but once complete the new methods will formally be listed in SW-846, which guides how the tests must be conducted in a lab but not what the test is used for, sources explain.

However, the agency does not appear poised to replace the toxicity characteristic leachate procedure (TCLP) regulatory method with LEAF, but only to determine whether a planned beneficial reuse of coal waste or other waste material is likely to leach hazardous materials at a particular site governed by the Resource Conservation &

Recovery Act (RCRA), sources say. The document is used "primarily as a guidance document setting forth acceptable, although not required, methods for the regulated and regulatory communities to use in responding to . . . RCRA-related sampling and analysis requirements," according to EPA's website.

EPA suggests in the coal ash proposal that the new LEAF method will act as a supplement to the existing test method, known as the TCLP, that has faced longstanding criticism from agency science advisors and others for inaccurately estimating the leaching risks posed by waste material. "[A] considerable body of evidence has emerged indicating that the TCLP alone is not a good predictor of the mobility of metals in [coal combustion residues] under a variety of different conditions," EPA says in the coal ash proposal.

And the agency said in the May 4 coal waste proposal that once the LEAF methods are validated, EPA intends for them "to be used in situations where TCLP is not required or best suited, and where waste management or reuse conditions are known, to provide an estimate of release tailored to a particular environmental scenario or defined range of conditions."

Sources say the TCLP will still be used to determine whether a leaching waste is hazardous, while LEAF will be used to determine whether a planned beneficial reuse is likely to leach contaminants at a particular site.

Agency officials have been working for years to improve TCLP, the most commonly used test for determining leaching from waste material. Industry and environmentalists alike have criticized TCLP, arguing that it overestimates or underestimates potential risks. The agency lost two lawsuits in the 1990s over the test, with the U.S. Court of Appeals for the District of Columbia Circuit describing a use of TCLP as "inaccurate" in its 1998 ruling in Columbia Falls Aluminum Co. v EPA.

A year later, EPA's Science Advisory Board (SAB) urged the agency to improve the leaching test, saying TCLP -- designed to test for toxic leaching in a municipal solid waste landfill -- is applied too broadly and may overestimate or underestimate leaching potential. SAB called on EPA to "improve leach test procedures, validate them in the field, and then implement them," in a 1999 letter to then-Administrator Carol Browner. The National Academy of Sciences (NAS) has also criticized the method.

Leaching From Coal Ash

In its coal ash proposal, EPA notes that TCLP did not provide a clear indication of the extent of leaching from coal ash, noting that each of the four main types of coal ash, when subjected to a TCLP leach test, "yields a different amount of trace element constituents."

EPA is soliciting public comment on whether "in light of these differences in the mobility of hazardous metals between the four major types of ash, regulatory oversight should

be equally applied to each of these CCR types when destined for disposal," the proposal says.

The proposal also cites the development of LEAF, which is designed to better replicate leaching that would occur in the natural environment when waste is exposed to varying weather conditions and acid rain, rather than a lined landfill environment. It is also specifically designed to test whether air pollution controls, which remove toxics from smoke stacks, mean more of the materials could potentially contaminate groundwater or drinking water.

While a power industry source downplays the significance of EPA's referencing LEAF in the coal ash proposal, environmentalists are already citing LEAF in pushing EPA to declare CCRs hazardous, and are also noting the test has implications for a broad range of other waste materials, such as mining and construction waste.

For example, Earthjustice in a May 5 blog notes that the new data shows that coal ash pollution in some cases "far exceeds the thresholds for hazardous waste," and says EPA should end use of TCLP for regulatory purposes and replace it with LEAF. "The new leaching data is cited in EPA's proposed rule, and this should end, once and for all, the reliance on a test that has no scientific basis," the blog says. "The utility industry and coal ash reuse industries argue that coal ash is not hazardous waste, relying on obsolete testing methods that are nearly 20 years old. But there is new science now being used by EPA that shows unequivocally that some ashes and sludges behave just like hazardous waste."

Another environmentalist calls TCLP "a quick and dirty test to compare how much would leach if it was in a sanitary landfill," despite the fact that a sanitary landfill is "not the appropriate benchmark" for where coal waste is stored.

However, the power industry source and others say while TCLP has its flaws it is unfair to compare TCLP and LEAF results. The new test "doesn't have any regulatory implications to define the bright line between hazardous and nonhazardous," the power industry source says. "TCLP is the test that establishes that bright line. The [new] data can help inform management decisions but it would be short sighted to merely compare the results of those leach tests with the TCLP regulatory levels." That is an unfair comparison and those arguing that the new test shows CCRs "are hazardous are cherry picking numbers," the source adds.

Additionally, Ken Ladwig of the Electric Power Research Institute, which has been working with EPA and others to develop the new test methods, says the LEAF results -- because they include a range of outcomes -- cannot be fairly compared with a single TCLP level to say the new tests show more leaching or more toxicity. "That is not a correct use of the data," Ladwig says.

The LEAF methods are specifically designed to understand how waste material will behave in a different environments, so they can be used once the disposal environment

is known, but it is difficult to use it as a test with a single limit, the way TCLP is used, to determine whether a material is a hazardous waste, he explains. However, Ladwig adds, "I can't say down the road [EPA] won't try to do that."

EPA in response to questions says "it is important to note" that EPA is not planning to revise or review the regulatory use of the TCLP, which it says "was developed for a particular purpose, and remains a valid and useful tool for identifying wastes that are likely to contaminate groundwater if improperly disposed."

EPA in an April 26 document included in its coal waste rule docket says results from the new leach test methods "suggest that the total amount of metals in CCRs is a less important predictor of leaching than the mobility of the metals. These data indicate that mobility is linked to [air pollution control (APC)] technology, coal rank and CCR management conditions."

The document adds that LEAF is being developed to address the earlier SAB and National Academy of Sciences push for "a more accurate source term for use in environmental or risks assessments through the consideration of waste form, pH, and liquid-to-solid ratio." -- Dawn Reeves

WATER

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EPA officials weigh in on Eagle Rock (*Indian Country Today*)

Originally printed at http://www.indiancountrytoday.com/national/95615974.html
BIG BAY, Mich. – As the top government official who oversees Great Lakes water quality stood on the edge of sacred Eagle Rock, overlooking a pristine expanse of the Yellow Dog Plains, she gained a better understanding about why the state-owned land is sacred to Michigan's Ojibwa.

"I very much understand what their concerns are – and that is one of the things we are considering as we moved forward on this," said Tinka Hyde, Water Division director for Environmental Protection Region 5. "We realize that Eagle Rock is of cultural and religious importance to the tribe."

Hyde was one of three EPA regional bosses from Chicago and the agency's tribal liaison for Michigan who were given a tour of the area May 13 by officials from the Keweenaw Bay Indian Community during a two-day visit to Michigan's Upper Peninsula.

Members of numerous tribes including Ojibwa, Cherokee and Lakota had been camping at the base of Eagle Rock since April 23 in hopes of preventing Kennecott Eagle Minerals from building a nickel and copper sulfide mine – named the Eagle Project. At

the company's request, state and local police officers raided the encampment May 27 arresting two campers.

Under federal treaties, Ojibwa have rights to hunt, fish and gather on the state of Michigan owned land. The state leased the land to Kennecott with the understanding that all permits must be approved.

Hyde said any ruling the EPA makes about the withdrawal of state and federal permit applications by Kennecott subsidiaries will be based solely on environmental protection laws, primarily the 1974 Safe Drinking Water Act.

Kennecott officials are now proposing an above ground system to discharge mine wastewater thus have withdrawn their EPA permit application for underground pipes named the Treated Water Infiltration System.

The KBIC Tribal Council has filed suit against Kennecott and opposes what they describe as an effort by mine officials to circumvent an EPA permit by using insulation to protect the pipes above ground instead of the original plan to use soil – noting that mine officials admit in design plans that the pipes will remain at the same elevation.

The EPA is "evaluating how or whether the Safe Drinking Water Act regulations apply to that situation," Hyde said of the mine's withdrawal of an EPA permit application for an underground TWIS.

The EPA's authority over the mine is "fairly limited in many respects," Hyde said adding the agency's job is to determine "whether activities planned are regulated by or meet Safe Drinking Water Act regulations" and are "appropriately implemented as to be compliant" with that law.

Meanwhile, as the deadline arrived to respond to state concerns about wetlands and other issues, Woodland Road LLC withdrew its application for a state permit to construct a $50 million 22-mile haul road to be paid for by Kennecott.

The road would stretch from the remote mine site in north Marquette County to the mine's ore processing facility at the former Humboldt Mill.

Before it was withdrawn, the EPA and other federal agencies had filed concerns over the state permit application for Woodland Road.

"If they chose to submit a new application we (the EPA) will review the project as we have in the past," Hyde said. A new but likely similar route is being examined to prevent about 100 rock laden trucks from a daily drive through Marquette and other cities.

The National Wildlife Federation has said the withdrawal of the two permit applications by Kennecott subsidiaries amounts to playing the system.

Led by EPA Region 5 Acting Administrator Bharat Mathur, the group was invited by the KBIC Tribal Council to visit Eagle Rock and meet with the council during a two-day (24 hours total) whirlwind tour to the Lake Superior basin area of Michigan's Upper Peninsula. Appointed acting region 5 administrator three years ago (May 2006), the Eagle Rock visit was Mathur's last on-site visit as regional EPA boss because Susan Hedman took the reins of the Chicago office May 24. Hedman had served as environmental council to the Illinois attorney general and as senior assistant attorney general since 2005.

Others present at Eagle Rock May 13 were EPA Regional Counsel Robert A. Kaplan and Jennifer Manville, regional EPA Michigan tribal environmental liaison from Traverse City, Mich. Representing the tribal council were vice president Susan LaFernier, tribal attorney John R. Baker, and KBIC mining specialist Chuck Brumleve. The four EPA officials later met with the tribal council members including President Chris Swartz Jr.

KBIC wants to make "sure the groundwater is protected, the surface is protected," Hyde said. The tribe's concerned about "having their access to and importance of Eagle Rock and the effects of mining may have on Eagle Rock."

During their visit to Eagle Rock, EPA officials were shown nearby streams and the Salmon Trout River, under which is located the large ore body that is targeted by Kennecott. Opponents are afraid the river could collapse into the mine and it's the only known location in Michigan where coaster brook trout breed.

"Those small headwaters are going into smaller streams and into the Salmon Trout River," said Hyde, adding they were given a tour of the smaller streams by well-known environmentalist Chauncey Moran, who for years has monitored and tested streams on the Yellow Dog Plains for the Sierra Club and others who have partnerships with state environmental agencies.

EPA officials did not meet with the campers or mine officials during the visit.

Officials keep quiet about EPA probe (*Herald Argus*)

By Alicia Ebaugh
Published: Monday, June 7, 2010 1:04 AM CDT
Staff writer

MICHIGAN CITY — Federal, state and local officials are remaining tight-lipped on why the Environmental Protection Agency served a search warrant Thursday on the Michigan City Sanitary District concerning "environmental crimes," but Mayor Chuck

Oberlie said Friday he believes the City Council's Utilities Committee forwarded information to the agency it thought deserved a second look.

"A judge needs probable cause to issue a search warrant, and I think some of their issues came to the forefront there," Oberlie said.

Council member Phil Jankowski, who serves as the Utilities Committee president, said it hasn't told authorities of any concerns since it brought some residential sewer overflows to the attention of the Indiana Department of Environmental Management about a year ago.

"Clearly, there are a lot of overflows that have not been reported," Jankowski said, "but we have just sat back and let the EPA and IDEM do their jobs."

IDEM has looked into several sanitary sewer overflows here over the last several months, he said.

EPA spokeswoman Phillipa Cannon said there is no danger to the public from activities at the Sanitary District, although she could not provide any further specifics of the investigation, as it is ongoing.

"I don't know if there was a risk in the past, I can't speak to that," Cannon said.

Randall Ashe, special agent in charge for the Environmental Protection Agency's Criminal Investigation Division in Chicago, said Thursday that 25 or 30 agents were involved in executing the search warrant, including EPA law enforcement, the U.S. Coast Guard and Indiana State Police. He said the agents were seeking documents and "samples" in carrying out the search. Officials questioned many of the district's workers and were seen lugging boxes of papers and what appeared to be computer hard drives to and from the building into the night.

The treatment plant was not shut down and is continuing operations.

Following a raw sewage overflow at B&E Marine on May 13, the Indiana Department of Environmental Management requested copies of three photos taken by a News-Dispatch reporter of the cleanup efforts. The pictures showed Sanitary District workers who appeared to be mopping up black sewage that remained on the docks.

But IDEM spokeswoman Amber Finkelstein said she spoke with Ashe and was not able to confirm whether those photos were related to the EPA's investigation.

Michael Hoffman, Sanitary District collections superintendent, previously said the 2 inches of rain that fell in the early morning hours of May 13 caused a sewer line at B&E Marine to overflow, sending about 500 to 1,000 gallons of raw sewage spilling onto the docks.

“Obviously, one does not want to put untreated sewage in Trail Creek, ever, but the volume was fairly small,” he said then.

Hinchey urges House leadership to move on fracking bill (*Greenwire*)

(06/04/2010)
Katie Howell, E&E reporter
A New York Democrat is pressing House leadership to proceed with legislation that would strengthen federal regulation of a controversial oil and gas production technique. Rep. Maurice Hinchey in a letter this week urged House Speaker Nancy Pelosi (D-Calif.) to act on H.R. 2766, which would require drilling companies to disclose the chemicals used in their hydraulic fracturing fluids under the federal Safe Drinking Water Act.

Hydraulic fracturing, a decades-old production technique, blasts sand, chemicals and water into a wellbore to break apart compact rock and release trapped hydrocarbons. Its use has come into the spotlight recently as drillers have moved to tap vast new shale gas plays across the country, like the Marcellus in Appalachia and the Haynesville in Louisiana.

The industry maintains the technique is safe and is adequately regulated by states, but environmentalists and some lawmakers like Hinchey disagree, claiming the technique poses a risk to water supplies.

"We've seen what happens when energy companies are granted unfettered access to our precious natural resources without proper oversight," he said in a statement. "In the wake of one of the largest environmental disasters in our nation's history, as millions of gallons of oil spew into the Gulf of Mexico, it is abundantly clear that we simply cannot rely on the promises made by those who have everything to gain and nothing to lose from drilling."

Efforts to move forward with the legislation have been stalled in committee pending an ongoing U.S. EPA study into the effects of fracturing on drinking water. The study was mandated by language that Hinchey had added to a fiscal 2010 appropriations bill.

Last week, Rep. Diana DeGette (D-Colo.), the main author of H.R. 2766, proposed and then withdrew language similar to H.R. 2766 as an amendment to a water-infrastructure bill.

Democrats on the House Energy and Commerce Committee, where the amendment was offered, indicated the measure didn't have enough support to pass.

"This is an issue that merits further consideration," Committee Chairman Henry Waxman (D-Calif.) said. "Now is not the right time for this change" (*Greenwire*, May 26).

Waxman has launched his own inquiry along with Energy and Environment Subcommittee Chairman Ed Markey (D-Mass.) into the chemicals used in fracturing fluids.

But Hinchey says those efforts aren't enough.

"Independent of the EPA study and the Energy and Commerce Committee investigation, I believe Congress must pass the [legislation] as soon as possible," Hinchey wrote in the letter. "There is absolutely no justification for a practice such as hydraulic fracturing to be statutorily exempt from the Safe Drinking Water Act."

A spokesperson in Pelosi's office did not immediately return a call for comment.

Navigating "Navigable" (*Texas Tribune*)

by Kate Galbraith
June 7, 2010
Collapsed bridge structure on the Double Mountain Fork Brazos River viewed from U.S. Route 83 at Rath City, Texas.
Congress is well-known for having arcane battles, but the biggest fight these days in water law is over a single word — and Texas environmentalists and ranchers are anxiously awaiting the outcome.

At stake is the future of the Clean Water Act, a 1977 law designed to reduce pollution in America's waterways. The law, which was built on a 1972 law of a different name, refers to "the discharge of pollutants into the navigable waters" of the United States.

But what does "navigable" mean? The Supreme Court has weighed in on the question twice in the last 10 years, and while appearing to narrow the term's definition, it has also left everybody confused. Now Congress is considering whether to remove the word "navigable" altogether, leaving the phrase to read, simply, the "waters of the United States." The Senate passed a bill out of committee a year ago that would strike "navigable," and a similar bill was introduced last month in the House.

Landowners and farmers hate the idea; they describe it as government overreach, certain to lead to needless regulation and extra costs. Environmentalists say the opposite: that many of the small, non-"navigable" streams that currently escape regulation are an essential part of the nation's drinking supply and need oversight.

Texas has a particular stake in the outcome, says Luke Metzger, director of the advocacy group Environment Texas, because it has "some of the most polluted rivers in America." The Brazos, for example, is the 13th most-polluted river in the country in terms of discharges of cancer-causing chemicals, according to a recent report by Metzger's group.

The Clean Water Act does cover big rivers like the Brazos. But many of the tiny streams that feed into it are left alone. This was not always the case: For the first few decades after Clean Water Act was enacted, many of those small streams were regulated. But two Supreme Court rulings — Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, in 2001, and Rapanos v. United States, in 2006 — have muddied the waters, so to speak. The Clean Water Act itself defines the term "navigable" as meaning "waters of the United States, including the territorial seas." But the Supreme Court rulings have suggested that the word "navigable" must be applied more narrowly. Thus, environmentalists say, three crucial types of water bodies, as well as some wetlands, are vulnerable to pollution: intermittent streams (which dry up in the summertime); ephemeral streams (which run only run after a big storm); and headwater streams.

Due to its hot climate, Texas also has plenty of streams that dry up in the summer and are therefore not "navigable." But they do provide drinking water to large numbers of Texans. According to the Environmental Protection Agency, more than 11.5 million people in Texas get a portion of their water from intermittent, ephemeral or headwater streams. Brewster County along the Mexican border, for example, gets nearly all of its drinking water from such waterways (see this county by county map of Texas). By removing the word "navigable" and replacing it with "waters of the United States," such streams would fall under the Act's pollution protections, environmentalists say.

Landowners, farmers and their allies in Congress think this is an awful idea and do not mince words. U.S. Sen. Kay Bailey Hutchison has said that the bill, if it passes, would constitute the "largest federal land grab in our nation's history." She was writing in the Dallas Morning News last summer, shortly after the Senate version of the bill, called the Clean Water Restoration Act, passed out of the Environment and Public Works committee. It still awaits action by the full Senate.

Ranchers fear that the drainage ditches and stock tanks will be subject to regulation if "navigable" is struck from the law. "Ranchers would have to go get a permit from federal government before they could build any sort of livestock watering tank," said Jason Skaggs, the executive director for government and public affairs at the Texas and Southwestern Cattle Raisers Association.

Kirby Brown, the vice-president for public policy for the Texas Wildlife Association, which represents many private landowners, argues that striking the term navigable would "remove the basis of the law itself, which is the Interstate Commerce Clause." Brown emphasized that his group wants to see wetlands protected. But he thinks there are other ways to achieve this, such as positive incentives that "provide ways for

landowners to participate and be paid to protect riparian areas." He cites efforts by the Natural Resources Conservation Service, a federal body, and the Department of Agriculture. The Clean Water act has done a fine job over the years, he says, and there is no need to change it.

Environmentalists say that the notion that the EPA will start regulating small puddles and stock tanks is off-base. "EPA has no interest, let alone the resources, to start doing that. So we think that's a really absurd assertion," Metztger said. The idea, environmentalists say, is to bring the Clean Water Act back to where it was before the Supreme Court started tinkering in 2001.

U.S. James Oberstar, D-Minnesota, who introduced the bill in the House last month, insists that there are sufficient protections for ranchers. The bill would preserve existing exemptions for "farm or stock ponds or irrigation ditches," as well as for "normal farming, silviculture and ranching activities," he said in a letter aimed at reassuring the nation's farmers.

Most farmers, including Skaggs, are not satisfied. Doing away with "navigable," Skaggs says, "brings every water body in the state of Texas under the jurisdiction of the federal government."

The House bill is currently lodged in the Transportation and Infrastructure Committee, which Oberstar chairs. U.S. Rep. Solomon Ortiz, D-Corpus Christi, is the only Texan on what Piper Crowell, the clean water advocate for Environment America (the national arm of Metzger's organization), describes as a "tough" committee. It is unusually large, with plenty of rural representation as well as vulnerable Democrats.

Nonetheless, Crowell says, "we know clean water is a very good vote for people to take."

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