U. S. Environmental Protection Agency
E-Clips
Prepared by the Office of Public Affairs

Monday, February 18, 2013

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(BNA articles can be viewed online http://Intranet.epa.gov/desktop/news.htm

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ADMINISTRATOR JACKSON

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EPA chief urges crackdown on international trafficking (*Greenwire*)

(05/26/2010)
Robin Bravender, E&E reporter
U.S. EPA Administrator Lisa Jackson yesterday called for increased U.S. efforts to combat illegal trafficking of electronic waste, or e-waste.

The United States must pursue legislative and regulatory changes to curb the growing international problem of illegal e-waste exports, Jackson told a meeting of Interpol's global e-waste crime group.

People living in developed countries are eager to trade in electronic gadgets for the latest innovations, Jackson said, but "too often, this e-waste ends up illegally overseas in developing countries, in countries like India and Africa -- on the African continent -- where labor is cheaper and workers are often less safe."

"Through a combination of legislation and regulation, we know that we can create incentives to spur the design of better, safer electronics," Jackson said. "We can stop the problems you're all dealing with before they begin."

Additionally, she said, the United States "can take steps toward ratifying the Basel Convention." More than 165 countries have signed onto the 1989 agreement that regulated the handling of hazardous waste, including electronics, but the United States has not ratified that treaty.

Jackson also highlighted the importance of effective enforcement to combat illegal exports.

"Enforcement is the right place to start because all the laws and regulations in the world cannot do a thing without proper enforcement, so working together is going to be fundamental to that cause," she said.

Waste from discarded electronics in developing countries will rise dramatically within a decade as sales of household appliances boom, a U.N. agency warned in a report released earlier this year.

The expected increase of electronic scrap will lead to serious public health and environmental hazards in countries that have already become the dumping grounds for richer nations' old televisions, computers and refrigerators and other electronics, the report said (*Greenwire*, Feb. 22).

MMS director largely absent from spill response (*Greenwire*)

(05/26/2010)
When crude oil started pouring out of BP PLC's destroyed Deepwater Horizon rig, top administration officials including Interior Secretary Ken Salazar and U.S. EPA Administrator Lisa Jackson rushed to the Gulf of Mexico. Missing from the scene was S. Elizabeth Birnbaum, director of the Minerals Management Service, which is responsible for overseeing the safety of offshore drilling operations.

Birnbaum has taken a back seat to other officials in answering questions about the spill response, and Salazar's recently announced plan to split up MMS would likely eliminate her job. Though colleagues and friends described her as smart and persistent, they joined critics in questioning whether she is capable of fixing an agency widely considered one of the federal government's most dysfunctional.

"The problems at MMS didn't originate with President Obama or President Bush, but at some point when you're the administration you end up taking ownership of them," said Frederick Hill, a spokesman for Rep. Darrell Issa (R-Calif.), a critic of Obama's response to the spill.

Previously the head attorney at the conservation group American Rivers, Birnbaum had little managerial experience before becoming director of MMS last July, and because she has rarely visited the agency's regional offices, she has yet to meet many of her new employees. Agency employees complain that Birnbaum has also done little to address longstanding problems with the agency, including scant attention by some employees to the safety and environmental risks of offshore drilling.

"We sent her a couple of letters and basically got nonresponses," said Paula Dinerstein, senior counsel at the Public Employees for Environmental Responsibility, who knew Birnbaum before she joined MMS. "We were disappointed that she wasn't going in and trying to right the wrongs of the past" (Gardiner Harris, *New York Times*, May 25). **-- GN**

EDITORIAL / OP-ED / COMMENTARY / LETTERS
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Avoiding the slick spots (*Washington Times*)

May 27, 2010 Thursday
COMMENTARY; Pg. 1
Avoiding the slick spots;
Agency more adept at blowing hot air

By Steve Milloy SPECIAL TO THE WASHINGTON TIMES
The U.S. Environmental Protection Agency is a perplexing beast. While the agency remains hellbent on regulating colorless, odorless and likely harmless greenhouse gas emissions, it has been utterly incapable of living up to its name with respect to the Gulf oil spill.

Not only was the EPA caught entirely unprepared for the oil spill, but also last week it actually tried to interfere with BP's efforts to use a chemical called Corexit to speed up dispersal of the oil. When the EPA told BP that it should use a less toxic chemical, BP rightly ignored the order because it's the oil, not the dispersant (stupid) that is the real threat to the environment, and there is no better option than the detergentlike Corexit.

Though laboratory toxicity tests show that Corexit will kill 50 percent of the fish exposed to a concentration of 15 parts per million over a period of four days, what the EPA seems to have overlooked is that there are no fish still living in an oil slick in the first place. By the time the oil has dispersed, so too will have the Corexit, down to nontoxic levels. But in the EPA mindset, all chemicals are bad and to be avoided - even ones that help and are, practically speaking, harmless.

But that is not the extent of the EPA's failure.

Millions of feet of boom are desperately needed to corral the expanding slick and protect coastlines. Only a small fraction of that boom has arrived in the Gulf region, and not even all of that has been deployed. Let's not forget the initial failure to have fire boom available nearby, which could have corralled the oil so that it could be burned - a 1990s-era requirement developed by the Clinton administration but not implemented by the EPA.

None of this is to excuse BP, the rig owners, and the other federal agencies whose performances have been far from inspiring, but at least none of them is called the Environmental Protection Agency.

As real pollution spews forth uncontrollably in the Gulf, the clueless EPA is meanwhile busy scheming to skirt the law and regulate the non-pollution that emanates from the nation's power plants and manufacturing facilities.

Although the Supreme Court ruled 5-4 in 2007 that the EPA could regulate greenhouse gases under the Clean Air Act, that law would require that EPA regulate all sources of greenhouse gases that emit more than 250 tons per year. As the average American emits about 20 tons per year, it's easy to see how the law would require the EPA to regulate virtually every small business and apartment building.

So, to avoid the obvious political problem of having to microregulate virtually all of society, the EPA devised a scheme (called the "tailoring rule") to limit regulation to facilities that emit 100,000 tons of greenhouse gases per year. This may sound like a

reasonable approach, except that the EPA lacks the legal authority to change the Clean Air Act, which sets the threshold for regulation at 250 tons.

Barring successful legal challenge, the EPA is planning to regulate large greenhouse-gas emitters starting in 2011.

The only remaining roadblock to the agency plan is a resolution introduced by Sen. Lisa Murkowski and 40 other Republican and Democratic senators to block the EPA from regulating greenhouse gases under the Clean Air Act. Debate and vote on the resolution has been scheduled for June 10.

Despite its 41 co-sponsors, the Murkowski resolution is no cinch to get the 51 votes it needs to pass the Senate. Democratic moderates like Virginia's Jim Webb and Mark Warner, Pennsylvania's Arlen Specter and Bob Casey, North Dakota's Kent Conrad and Byron Dorgan, Ohio's Sherrod Brown and Republicans like Maine's Susan Collins and Olympia Snowe have not yet publicly embraced the bill.

This is despite the fact that the EPA is showing precisely how unprepared and inept it is at dealing with a genuine environmental crisis. In contrast, the agency and its lawyers have been quite creative and adept at devising a scheme to create and regulate a non-crisis.

Passing the Murkowski resolution should be Congress' first step in a longer process of re-evaluating what the EPA is all about.

Steve Milloy publishes JunkScience.com and is the author of "Green Hell: How Environmentalists Plan to Control Your Life and What You Can Do to Stop Them" (Regnery 2009).

The standard for an environmental hazard (*Washington Times*)

May 27, 2010 Thursday

COMMENTARY; Pg. 1
The standard for an environmental hazard;
Litigators clean up while taxpayers are taken to the cleaners
By Steve Milloy SPECIAL TO THE WASHINGTON TIMES
The EPA has a history of impeding environmental protection, most notably with toxic-waste-site cleanup and nuclear waste storage.

In the wake of the 1978 Love Canal controversy, a lame-duck Congress and president enacted the Superfund law in December 1980 to provide for the cleanup of so-called toxic-waste sites. But the Superfund law was poorly designed. By the early 1990s, few sites had been cleaned up. Moreover, while it would take only about two years to actually clean up a site, it would take 10 years to progress to the point of

implementation. An average cleanup cost $25 million. The Department of Energy was looking down the barrel of $300 billion worth of cleanups. More money was spent litigating cleanups than actually cleaning up.

Although there were many problematical aspects of the Superfund law, the EPA's control over cleanups was the greatest obstacle to the program's goals. "How clean is clean?" was the famous rhetorical question of the time. In the early years of Superfund, the EPA doggedly maintained that sites had to be cleaned up virtually to something near Garden of Eden status - an obviously silly goal for a dump or an industrial facility. It wasn't good enough just to seal off the facilities and prevent public exposure to substances at the site. Such standards added unnecessary millions to the cost of every cleanup. Because private parties had to pay, they fought the EPA every step of the way.

Sites began getting cleaned up faster and more cheaply during the Clinton administration after cleanup standards became more reasonable in a practical effort to get the program moving. No longer was the groundwater at sites being pumped and treated until it was good enough to be bottled. No longer was soil treated to the point where a hypothetical child could eat spoonfuls of soil from the site's most contaminated or "hot" spot.

Another example of EPA impeding environmental protection is the now-abandoned project to store spent nuclear fuel at the Yucca Mountain facility in Nevada. Although the Yucca Mountain site was in a remote part of the Nevada desert and the spent fuel would have been stored in sealed casks one mile underground, the EPA set standards that virtually guaranteed the facility would never open.

The EPA decided that the Department of Energy (DOE) would have to be able to guarantee that there would be no significant exposures to the public from radiation for a period of 1 million years - about 200 times longer than recorded history. The DOE was being forced by the EPA to figure out how it might communicate with and warn future civilizations that might not understand English-language warnings about the spent nuclear fuel stored beneath the mountain.

DOE, of course, could never hope to meet the EPA's standards. Despite 25 years of engineering and $30 billion in costs, Yucca Mountain was a dead man walking when the Obama administration defunded it early in 2009. Because of the lack of a long-term storage facility for spent nuclear fuel, nuclear power plants are forced to continue storing spent fuel in on-site storage pools - facilities that are running out of space.

Obama's oily Katrina (*Washington Times*)

May 27, 2010 Thursday
B, EDITORIALS; Pg. 2
Obama's oily Katrina;
This administration is not so slick after all

THE WASHINGTON TIMES
Back in 2007, then-Sen. Barack Obama critiqued the Bush administration's response to Hurricane Katrina. "There is not a sense of urgency out of this White House and this administration," he declared, two years after the disaster struck. Now, more than a month since the Deepwater Horizon oil rig exploded and sank, with a massive oil spill making landfall on the Gulf coast, Louisiana's Gov. Bobby Jindal is the one calling for "more urgency." The only rush in Washington is over where to shift the blame.

Mr. Obama apparently never had a plan for responding to this disaster. The White House seemingly felt that if the administration didn't treat it as a crisis, it would go away. If fingers were to be pointed, they could direct them at BP. That political strategy worked well for a week or so. But BP has failed to come to grips with the spill, and the White House, lacking ready solutions, looks feeble and rudderless.

When the rig blew up on April 20, the U.S. Coast Guard made a commendable effort to save lives of oil-rig workers. After that, the government assumed the posture of a deer in the headlights. It took a week for Mr. Obama to issue the panicky command directive "plug the damn hole," but he did not otherwise seem concerned. He waited almost two weeks to visit Louisiana, being held up by higher priorities like meeting U2's Bono in the Oval Office and doing a standup routine at the White House Correspondents' Dinner.

Military assets were available for immediate response to the catastrophe, but the Department of Homeland Security had to make a request before they could act. DHS Secretary Janet Napolitano seemed unaware of this requirement. She waited nine days to declare the spill of "national significance" and admitted she didn't know the Defense Department had any equipment that might be helpful. (For the record, the Naval Research Laboratory pioneered oil-spill control methods in the 1970s, and the Navy maintains oil-containment gear stockpiles around the world for emergency response to just these types of catastrophes.)

On Monday, the Commerce Department declared a "fishery disaster" in the Gulf, but the Federal Emergency Management Agency has yet to declare the oil spill a "major disaster." Since the oil-rig explosion, there have been 17 major disaster declarations in 14 states after severe storms, flooding, tornados, earthquakes, mudslides and straight-line winds. Perhaps FEMA doesn't make declarations regarding "man-caused disasters."

In several cases, Washington has made the situation worse. Mr. Jindal sought to take the initiative to erect 80 miles of emergency sand-barrier islands to keep the oil from fouling the sensitive coastal wetlands, but the federal government said the plan needed more study, demonstrating a lack of understanding of the word "emergency."

Interior Secretary Ken Salazar ramped up the gangster rhetoric when he pledged to "keep our boot on [BP's] neck until the job gets done." That was a bizarre authoritarian image unsuitable for the American republic, but it does fit with the Obama administration drive to generate anti-corporate hatred as a means of avoiding culpability. Mr. Salazar

continued his faux bravado last weekend when he said that if BP did not perform, the government would "push them out" and take over. Coast Guard Adm. Thad W. Allen, who is leading the government effort, sagely asked who would replace BP, forcing the sharp-tongued Mr. Salazar lamely to admit that his statement was "more of a metaphor."

A better metaphor came from EPA head Lisa P. Jackson, who recently filled a cup with the increasingly fouled water at the mouth of the Mississippi River and exclaimed, "Oh, my God - it's so thick!" Her agency's thick-headedness was on display when it demanded that BP use a less-toxic chemical dispersant to break up the oil slick, even though alternatives are not available in sufficient quantity to handle such a large-scale catastrophe. When BP pointed this out, EPA bureaucrats told the oil experts to "keep looking."

The Gulf oil spill is a case of epic failure for a liberal administration that has force-fit environmental concerns into all aspects of government policy. This is a far worse ecological tragedy than anything caused by global warming, and unlike that bugbear, this is a real, rolling disaster that is causing harm now. Mr. Obama's response to the oil spill has not been very slick.

Published May 26 2010
Betsy Perkins, Grand Forks, letter:

Anti-EPA measure assaults science, health (*Grand Forks Herald*)

Instead of believing slick propaganda produced by the coal industry, the Chamber should listen to the mainstream scientists, physicians and groups such as the American Academy of Pediatrics. All these organizations and others have pointed out the need to get coal emissions under control.
By: Betsy Perkins,

GRAND FORKS — The North Dakota Chamber of Commerce recently supported efforts to weaken the Clean Air Act and stop the Environmental Protection Agency from regulating known pollutants (“Don’t let EPA cripple N.D.’s economy,” Page A4, May 14).

The Chamber sent a letter to newspapers around the state asking Sens. Kent Conrad and Byron Dorgan, both D-N.D., to vote for a resolution by Sen. Lisa Murkowski, R-Alaska, that would stop the EPA from setting pollution limits on dangerous emissions from coal plants and other sources.

The resolution also would weaken the new clean-car standards that the big car companies, the states and the United Autoworkers support.

Public health organizations including the American Academy of Pediatrics and the American Public Health Association have urged the Senate not to pass Murkowski's flawed resolution. The U.S. National Academy of Sciences and other professional organization have urged the same thing. And recently, a group of well-respected North Dakota scientists wrote a letter opposing Murkowski's assault on scientific facts.

Instead of believing slick propaganda produced by the coal industry, the Chamber should listen to the mainstream scientists, physicians and groups such as the American Academy of Pediatrics. All these organizations and others have pointed out the need to get coal emissions under control, and many studies have shown that we do not have to pollute the air our children and grandchildren breathe in order to have a prosperous energy economy.

Instead of promoting old polluting industries, the Chamber should help spur the North Dakota economy by moving us toward what the rest of the world wants: clean, inexpensive, non-polluting sources of energy.

Betsy Perkins

AIR

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Phoenix Dust Storms Not Only Cause of Poor Air Quality EPA Says (*EP Magazine*)

May 27, 2010
dust storms chart

This chart shows a day where the Arizona Department of Environmental Quality has claimed that the air pollution measurements should be excluded from consideration under the Exceptional Events Rule. Note the very high concentrations at W. 43rd while the other monitors are relatively unaffected. This is not consistent with a regional dust storm. We've noted that PM10 levels at W. 43rd often begin to rise at the same time as the nearby industrial facilities begin their work day. An Arizona State University analysis noted that these exceedances are much more likely to occur on weekdays than on weekends.

The U.S. Environmental Protection Agency rejected Arizona's claim that dust storms caused the high pollution readings in Phoenix in 2008, a decision which could have significant implications for the state.

Under the Clean Air Act, states must submit plans showing the EPA how they will meet air quality standards for certain pollutants. Arizona is currently not meeting the national standard for particulate matter, PM-10 (one-seventh the width of a human hair).

The state had asserted that dust storms were responsible for 10 of the 11 unacceptably high pollution spikes in Phoenix during 2008.

"After thoroughly reviewing the state's data, EPA air-quality scientists determined that a legally significant number of pollution spikes were not the result of regional dust storms," said Jared Blumenfeld, EPA regional administrator. "Therefore, the "exceptional events" were not supported by the science," added Blumenfeld.

This finding will require EPA to initiate disapproval of Arizona's air quality control plan (PM-10) for Phoenix. If a final disapproval is rendered, federal transportation funds to the state could be frozen. In such a scenario, transportation funds would be withheld until the state submits an adequate air quality plan (PM- 10) to EPA. The freeze would not affect current, approved transportation plans and projects.

"I want to acknowledge the collaborative work that ADEQ [Arizona Department of Environmental Quality], the Maricopa Association of Governments, Maricopa County, and the city of Phoenix have done to address existing sources of PM-10," said Blumenfeld. EPA is committed to continuing to provide the state, regional and local agencies technical expertise, monitoring equipment and funding to bring the state into compliance. The federal government already provides $30 million annually to Arizona, through the Congestion Mitigation and Air Quality program. These funds are available to be used to reduce PM-10 emi

Massachusetts manufacturer agrees to pay $215,340 to settle EPA case (*Reliable Plant*)

A Salisbury, Mass.-based company that makes bandages and tape for athletic and medical purposes has agreed to pay $215,340 to settle environmental claims by the U.S. Environmental Protection Agency.

EPA’s New England office alleged that the company, Andover Healthcare, emitted air pollution in violation of the federal Clean Air Act, and failed to submit information required under the Emergency Planning and Community-Right-to-Know Act.

EPA’s complaint stated that on five separate days in 2008, Andover Healthcare operated without its required air pollution control device, a catalytic oxidizer. Moreover, on numerous occasions over a five-year period Andover operated its catalytic oxidizer at temperatures too low to ensure the proper destruction of volatile organic compounds. Andover also failed to sample the oxidizer catalyst’s core on an annual basis, and failed to prepare annual reports of volatile organic compounds and hazardous air pollutant emissions, as required by law.

As a result, Andover Healthcare was charged by EPA with emitting excess amounts of toluene and heptane, both volatile organic compounds. Volatile organic compounds contribute to the formation of ground-level ozone. Exposure to ground level ozone can trigger a variety of health problems, including chest pain, coughing, throat irritation and congestion, and can exacerbate conditions associated with bronchitis, emphysema and asthma. In addition to being a volatile organic compound, toluene is a hazardous air pollutant. Chronic inhalation exposure to toluene can hurt the central nervous system and also irritate the upper respiratory tract and eyes and cause sore throats, dizziness, and headaches.

The company has now eliminated its toluene and heptane emissions by switching to water-based components.

The Right-to-Know violations arose because Andover failed to submit to EPA toxic release inventory forms for toluene between 2005 through 2007. Andover also failed to notify the local fire department, State Emergency Response Commission, and Local Emergency Planning Committee of certain chemical substances at Andover's facility, including sulfuric acid.

May 26, 2010

EPA objects to EKPC coal plant air permit (*Richmond Register*)

Particulate pollution at issue
By Bill Robinson
Senior News Writer
WINCHESTER — The federal Environmental Protection Agency issued a letter Monday to the Kentucky Division of Air Quality formally objecting to a permit the state agency issued April 9 for a proposed coal-fired generating plant in Clark County.

The permit for the plant that East Kentucky Power Cooperative wants to build near the Kentucky River near Madison County must pass a federal review before it can take effect. EKPC generates power for numerous rural elect cooperatives including Bluegrass Energy and Clark Energy, which serve customers in Madison County.

A copy of the letter to John S. Lyons, director of the Kentucky Department of Environment Protection, was obtained by the Berea-based Kentucky Environmental Foundation and provided to the Richmond Register.

The federal regulators said EKPC had not demonstrated whether the U.S. EPA's policy governing emission of particles 10 microns in diameter would apply, or whether the utility should perform a compliance analysis for particles as small as 2.5 microns.

EKPC based its application, the EPA letter states, on the assumption that the plants emissions would not violate national standards for emission of 2.5-micron particles. However, the EPA said the cooperative's analysis had not followed "current accepted modeling procedures and guidance."

The cooperative may submit a new compliance assessment that conforms to that guidance, the letter states. A 12-page document outlining the procedures was attached to the letter.

Elizabeth Crowe of the Kentucky Environmental Foundation, which has steadfastly opposed construction of the coal-fired electric generating plant, said, "It's time for EKPC to stop wasting time and money on the plant and start working on clean, affordable energy solutions."

A recent audit of EKPC done for the state Public Service Commission was highly critical of the co-op's financial management and called building a coal-fired generating plant "the most risky" method of meeting co-op members needs, Crowe said.

The U.S. Department of Agriculture will not loan money to rural electric cooperatives to build coal- and nuclear-fired generating plants, she said. But, it will loan money for conservation programs and alternative generation methods.

"Now, (the federal) EPA is opposing the air permit because the state underestimated the hazards of harmful soot emissions," Crowe said.

Fine soot particles from coal combustion, which contain a number of toxic chemicals, can penetrate deep into the lungs and cause significant damage, or even death, she said. The Smith plant would emit an estimated 300 tons of soot annually.

"EPA actually warned the state about the inadequacies of its modeling on soot in a letter in March," Crowe said, "but the Kentucky Division for Quality issued a final permit for the Smith plant anyway," a day before more-stringent federal standards were to take effect.

"When it comes to our health, there is no such thing as a 'safe' level of pollution," said Philip Curd, a Jackson County physician and customer of Jackson Energy Cooperative, an EKPC member. "The smaller soot particles are dangerous because they can lodge in the deepest recesses of lungs, where they can cause tissue damage and where cancers can originate."

Bill Robinson can be reached at brobinson@richmondregister.com or at 624-6622.

EPA Studying Own Carbon-Trading System, Official Says (*Bloomberg*)

U.S. Bill May Limit Carmaker Hiring of Ex-Regulators
Refiners See Carbon Costs as Much as $42.3 Billion (Update1)

McAteer, Former Clinton Official, to Investigate Mine Blast
Climate Bill Won't Have 'Linked' Oil Fee, Graham Says (Update1)
Business Exchange (Updates with comment from EPA spokesman in 11th paragraph.)
By Simon Lomax

May 26 (Bloomberg) -- Lawmakers should try this year to delay the U.S. Environmental Protection Agency from enforcing greenhouse gas regulations instead of repealing them, Senator Jay Rockefeller said today.

"We cannot wait any longer to send the message that relying on EPA is the wrong way to go," Rockefeller said in an e-mail. Rockefeller, a West Virginia Democrat, has proposed a two-year suspension of EPA rules for power plants and factories, a delay that he says will give Congress time to pass laws dealing with carbon dioxide and other greenhouse gases scientists have linked to climate change.

A two-year suspension "has a better chance of becoming law" than a plan from Senator Lisa Murkowski, an Alaska Republican, to overturn the agency's Dec. 7 finding that greenhouse gases are a danger to the public and should be regulated, Rockefeller said.

A vote on Murkowski's motion to overturn the EPA finding is scheduled for June 10.

The EPA issued regulations to cut greenhouse gas emissions by setting higher fuel economy standards for cars and requiring newly built and modified industrial plants to use the "best available" technologies to minimize pollution.

President Barack Obama has been urging Congress to pass legislation that would replace these regulations with a cap-and- trade program in which companies buy and sell pollution allowances.

Pressuring Lawmakers

Murkowski has said the EPA regulations are being used to pressure lawmakers into backing the cap-and-trade plan, which narrowly passed the House last year and then stalled in the Senate. Senators John Kerry, a Massachusetts Democrat, and Joseph Lieberman, a Connecticut independent, released a revamped cap-and-trade bill May 12 hoping it can pass Congress this year.

Rockefeller said he and Murkowski agree that limits on greenhouse gases should be set by Congress, "not an unelected federal agency."

"The fate of our West Virginia economy, our manufacturing industries and our workers should not be in the hands of EPA," Rockefeller said.

Rockefeller and Murkowski are "scare-mongering" by portraying the EPA's greenhouse gas regulations as a threat to the economy, Frank O'Donnell, president of the Washington-based environmental group Clean Air Watch, said in a telephone interview.

Dependent on Oil

Murkowski's motion would make the U.S. economy more dependent on oil, Brendan Gilfillan, an EPA spokesman, said in an e-mail. "We hope the Senate will reject the resolution," he said. The agency "has not taken a position" on Rockefeller's proposed two-year suspension of some greenhouse gas regulations, Gilfillan said.

The EPA will phase-in regulations for industrial polluters and is "trying to move forward in a measured way," O'Donnell said. In 2007, the Supreme Court ruled that greenhouse gases could be regulated under the Clean Air Act, and it would be "irresponsible" if the EPA didn't use that authority, he said.

While lawmakers are worried about the impact of new EPA carbon regulations on the economy, they are also "nervous" about limiting the agency's authority to take action on climate change, Rockefeller told reporters in Washington yesterday.

Fuel Standards

Rockefeller said his legislation would allow the EPA to enforce higher fuel economy standards while delaying regulations for industrial polluters. Murkowski's resolution would overturn all the agency's carbon regulations, he said.

Under the Congressional Review Act, Murkowski can demand a Senate vote on her motion to disapprove the EPA's endangerment finding. Unlike other legislation that often requires 60 out of 100 votes to clear the Senate, it only needs 51 votes to pass.

The disapproval motion isn't guaranteed to get a vote in the House, and if the measure does pass both chambers of Congress, Obama might veto it.

Since it became law in 1996, the Congressional Review Act has only been used once to successfully overturn the regulations of a federal agency, Richard Williams, managing director of the regulatory studies program at George Mason University's Mercatus Center, said in a telephone interview from Arlington, Virginia.

Veto Issue

Obama, who supports federal limits on greenhouse gases, would "almost certainly" veto the disapproval motion, Williams said. With large Democratic majorities in the House and Senate, Murkowski and her supporters wouldn't be able to get the two- thirds majority needed to override a presidential veto, he said.

"They must understand how difficult and how unlikely it is that you're actually going to sustain one of these things," Williams said. A more effective way of blocking the EPA would be amending legislation that sets the agency's budget to prohibit the enforcement of greenhouse gas regulations, he said.

“The budget is the one thing that will make agencies take notice, so it’s a much easier way to do it,” Williams said.

Murkowski tried unsuccessfully to amend the EPA’s budget last year to limit its ability to regulate greenhouse gas emissions. That measure would have delayed EPA regulation for one year and allowed the agency to move ahead with higher fuel economy standards, Robert Dillon, Murkowski’s spokesman, said in a telephone interview.

Murkowski chose to pursue a disapproval motion because “it’s the only way to guarantee a vote,” Dillon said.

“It’s a legitimate attempt to stop the EPA from harming the economy,” he said. If it fails, “it is still beneficial to the American public that members are on the record on whether they support EPA climate regulation.”

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APNewsBreak:

EPA may federalize Texas air program (*Associated Press*)

By RAMIT PLUSHNICK-MASTI
HOUSTON — The Environmental Protection Agency may take over the entire job of regulating air quality in Texas if the state keeps violating the Clean Air Act, an EPA official told The Associated Press on Wednesday — intensifying a dispute over regulating pollution from the largest U.S. refineries and petrochemical plants.

The comment by regional EPA chief Al Armendariz comes a day after he said the federal government would issue the operating permit for one refinery in Corpus Christi and planned to take over 39 other permits.

Now, Armendariz said, the agency is studying how to federalize what has always been a state job and hiring eight permitting engineers and attorneys — partly to deal with Texas.

"Do we also think the deficiencies are serious enough to go that route? The answer is yes," Armendariz said. "If we have to, we will. The takeover of a state program and the federalizing of a state program is a lengthy process and doesn't happen overnight."

Armendariz had said the EPA wanted assurances by July 1 that Texas will comply with federal law.

The EPA's plan is sure to set off fireworks in Texas.

State regulators have consistently said they disagree with the EPA's conclusion that Texas allows the petrochemical industry to spew out an unmeasured amount of toxins as it refines one-third of the nation's gasoline and produces thousands of other chemical products and plastics.

"It would take years and kill millions of jobs and the economy would suffer eventually, and we're seeing no environmental benefit," Bryan Shaw, chairman of the Texas Commission on Environmental Quality, told the AP.

Now, the dispute is rapidly becoming a battle over federal and state rights.

Gov. Rick Perry, who is running for re-election and campaigning on an anti-Washington platform, said the EPA's action is another attempt by the federal government to wrest control from states.

"The Obama administration has taken yet another step in its campaign to harm our economy and impose federal control over Texas," Perry said. "On behalf of those Texans whose jobs are threatened by this latest overreach and in defense of not only our clean air program but also our rights under the 10th Amendment, I am calling upon President Obama to rein in the EPA."

The EPA's next major step will likely come next month, when it plans to officially block a 16-year-old Texas permitting program that never received the required federal approval and which the EPA says violates the law. Documents obtained by The Associated Press indicate the EPA believes the flexible permits let some plants emit double the admissible levels of toxic pollutants, including cancer-causing benzene and butadiene.

Texas's so-called flexible permits set a general limit on how much pollutants an entire facility can release. The federal Clean Air Act requires state-issued permits to set limits on each of the dozens of individual production units inside a plant. The EPA says Texas' system masks pollution and makes it impossible to regulate emissions.

However, because Texas began issuing the permits in 1994 — and the EPA never stopped the practice — it will take at least five years to issue new permits to about 140 affected facilities, including Exxon Mobil's largest U.S. refinery in Baytown near Houston, Shell's Deer Park refinery and the Pantex Plant in Amarillo, Texas — a facility

charged by the U.S. Department of Energy with maintaining the nation's nuclear weapons stockpile.

Until the plants have permits that allow for effective monitoring, the EPA and environmental activists say their true pollution will remain a mystery.

Shaw insists the EPA is relying on faulty data and said the federal move caught the state by surprise. Texas, he said, is willing to revise and explain the program to the EPA.

"It was somewhat out of left field," Shaw said. "It indicates the discussion and the negotiation are over ... I'm hopeful that we can get back to the table and roll up our sleeves and make some progress and quit having turf wars."

Last year, the EPA presented state officials with data showing that the Shell Deer Park facility outside Houston was releasing more than double the amount of sulfur dioxide allowed by law. Sulfur dioxide is a respiratory irritant and one of only six pollutants whose levels are strictly monitored by federal law.

The EPA also accused Texas of allowing Shell to do 11 additional sulfur dioxide projects when the EPA's rules would have allowed only one. In 2007, the EPA said, Texas allowed Shell to increase benzene emissions by 18 percent "solely based on company's request."

At Exxon's Baytown facility, the EPA argued the plant was being allowed to release more than double the allowable volatile organic compounds, toxins that include benzene and butadiene. The EPA said the facility released 6,245 tons per year instead of the EPA limit of 3,098 tons per year.

Bill White, the Democratic candidate for governor and a former deputy energy secretary in the Clinton administration, blamed Perry.

"Because of Rick Perry's mismanagement of the state's environmental agency, our state is now losing our ability to make our own decisions about air quality and the economy," White said in a statement. "I guarantee you that as governor, I'll ensure Texas complies with the law and I'll bring the ability to regulate the refineries back to Texas where it belongs."

EPA honors N.J. Clean Energy Program and BPU (*State Ledger)*

By Abby Gruen/The Star-Ledger
May 26, 2010, 2:15PM

Lee solomon.JPGPatti Sapone/The Star-LedgerLee Solomon, the commissioner of the Board of Public Utilities speaks during the press conference announcing the launch of a monitoring buoy by Fishermen's Energy of New Jersey, the first step to developing a wind farm, April, 29, 2010.

The New Jersey Board of Public Utilities and New Jersey's Clean Energy Program have been recognized for New Jersey's innovative solar financing model by the U.S. Environmental Protection Agency through the Clean Air Excellence Awards Program.

Established in 2000 at the recommendation of the Clean Air Act Advisory Committee, the Clean Air Excellence Awards Program annually honors outstanding innovative efforts that advance progress in achieving cleaner air. Award-winning organizations directly or indirectly reduce pollutant emissions, demonstrate innovation, offer sustainable outcomes, and provide a model for others to follow, the BPU said in a press release today.

Recognized in the Regulatory and Policy Innovations category, New Jersey's solar financing model is based on the use of Solar Renewable Energy Certificates or SRECs. Representing all of the clean energy benefits of a solar energy system, SRECs can be sold or traded separately from the power, providing solar system owners a recurring source of revenue to help offset the cost of installation.

"We are honored to receive this award from the EPA," said Lee Solomon, President, NJBPU. "New Jersey's SREC program is the first in the nation to successfully begin the transition from up-front incentives to a market-based system for project finance. By avoiding upfront incentives, the SREC program lowers the financial impact on ratepayers while continuing to motivate solar electricity installations."

Murkowski Resolution: Stop the out-of-control Environmental Protection Agency's global warming rampage

We Must Defeat the EPA Power Grab (*Canada Free Press*)

By Alan Caruba Wednesday, May 26, 2010
"The U.S. Environmental Protection Agency is carrying out one of the biggest power grabs in American history. The agency has positioned itself to regulate fuel economy, set climate policy for the nation and amend the Clean Air Act—powers never delegated to it by Congress. It has done this by declaring greenhouse gas emissions a danger to public health and welfare, in a proceeding known as the 'endangerment finding.'"

So wrote George Allen and Marlo Lewis in a recent Forbes commentary. Allen is a former U.S. Senator and Governor from Virginia. Lewis is a senior fellow in environmental policy at the Competitive Enterprise Institute.

The Senate is scheduled to vote June 10 on the Murkowski Resolution, S.J. Res. 26. If passed it will stop the out-of-control Environmental Protection Agency's global warming rampage. The resolution has 41 sponsors, but needs 51 votes to pass. There will be no filibusters and no second change to reverse the worst attack on the U.S. economy and the freedom of Americans to utilize energy for business and personal use.

"If allowed to stand," wrote Allen and Lewis, "the EPA's endangerment finding will trigger a regulatory cascade through multiple provisions of the Act. America could be burdened with a regulatory regime more costly than any climate bill Congress has rejected or declined to pass, yet without the people's representatives ever voting on it."

Americans have witnessed the spending of billions in stimulus bills that have not reversed or slowed the worst unemployment rate since the Great Depression.

They have witnessed the take-over of General Motors by the federal government.

They have watched this Democrat-controlled Congress ram through a healthcare "reform" bill that takes over one-sixth of the nation's economy and a Cap-and-Trade Act, renamed a "climate" bill, is waiting for a vote.

When the Environmental Protection Agency was established in 1970 no one ever imagined that it would exceed its mandate to ensure clean air and water to such an extent that it would pose a threat to the lives of Americans and to the economy.

It is in control of two people who are virulent environmentalists. Carol Browner, an Obama "czar" whose appointment was not subject to congressional oversight was an EPA administrator during the Clinton administration. She is an avowed socialist and close associate of former Vice President Al Gore. Lisa Jackson, the current administrator, worked with her before being selected to head the New Jersey Department of Environmental Protection.

The same day Rasmussen Reports revealed that Barack Obama has the lowest approval rating of any previous President it was reported that Ms. Jackson had cancelled attendance at a political fundraiser in New York next week.

It must have occurred to someone in her office that, in the midst of the worst oil spill in U.S. history, that might not be a good idea. They scrubbed her participation saying "her priority has continued to be protecting human health and the environment."

If that is an EPA priority it has pursued this goal in some strange ways.

For example, it has consistently banned some of the best pesticides ever invented to protect against termite infestations that do billions in damage every year or DDT that actually won a Nobel Prize for its protection of human life against the scourge of malaria and other mosquito-borne diseases.

The EPA is so anti-chemical it is currently looking for a way to stop the use of oil dispersant chemicals to reduce the threat to marshes and other areas the spill may reach!

While this is happening, it is seeking to impose rules that would put an end to mountaintop coal mining, closing off access to an energy resource responsible for 50% of all the electricity used daily and putting an end to countless mining industry jobs.

The nation is now at a crossroads between a future in which the federal government, through the EPA, controls the entire economy or whether this evil genie gets put back in the bottle.

We live in an America in which the amount of water we can use to flush our toilets has been regulated and we will soon be unable to purchase an incandescent light bulb, one of the greatest inventions in the history of mankind.

We live in a nation that requires that every gallon of gasoline include ethanol, an additive made from corn. So much corn is diverted to this that it has forced up the price of virtually every food product we purchase. At the same time it has reduced the mileage of every gallon.

If you have had a lingering feeling that something is terribly wrong, you’re right.

For now, the job at hand is to get the Murkowski resolution passed or, in effect, we might as well close the doors on America’s future because the EPA will destroy it.

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Perry says EPA harming Texas economy (*Dallas Morning News*)

12:00 AM CDT on Thursday, May 27, 2010
By GROMER JEFFERS JR. / The Dallas Morning News
gjeffers@dallasnews.com
Gov. Rick Perry said Wednesday that a move by federal environmental officials to regulate pollution from Texas refineries is another step in the Obama administration's "campaign to harm our economy."

The federal government has "put a bull's-eye on the backs of hardworking Texans," the governor said at a ribbon-cutting in Richardson.

The U.S. Environmental Protection Agency said Tuesday that it would take over the process of issuing a permit for a Corpus Christi refinery, taking that responsibility away from state regulators. The EPA said the state hadn't done enough to regulate emissions of pollutants, including cancer-causing compounds.

Although the EPA stopped short of taking over the state's entire permitting system, its action was a clear statement that the federal government was cracking down on the Texas Commission on Environmental Quality. The EPA's top regional official said he was prepared to exert authority over several other air quality permits in Texas.

But Perry blasted the federal agency's actions, saying Texas' approach of collaborating with businesses has been better for the economy and the environment.

"It would be a good idea if more states were like Texas," the governor said. "Our state's air is cleaner than it was. Our economy is stronger than most other states'."

Perry's election opponent this fall, Democrat Bill White, said the governor was to blame for the state losing control of the permitting process. Perry's administration ignored repeated federal warnings on the issue, White said through a campaign spokeswoman.

Katy Bacon, the spokeswoman, called the episode "yet another example of Rick Perry managing a state agency into a ditch and hurting Texans along the way." Perry's campaign called that proof that White is "out of touch with the concerns of Texans."

Perry's criticism of the EPA was part of a consistent refrain. The Republican governor has frequently railed against what he calls Washington's intrusions into Texas affairs. Perry has also supported efforts to stop the EPA from regulating gases, saying the move was based on flawed science. It's part of his frequent criticism of the federal government on a host of issues.

"There are some troubling decisions this administration has made toward Texas," he said. "The EPA is on the verge of killing thousands of Texas jobs."

Dispute not likely to affect Tenaska (*Abilene Reporter-News*)

Staff Reports
Thursday, May 27, 2010
Jaime Adame
adamej@reporternews.com / 325-676-6781
Strong criticism from the Environmental Protection Agency levied at state regulators won’t have an immediate impact on the application process for Tenaska as it seeks an air permit from the Texas Commission on Environmental Quality.

A case hearing is set to go on as scheduled Wednesday in Austin. The EPA this week stripped TCEQ of the authority to issue an operating permit for a Corpus Christi refinery and warned that federal regulators could take over the state’s air permitting process for other facilities as well.

Regional EPA Chief Al Armendariz told The Associated Press on Wednesday that the agency may take over the entire job of regulating air quality in Texas if the state keeps violating the Clean Air Act. He said the EPA wanted assurances by July 1 that Texas will comply with federal law.

But EPA criticisms so far have focused on permits issued to plants already built or in operation, mainly refineries and petrochemical plants. The EPA has claimed that Texas allows the petrochemical industry to spew out an unmeasured amount of toxins, a charge the state disputes.

In an e-mailed statement, Greg Kunkel, vice president of environmental affairs for Tenaska, said, “These issues are not relevant to the permit for which we have applied.” The Nebraska-based company is seeking to build a coal-fired power plant about nine miles northeast of Sweetwater, describing the project as among the first in the world that would use technology to capture and store 85 percent to 90 percent of carbon dioxide emissions.

However, a focus of the EPA on so-called “fine” particle emissions appears somewhat at odds with state regulatory requirements for the Tenaska permit.

Some questioning the project have commented that Tenaska’s permit application, more than 350 pages, did not include a specific type of analysis for “fine” particles, less than 2.5 micrometers in diameter.

The EPA has been attempting to strengthen regulations related to “fine” particles, noting on its website that “health studies have shown a significant association between exposure to fine particles and premature death from heart or lung disease.”

While the agency has allowed states to use an analysis of particles four times as large as a “surrogate” for the “fine” particle regulatory program, TCEQ officials noted in response to comments made about the proposed Tenaska plant that, “recently, the EPA has stated concerns regarding the continued use of the surrogate policy.”

“It will probably be an issue that will come up in the contested case public hearing next week,” said Neil Carman, the Clean Air program director for the Sierra Club’s Lone Star chapter. The Sierra Club is opposing the plant.

Carman also said the EPA and TCEQ have differing definitions for clean technology requirements, specifically what is known as “best available control technology,” or BACT.

In a March letter posted on the TCEQ website, the EPA expressed concern about how the TCEQ defined BACT, emphasizing that, after consideration of energy and economic factors, BACT should result in “an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation.”

“TCEQ’s arguing that Tenaska meets the definition of BACT on particulate pollution controls. We don’t think it does,” Carman said.

EPA ups ante in battle with state over clean-air standards (*Houston Chronicle*)

By PEGGY FIKAC
Austin Bureau
May 26, 2010, 11:15PM
AUSTIN — Texas has “weeks, not years” to show it is willing to comply with the Clean Air Act or face the prospect of the U.S. Environmental Protection Agency taking over its entire air-pollution permitting program, EPA's regional administrator said Wednesday.

“We have to get good air quality permits issued in Texas, and either the state of Texas does it, or I'll have to,” Al Armendariz said, adding, “I'm hopeful that the state will correct the deficiencies and stay as the permitting authority in the state of Texas.”

His pronouncement upped the ante a day after the EPA announced it was taking over the issuance of an operating permit for a Corpus Christi facility and said it could do the same for some 39 others under scrutiny unless the state makes changes. Armendariz said there are “significant problems,” not only with those individual permits, but with the program itself, and that the Clean Air Act would require the federal government to take over every air-quality permit if deficiencies are not corrected.

While such a process could be initiated soon, it would take many months to complete, he said.

Perry, White reactions
The EPA's action was condemned by GOP Gov. Rick Perry, who blasted the Obama administration and called on the president to “rein in” the agency.

“The Obama administration has taken yet another step in its campaign to harm our economy and impose federal control over Texas,” Perry said in a statement. “On behalf of those Texans whose jobs are threatened by this latest overreach, and in defense of, not only our clean air program, but also our rights under the 10th Amendment, I am calling upon President Obama to rein in the EPA and instruct them to study our successful approach for recommended use elsewhere.”

The campaign of Bill White, the Democratic candidate for governor, blamed Perry, who appoints the commissioners who oversee the Texas Commission on Environmental Quality, for putting employers at risk through the state's policies.

“I guarantee you that as governor, I'll ensure Texas complies with the law and I'll bring the ability to regulate the refineries back to Texas where it belongs,” White said in a statement.

The EPA's actions this week should not have come as a complete surprise to state and industry leaders. The federal agency has been openly critical of Texas' air pollution permitting program since last year.

Earlier this year, the EPA halted a Texas rule known as the “qualified facilities exemption,” which allowed companies to make changes to their plants without federal review if they kept actual emissions below permitted levels. The EPA said the rule enabled companies to treat major changes as minor ones and avoid more intense regulatory scrutiny.

According to the Associated Press, the EPA last year presented state officials with data showing some facilities were releasing more than twice as much pollution as their permits allowed. The AP cited EPA correspondence indicating the Shell Deer Park facility had released double the amount of sulfur dioxide allowed by law, and an Exxon Mobil Baytown facility was allowed to release twice the amount of volatile organic compounds, including benzene and butadiene, that it legally was permitted.

TCEQ Chairman Bryan Shaw disputed the contention that Texas air permits violate the Clean Air Act and said of the idea that EPA may move to take over the permitting process, “I'm glad that there's a formal process that would have to be utilized for that to happen. ... At least that process is something that can't be done on a whim.”

Flexible permit contested

The Clean Air Act requires states to develop plans to meet federal requirements aimed at protecting public health. The EPA has been meeting with the TCEQ and representatives of industry and environmental groups to discuss what the federal agency calls deficiencies with Texas' air emission permits.

One major point of contention is Texas' flexible permit, which sets an air emissions cap for an entire facility, but allows leeway for various units within that plant. Environmentalists and regulators say that hinders enforcement of clean-air rules. Armendariz said such a permit never has been federally approved.

Among other points, the EPA also objects to a process that allows a facility to make changes without going through a formal permitting process.

“EPA seems to at this point be interested in implementing ... what they desire as opposed to what the regulations and the laws require,” Shaw said. “That circumvents states' rights and our duty to develop permitting programs that are protective of the environment and customized to fit the people of Texas.”

The agency is expected to formally disapprove the flexible permit program by the end of June; some 140 plants have such permits. Shaw said the state has not ruled out going to court if that happens, though he said that was not his first choice.

“We would have legal standing to sue on that, and, certainly, my hope is that we can sit at the table and work toward resolution, but this program is too important for us not to consider all the options,” Shaw said.

Armendariz was clear: “The state has to demonstrate to us in a short period of time that they're willing to issue permits that are consistent with the Clean Air Act and operate a program that's consistent with the Clean Air Act. They have weeks, not years, to make that demonstration.” If Texas doesn't do so, he said, EPA will initiate a takeover: “We will begin that process, and we can begin it soon.”

Conflicting views
Environmental groups have pressed the EPA to step in and change the state permitting process.

“Our air would be cleaner, our permits would be tighter and tougher, and we would all be able to breathe more deeply if the federal government came in and enforced the law in Texas,” said Public Citizen's Tom “Smitty” Smith.

Business interests accused the federal government of unnecessarily meddling.

Bill Hammond, president of the Texas Association of Business, said in a statement, “Evidently, Texas' success in improving both our environment and our economy, while Washington still argues about how to accomplish either, is something that EPA and the administration finds troubling.”

pfikac@express-news.net

U.S. EPA strips Texas of control over major refinery permit (*Greenwire*)

(05/26/2010)
Issuing a direct challenge to the Texas Commission on Environmental Quality's regulators, U.S. EPA yesterday seized control of air pollution permitting for Flint Hills Resources LP's East Corpus Christi refinery.

Claiming that the Texas agency has taken shortcuts, omitted information and made it hard to tell if companies are avoiding mandatory reviews, EPA has threatened to take over the state's entire air-pollution permitting system. The agency has formally objected to permits at 40 Texas facilities over the past six months, and more permits could be taken over if state and federal regulators cannot reach an agreement, EPA Region 6 Administrator Al Armendariz said.

"The EPA is serious about requiring that air-quality permits held by companies in Texas are federally sufficient," Armendariz said. "If the state agency is unwilling or unable to issue those permits, the EPA must and will do so."

The Corpus Christi facility, owned by a division of Wichita-based Koch Industries Inc., is the nation's 11th largest refinery and one of Texas' largest polluters. Federal officials chose to take control of the refinery's permits because of a particularly strong legal basis for claims that there were unaddressed problems with the state permit, not because of operations at the facility, Armendariz said.

Mark Vickery, executive director of the TCEQ, said the agency understands that EPA might be required to take over some permits while the state and federal regulators try to hash out "significant differences in opinion." The state agency denies that there has been "wholesale circumvention" of federal rules.

"A collaborative effort will continue to be beneficial to both agencies' limited resources and to continued protection of the environment and public health," Vickery wrote to Armendariz in a letter dated Monday (Randy Lee Loftis, *Dallas Morning News*, May 26).
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Vermont DEC, EPA Clear Out Asbestos from Mt. Norris Boy Scout Camp (*EP Magazine*)

May 27, 2010
Federal and state clean-up workers recently completed work to identify and remove asbestos contamination from the Mt. Norris Boy Scout Reservation in Eden Mills Vt., a camp facility owned and operated by the Green Mountain Council, Boy Scouts of America. EPA performed the work at the request of the Boy Scouts.

Environmental sampling work began at the site in early 2009. Following initial results from that sampling, which showed some potential for asbestos in camp buildings and property, the Green Mountain Council elected to suspend camp operations for 2009 and requested assistance from EPA to perform more rigorous sampling and removal of any contamination that might be found at the camp.

The federal agency worked in coordination with the Vermont Department of Environmental Conservation. Environmental workers conducted extensive sampling and other work until winter weather in late 2009 stopped the efforts. They recently returned to the camp to complete their efforts.

Using a certified asbestos abatement contractor, work at the camp included cleaning the interiors of all 58 onsite buildings, a process consisting of HEPA vacuuming, wet wiping and the use of negative air machines. As the Scouts typically sleep in canvas tents, they were all opened and meticulously vacuumed. Bare areas near the camp dining hall were asphalted to prevent any asbestos fibers from becoming airborne. EPA also re-asphalted the main parking lot and rerouted much of the localized surface water flow to ensure that erosion will not cause disruption to any asbestos fibers contained in fill underlying asphalted areas.

Mt. Norris Boy Scout Reservation is planning to resume its normal summertime camp schedule.

BP SPILL
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Four questions for Obama (*Washington Post*)

May 27, 2010 Thursday
Met 2 Edition
A-SECTION; Pg. A10
Maryland
Four questions for Obama
On Thursday, President Obama will hold a White House news conference, his first since February, as he attempts to shore up public confidence in his administration's efforts to fight the oil spill in the Gulf of Mexico. Here are a few questions reporters might consider asking the president:

1.In explaining and defending your decision in March to open up additional offshore areas to drilling, you argued that improvements in technology have made drilling significantly less risky. Just 18 days before the explosion of the Deepwater Horizon, you said: "It turns out, by the way, that oil rigs today generally don't cause spills. They are technologically very advanced." What do you think of those assumptions now?

2.BP, the company that caused the incident, is now in the position of making many of the key decisions on how to deal with it. White House officials note that the administration is following a process established under the 1990 Oil Spill Act, which was passed in response to the Exxon Valdez incident; they also concede that the government, effectively, has no choice, because it lacks the equipment and expertise to do the job. In at least one instance where the federal government has attempted to overrule BP, over its use of dispersant chemicals that the Environmental Protection Agency says are too toxic, the company has reduced but not discontinued its use of those chemicals. What do you say to those who say too much control has been ceded to BP? And what kind of changes, if any, should be made in the process for dealing with future oil spills?

3.On May 6, Interior Secretary Ken Salazar announced a moratorium on the issuance of final permits for "new offshore drilling activity." Critics note, however, that this policy has never been put into writing and that its definition has become steadily narrower. And the New York Times has reported that since the April 20 explosion on the rig, waivers have continued to be granted for drilling projects. What, exactly, does this moratorium cover?

4.Should anyone in the government be fired as the result of this disaster?

-- Karen Tumulty and Juliet Eilperin

BP in wait-and-see mode with 'top kill' procedure (*CNN)*

May 27, 2010 Thursday 3:23 AM EST
U.S.
By the CNN Wire Staff
Venice, Louisiana
BP officials may know by Thursday afternoon whether the oil company's latest attempt to cap the runaway leak in the Gulf of Mexico is yielding results.

"I think we just need to take the next 24 hours and actually see what the results are," said BP Chief Operating Officer Doug Suttles from Robert, Louisiana.

The operation, known as a "top kill," that began Wednesday afternoon was going according to plan, he said, with drilling mud being applied to the well at a rate of up to 65 barrels per minute.

Coast Guard Rear Admiral Mary Landry, the federal on-scene coordinator, was equally reluctant to draw conclusions.

"While we're very encouraged by some aspects of this procedure, I don't want to express optimism until I know for sure that we've secured the well and the leak has stopped," she told reporters.

President Obama is certain to be peppered with more questions Thursday about the administration's response to the spill. He plans to announce "strengthened inspections" and an effort to tighten safety regulations for offshore drilling, during an afternoon session with reporters, an administration official said.

He is also expected to discuss other recommendations that came from a 30-day review he ordered shortly after the April 20 explosion aboard the drilling rig Deepwater Horizon that triggered the leak and left 11 men missing and presumed dead.

"If it's successful, and there are no guarantees, it should greatly reduce or eliminate the flow of oil now streaming into the Gulf from the sea floor," Obama said after discussing the top kill procedure with Energy Secretary Steven Chu, who was in Houston at the command center. "And if it's not, there are other approaches that may be viable."

But he didn't elaborate on what he meant by those "other approaches."

No less than four Congressional hearings were scheduled Thursday regarding the spill. The committees will hear from oil rig workers and their families. Lamar McKay, chairman and president of BP America, and Steven Newman, president and CEO of Transocean, owner of the oil rig that exploded and sank, are also expected to testify, along with Interior Secretary Ken Salazar and Liz Birnbaum, director of the Minerals Management Service.

Early Thursday morning, the Unified Command in Louisiana said it has recalled all 125 commercial vessels in Breton Sound, Louisiana, after four crew members in three vessels involved in the oil recovery operations reported feeling sick.

Medics were going boat to boat to evaluate crew members as a precaution, said Lt. Cmdr. Rob Wyman.

The four crew members, who prompted the recall, reported feeling nauseous and dizzy, and complained of headaches and chest pains, the Deepwater Horizon Incident Joint Information Center said.

The other crew members on those boats declined treatment at the dock.

"No other personnel are reporting symptoms, but we are taking this action as an extreme safeguard," said Coast Guard Chief Petty Officer Robinson Cox.

All four crew members were taken to West Jefferson Medical Center outside New Orleans.

Hospital spokeswoman Taslin Alfonzo said that in addition to the four, the medical center also received three other men who were working on the spill cleanup.

The vessels were involved in cleaning up oil that has been gushing into the Gulf of Mexico since the oil rig sank about 40 miles of Louisiana, gushing an estimated 5,000 barrels (210,000 gallons) of crude a day.

More than a month after that blast, patience was in short supply in southern Louisiana.

Plaquemines Parish President Billy Nungesser on Wednesday blasted the federal government's response and called for its point man to step aside.

"Thad Allen should resign," Nungesser said, referring to the U.S. Coast Guard admiral who has been leading the government's effort. "He's done absolutely nothing. He's an embarrassment to this country."

Nungesser, who had just completed a tour of the stricken area, bemoaned what he had seen. "The same oil that's been out there two weeks ago is still out there, and nothing is being done," he said. "The marsh is dying. It's dead."

He said the Coast Guard should demand that BP begin cleanup efforts immediately.

"They had no plan to keep the oil out, even though they said it wouldn't come ashore," he said. "They had no plan to clean it up. They have no plan to make the fishermen whole. It's like it's being run with a bunch of seventh-graders. This is absolutely ridiculous."

Nungesser said he was holding out hope that President Obama's return visit to the region on Friday would result in action.

"When he comes back, he needs to change the command that's in charge of this," Nungesser said.

The parish president specifically called on Obama to support plans touted by Louisiana Gov. Bobby Jindal for the Environmental Protection Agency to issue dredging permits so that berms can be constructed to protect the state's threatened marshlands.

The EPA has said it is studying the proposal. Meanwhile, Landry defended Allen's work.

"I would hope that Adm. Allen, who has been at this since day one, would not even consider taking that recommendation," Landry told reporters. "I don't think the president would back that up either."

She added, "I don't think we can spare to have anyone leave at this point. I think we're right in the middle of the fight."

She also disputed the assertion that little was being done. So far, BP has spent more than $750 million on the spill, and federal authorities have spent more than $100 million, which BP will reimburse, she said.

More than 20,000 people and an armada of vessels and equipment from a number of federal and state agencies as well as from the private sector are being used, she said. "Nobody is not involved in this spill in this region," she said.

Wednesday's effort to cap the flow got under way at 1 p.m. (2 p.m. ET), when BP began pumping thick, viscous fluid twice the density of water into the site of the leak. If all goes according to plan, the well would then be sealed with cement.

CLIMATE CHANGE / GLOBAL WARMING

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NASA accused of 'Climategate' stalling (*Washington Times*)

May 27, 2010 Thursday
A, PAGE ONE; Pg. 1
NASA accused of 'Climategate' stalling;
FOIA response long overdue
By Stephen Dinan THE WASHINGTON TIMES
The man battling NASA for access to potential "Climategate" e-mails says the agency is still withholding documents and that NASA may be trying to stall long enough to avoid hurting an upcoming Senate debate on global warming.

Nearly three years after his first Freedom of Information Act request, Christopher C. Horner, senior fellow at the Competitive Enterprise Institute, said he will file a lawsuit Thursday to force NASA to turn over documents the agency has promised but has never delivered.

Mr. Horner said he expects the documents, primarily e-mails from scientists involved with NASA's Goddard Institute for Space Studies (GISS), will be yet another blow to the science behind global warming, which has come under fire in recent months after e-mails from a leading British research unit indicated scientists had manipulated some data.

"What we've got is the third leg of the stool here, which is the U.S.-led, NASA-run effort to defend what proved to be indefensible, and that was a manufactured record of aberrant warming," Mr. Horner said. "We assume that we will also see through these e-mails, as we've seen through others, organized efforts to subvert transparency laws like FOIA."

He said with a global warming debate looming in the Senate, NASA may be trying to avoid having embarrassing documents come out at this time, but eventually the e-mails will be released.

"They know time is our friend," said Mr. Horner, author of "Power Grab: How Obama's Green Policies Will Steal Your Freedom and Bankrupt America."

Mark S. Hess, a spokesman for NASA's Goddard Space Flight Center, which overseas the climate program, said the agency is working as fast as it can, and that Mr. Horner should expect some answers any day.

"It looks like the response to his appeal is probably going to happen very soon. I can't tell you it's going to be tomorrow or the next day, but it's just a matter of days," Mr. Hess said.

He said he hasn't seen the response, and doesn't know whether it will authorize any more information to be released.

The science behind global warming has come under question since e-mails leaked from one of the key sources for global temperature data, the Climatic Research Unit in

Britain, seemed to show scientists manipulated data. It became known in the press as "Climategate."

An investigation has cleared the scientists of deliberate malpractice and declared the basic science credible.

The British investigation also sympathized with scientists being reluctant to share all of their data, but investigators said the science needed to be above reproach and so the more that is shared, the better.

In the case of NASA's FOIA situation, The Washington Times first reported on the agency's delinquency in December. At that time, the agency was more than two years overdue on one request and nearing the two-year mark on another request - far longer than the 20 business days allowed under FOIA law for a first response.

After that report, the agency released about 2,000 pages, many of them heavily redacted, to CEI. Mr. Horner said among those pages was evidence he said proves NASA data is based on the British records that have come under fire.

But CEI said the agency withheld e-mails NASA scientists sent from nongovernment e-mails, even though they were doing government science work.

Mr. Horner said he has evidence one scientist went back and deleted time stamps on his Internet postings to his private website, which Mr. Horner said shows the scientist was doing that work on government time.

CEI's lawsuit, which is expected to be filed in federal district court in Washington, also says that e-mails leaked from the British research unit include documents that should have been released by NASA, but haven't been.

Mr. Hess said they are fielding more than just CEI's inquiries, and they are taking them all in order.

"We all understand the statute is 20 days, and we work really hard to comply with that as much as humanly possible, but for the most part, especially for a request where you may have to search thousands of documents, sometimes 20 days is just a herculean task," he said.

Some of the NASA scientists Mr. Horner targeted with requests have spoken out against the recent FOIA inquiries, calling them an effort to try to intimidate scientists into not publishing their work.

Gavin Schmidt said information requests have ballooned in recent months and that he thinks those making the inquiries are trying "to put a chilling effect on scientists speaking out in public."

And James E. Hansen, director of GISS, said in a March memo that responding to FOIAs takes away from his time to do research.

He called it "a waste of taxpayer money" and questioned the motives of those filing FOIA requests.

"It seems that a primary objective of the FOIA requesters and the 'harvesters' is discussions that they can snip and quote out of context," he said, warning that could confuse the public and that might delay the pressure Mr. Hansen said will be needed to force policymakers to combat global warming.

The document fight comes as the Senate is preparing for two global warming debates.

One will be on a Republican move to try to overturn Obama administration rules that would let the Environmental Protection Agency regulate carbon emissions, even without specific new authorization from Congress. The second is expected to be a full-blown debate on Democrats' bill to combat global warming.

On Wednesday, President Obama said he wants to see action.

"I'm going to keep fighting to pass comprehensive energy and climate legislation in Washington," he said at an event in California. "We're going to try to get it done this year, because what we want to do is create incentives that will fully unleash the potential for jobs and growth in this sector."

PESTICIDES

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Pesticide Makers Weigh Suit Over EPA Endangered Species Risk Reviews (*Inside EPA*)

Pesticide manufacturers are rejecting EPA's push for labels detailing restrictions on pesticide use to protect endangered species and the industry is threatening to file a lawsuit challenging EPA's process for developing the restrictions, which could complicate future reviews for restrictions on other chemical products.

But EPA is defending its process for developing the recommended restrictions, and says it will take steps under the Federal Insecticide, Fungicide & Rodenticide Act to compel the label changes.

Four pesticide companies sent a May 7 letter to EPA saying they will not adjust their labels for three pesticides -- chlorpyrifos, diazinon and malathion -- to include restrictions advocated by EPA in order to reduce harm to endangered species. "Solid

scientific analysis . . . supports [the] view that the use of [these] products is not taking or jeopardizing any protected species and not adversely affecting any critical habitat," the companies argued.

The letter comes just weeks after the companies joined with industry association CropLife America to send EPA an April 16 letter saying they are prepared to file a lawsuit against EPA claiming that the agency's process for crafting the restrictions has major flaws, including a lack of industry participation, among other criticisms.

EPA is developing proposed restrictions of use for pesticides as a result of lawsuits filed by environmentalists against the agency and the National Marine Fisheries Services (NMFS). The suits aimed to protect a score of endangered salmon species in the West Coast from the adverse impacts of 54 listed pesticides.

EPA could also be forced to develop hundreds of other pesticide restrictions if environmentalists file, and subsequently win, a proposed lawsuit, arguing EPA failed to assess the impacts of 394 pesticides on almost 900 aquatic and terrestrial species protected under ESA.

The U.S. District Court for the Western District of Washington in a 2002 ruling in one of the suits that led to the restrictions, *Washington Toxics Coalition, et al. v. EPA* ordered EPA to comply with the Endangered Species Act (ESA) by considering the risks that 54 pesticides pose to a score of salmon species. EPA subsequently consulted with NMFS, which issued a biological opinion in 2008 for the first three pesticides from the list -- chlorpyrifos, diazinon and malathion.

EPA in September advocated new limits for the use of the pesticides by setting buffer zones where the chemicals cannot be sprayed near water, barring application in very wet or windy weather and requiring monitoring and reporting of fish deaths from the pesticides. The agency also sent letters to producers of the pesticides asking them to make registration revisions that would include labeling changes to reflect the restrictions.

EPA's request is not mandatory and the companies in their May 7 letter say that they will not make the requested labeling changes because they believe that "solid" data beyond that included in NMFS' opinion shows that use of the three pesticides is not harming endangered species. The companies that sent the letter are Dow AgroSciences, Makhteshim Agan of North America, Gharda Chemicals and Cheminova USA.

Industry Letter

The companies also signed off on CropLife America's April 16 letter threatening a suit over the process for the endangered species pesticide reviews. Industry warns it is "prepared" to file suit within 60 days unless EPA addresses its concerns.

Among the complaints the companies make is a violation of the ESA because EPA has failed to adopt procedures to ensure “adequate” participation by pesticide registrants in ESA consultations; failure to develop a program to respond to NMFS’ biological opinions that would comply with FIFRA and ESA; and failure to “ensure the use of and reliance upon the best scientific and commercial data available” in making endangered species decisions.

Industry also uses the letter to reiterate its claim that the pesticides will not harm endangered species. “Our industry’s compliance with FIFRA’s mandates has assured that the proper use of any regulated products will not jeopardize endangered or threatened species or adversely affect critical habitat,” they argue.

The companies already filed a petition with EPA in January asking EPA to develop a rule establishing “clear and equitable” procedures for developing endangered species assessments and restrictions for pesticides.

An EPA spokesman said the agency is “considering [its] options relative to that notice” and will “soon” publish the petition for public comment. In response to industry’s decision not to make labeling changes he said, “EPA plans to pursue administrative procedures under the Federal Insecticide, Fungicide and Rodenticide Act to compel adoption of the new limitations.”-- *Maria Hegstad*

TOXICS

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How does oil dispersant work? (*FOX 10 News*)

Azwell: Corexit highly toxic to organisms
Updated: Wednesday, 26 May 2010, 1:22 PM CDT
Published : Wednesday, 26 May 2010, 1:22 PM CDT
Dan Simon
SONOMA, Calif. (CNN) - BP and the Environmental Protection Agency are butting heads over an oil dispersant. The oil giant has defied the EPA by refusing to stop using the chemical dispersant corexit to break up the oil slick in the Gulf of Mexico.

Dan Simon takes a look at how dispersants work with Thomas Azwell, a researcher from UC Berkley. Azwell also talks of why they could be dangerous to marine life.

Democrats, GAO Urge ATSDR Policy Overhaul To Improve Risk Studies (I*nside EPA*)

The Agency for Toxic Substances & Disease Registry's (ATSDR) policies for assessing chemical exposure risks are inadequate and produce flawed data that has resulted in inaction on reducing risks, according to Democrats and the Government Accountability Office (GAO) who are calling on ATSDR to overhaul its policies.

Environmentalists are already seizing on the Democrats' and GAO's concerns about the agency's process for assessing community exposures to hazardous chemicals, saying the recommended policy overhaul should include new methods to help ATSDR make causative links between disease clusters and environmental exposures -- an approach that Rep. Frank Pallone (D-NJ) has been advocating to assess cancer risks from Superfund sites in his state.

At a May 20 House Science & Technology Committee oversight panel hearing, Democrats claimed the lax ATSDR policies allowed the Centers for Disease Control & Prevention (CDC) -- of which ASTDR is a division -- to release flawed analyses underestimating risks of lead water contamination in Washington, DC, and also resulted in CDC taking no action to address exposure to toxics from munitions dumped on an island in Puerto Rico.

They also released a May 20 GAO report that finds ATSDR's policies and procedures for investigating community exposures related to hazardous chemical sites and releases "lack some of the critical controls" to ensure their quality, and calls on the agency to revise its policies to better analyze the exposure risks.

Rep. Brad Miller (D-NC), chair of the oversight panel, said that ATSDR, the National Center for Environmental Health, and other CDC offices are on the "wrong path" in their approach to assessing risks.

This includes "conducting studies designed to make it impossible to find a health problem; analyzing data that is incomplete, inaccurate, or irrelevant to the underlying question without disclosing the known results of the data; responding to critics by attacking their knowledge or their motives; failing to have rigorous and consistent reviews of the study designs, data collection and quality, analytical methods and conclusions; failing to have consistent policies and procedures for conducting public health research and interventions and for publications," he said.

"All of this needs to change if ATSDR and [the National Center for Environmental Health] are to succeed," Miller said. "We need more honesty and transparency and less attitude from these offices."

The GAO report, “Policies and Procedures for Public Health Product Preparation Should Be Strengthened,” underscored the Democrats’ concerns, finding a number of problems with ATSDR’s approach to exposure studies.

For example, it found that while the agency used to classify some hazardous chemical sites as “high-priority” requiring a higher level of review, it no longer does so. As a result, “management cannot ensure that they have consistently managed the risk related to new work,” according to the report.

Assessing Risk-Level Of Work

GAO urges ATSDR to develop policies and procedures “that direct management to assess the risk level of work when it is initiated and reevaluate the risk level throughout product preparation to ensure it remains appropriate, and that ATSDR revise its policies and procedures to include guidance about management’s roles and responsibilities in monitoring product development.”

The oversight subcommittee’s ranking member, Rep. Paul Broun (R-GA), asked a top CDC official if the center “would welcome changes to its peer review process.” Broun noted that CDC is currently exempt from requirements to perform peer reviews of its health exposure assessments under the Comprehensive Environmental Response, Compensation & Liability Act, also known as the Superfund law, which created and authorized ATSDR.

Robin Ikeda, deputy director of CDC’s Office of Noncommunicable Diseases, Injury & Environmental Health, responded that peer review is “a pillar of good science. We welcome it in some form at CDC.” But she added that it “needs to balance the rigor of good peer review with the need to act quickly in emergent situations.”

Democrats at the hearing said that the problems with exposure analysis policies led CDC to release flawed statistical analyses of lead contamination in Washington, DC, drinking water, and separately to take no action to address Vieques Islanders’ exposures to munitions the U.S. Navy has dumped on the Puerto Rican island since World War II.

The Democratic majority on the oversight panel also released on May 20 a report urging CDC to retract its “faulty” 2004 study concluding that there was no correlation between elevated lead levels in Washington, DC water and health issues. This report led local health officials to dismiss concerns, Miller said at the hearing.

A science committee source indicates that Miller is not yet considering legislation to address his concerns at ATSDR or additional funding for the agency. Miller wants to establish a working relationship with the new leadership at the agency before providing additional funds or seeking legislative fixes, the source says.

During the hearing, Stephen Lester, science director for the activist group Center for Health, Environment and Justice, said that an overhaul of ATSDR policies could help better address risks from disease clusters.

Lester argued that ATSDR could make causative links between a disease cluster and an environmental exposure, but that the agency is not using the methods that will provide these links. Instead of identifying an epidemiological cohort and questioning and taking samples from individuals in the disease cluster, ATSDR relies on statistical analysis of existing data, often from EPA, Lester says. The problem, according to Lester, is that EPA's data is intended for a different purpose -- determining an appropriate cleanup level, rather than a human health risk number.

Lester said ATSDR needs to perform its own research, that too often it relies on a "cookie cutter method" for assessing human health effects from environmental contaminants without collecting its own data.

Community Needs

ATSDR's response is not tailored to the needs of the community or to respond to the information that the community provides about exposures and disease outbreaks, Lester said.

At a House Energy & Commerce Committee health panel hearing last month, Pallone asked ATSDR interim director Henry Falk what the agency needs to make causative links between environmental exposures and disease clusters. Pallone pointed to several examples of Superfund sites in New Jersey, where ATSDR has been unable to find a causative link between disease and a particular site. Falk could not suggest ways for Congress to assist the agency, saying only that scientific uncertainty remained a major problem.

Despite Pallone's plea for suggestions of how Congress could either empower ATSDR or provide the agency more funding to assist it in making such findings, neither Falk nor National Institute of Environmental Health Sciences director Linda Birnbaum has provided written responses by press time, according to a committee spokeswoman.

Yale University risk assessment professor John Wargo said at the May 20 oversight panel hearing that ATSDR is too focused on finding a causative link that exposure to a certain agent is dangerous and results in an adverse health outcome. Instead, Wargo argued, ATSDR should change its standard of review to a health protective one such as a reasonable certainty of no harm -- the standard used in the Food Quality Protection Act.

Such a change would allow ATSDR to provide affected communities with advice on how to reduce their exposures even without making a definitive causative link, Wargo said.

At the hearing, CDC's Ikeda did not speak to the issue of assessing disease clusters and instead faced a slew of questions over the center's study on lead in Washington, DC, drinking water. She said the center May 20 released revisions to its 2004 lead drinking water study "to correct the record . . . we certainly know that no lead level is safe." The original study drew criticism for underestimating the risks of lead in the city's water.

But Miller said the revisions have not fixed a "fundamental flaw" of the earlier study. A cross-sectional study indicated that no one living in homes with more than 300 parts per billion (ppb) lead in the water had elevated blood lead levels. But according to the subcommittee's majority report, CDC did not disclose that many residents were drinking bottled water instead of tap water and had been for months before their blood lead levels were tested.

The report criticizes CDC's decision to exclude homes with 100-300 ppb of lead in the water from the cross-sectional study, and notes that neither CDC nor Washington, DC, officials can produce the raw data used in the study.

Virginia Tech environmental engineering professor Marc Edwards said at the hearing that some of the water lead levels were so high that a single glass of water could cause elevated blood lead levels.

Edwards also criticized CDC for not retracting the study, which he said was used around the country to refute the notion that exposure to lead could result in elevated blood lead levels -- for example being used to temper concerns raised about lead levels in Seattle, WA, public schools' drinking water, Edwards said.

Ikeda replied that she was aware that ATSDR's 2004 statements were "ambiguous and open to interpretation." She indicated that the cross-sectional study had not been repeated and that it "certainly had limitations." -- *Maria Hegstad*

Industry Faces Uphill Battle To Preempt Strict State Laws In TSCA Reform (*Inside EPA*)

Chemical industry representatives could face an uphill battle in their efforts to preempt strict state chemical laws in a reformed Toxic Substances Control Act (TSCA), with a Senate bill and House draft expanding states' current TSCA authority to adopt stricter standards than EPA even as states ramp up their efforts to adopt stricter rules.

One industry source says a "credible federal statute" could, at best, slow adoption of comprehensive state chemical management efforts, like recent laws that passed in Maine and Minnesota, but the source questions whether such a statute would stop state chemical-by-chemical efforts.

Industry has often cited the increase in state chemical laws as one of the reasons for comprehensive chemicals management reform because the “patchwork” of laws is disruptive for chemical makers and distributors.

A spokesperson with the American Chemistry Council (ACC), which represents chemical makers, says members are “seeing an uptick” in both chemical-by-chemical laws and broader chemicals management programs, like those in Maine and Minnesota, and says the federal discussion “is not having the impact of dissuading . . . the states.”

An industry coalition last month raised questions about the preemption standards in the legislative proposals. “We support a federal policy to regulate chemicals in commerce rather than a patchwork quilt of state laws that would make it difficult to bring products to the marketplace,” an industry coalition lead by ACC said of the Senate bill in an April 15 statement. “However, preemption provisions in this proposal will allow states to adopt regulations that are not uniform. We are also concerned about the proposed standard for decision-making.”

Rather, proponents of strict regulation continue to see state rules as an important way of leveraging federal action. Healthy Legacy, a coalition of Minnesota activist groups that support TSCA reform, said in an April 15 press release that the introduction of the Senate TSCA bill “is in part a response to a number of recent groundbreaking toxic chemical policies adopted” in states like Minnesota.

But this approach has riled industry, who have viewed the effort as a way to force them to the table. Roger Bernstein, ACC’s vice president of state affairs, told an industry conference in 2008 that environmentalists and their donors are in increasingly targeting chemicals one by one and state by state as a way to force industry to negotiate on TSCA reform. The environmentalists’ “goal is to create a patchwork of regulations in states until we would come together and coalesce around TSCA reform,” Bernstein said.

Sources say the efforts have even extended to states that would not traditionally pursue the chemicals regulation, such as Georgia.

States Oppose Preemption

While industry may favor preemption to head off a patchwork approach, many states oppose preemption. A group of 13 state environmental commissioners last December released a set of principles for TSCA reform that called for preserving state rights even if toxics law reform boosts federal authority on managing chemicals.

“States acknowledge the need for a strong federal chemical regulation system, while expressly preserving the authority of states and localities to implement measures to manage chemicals of concern,” the principles state. The principles were backed by California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Oregon, Vermont and Washington.

Over the past few years, states like California, Minnesota, Maine and Washington have pursued comprehensive chemicals management programs, which oftentimes includes prioritizing chemicals of concern. At the same time, many states are pursuing a rash of chemical-by-chemical actions, such as the bar on plastic ingredients containing bisphenol A (BPA) that six states have already imposed on certain products.

In addition to regulating BPA, Minnesota in 2009 passed the Toxic-Free Kids Act, which requires state agencies to prioritize chemicals of concerns and chemicals found in children's products.

"Minnesota has shown that strong action on toxic chemicals is politically possible. Congress should follow our lead," Meredith Salmi of Arc Greater Twin Cities, a coalition member, said in the April 15 statement.

Both TSCA reform legislative proposals currently being considered would give states increased authority to regulate chemicals alongside the federal reform. For example, the House discussion draft, introduced in April by Reps. Henry Waxman (D-CA) and Bobby Rush (D-IL), would not affect the right of a state to adopt other chemical management rules "unless compliance with both this Act and the State or political subdivision of a State regulation, requirement, or standard of performance is impossible."

The Senate bill, S 3209 introduced in April by Sen. Frank Lautenberg, would amend TSCA so that the federal bill would not " be construed, interpreted, or applied to preempt, displace or supplant any provision of any law . . . relating to any chemical substance or mixture, or any article that contains a chemical substance or mixture, which is more stringent than is provided for under this chapter."

Sources say these provisions seem to dial back current preemption authority in TSCA, which preempts states from establishing a regulation for a chemical that is already regulated under section 5 or 6 of TSCA, unless the state rules are identical to the federal regulation, implements a different federal statute or "prohibits the use of such substance or mixture [in the state.]" Still, states can seek exemptions for regulations that would provide "a significantly higher degree of protection" than the federal rules.

But a "good federal policy" and budgetary pressure at the state level could lead to less incentive for states to pursue their own comprehensive management programs, like California's Green Chemistry Initiative, the industry source says. Proposals for less resource-intensive programs like Maine's safer chemicals program, which was signed into law in 2008 and prioritizes chemicals of concern for substitution, could persist, the source predicts.

But governors and legislators could reason, "Why don't we wait to see if the federal government will do a lot of this work for us," the source adds.

Activists see these state actions continuing even as TSCA is debated at the federal level. "We have no idea when federal reform will happen," says a source with the Safer

States coalition, a network of state public health and environmental groups. “States will continue to act because the public is demanding it.”

Further, state activists say the states are able to innovate and react quickly to emerging concerns, where it might take years for the federal government to react -- something that could remain an issue even with a reformed TSCA. “Whatever happens federally should be the floor,” the Safer States source says. States could also help create incentives for industry to move towards safer chemicals, such as the California’s green chemistry program.

A source with U.S. PIRG says preemption could be a “thorny issue,” but said groups oppose any attempt to preempt state law. “The states have jumped out ahead of the federal government and we would hate to lose those protections for the states,” the source says. -- *Aaron Lovell*

WATER

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EPA Questioned Over Whether Dioxin Risk Review Responds To NAS (*Inside EPA*)

EPA is facing questions from other federal agencies and the chemical industry over whether it responded to the National Academy of Sciences’ (NAS) 2006 recommendations on how the agency assesses the risks of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), the most potent dioxin and the basis for estimating risks of mixtures of dioxins and related compounds at contaminated sites.

EPA released for public comment May 21 its long-delayed draft reassessment of TCDD. The reassessment stalled in 2003 after the agency released cancer risk estimates for the contaminant significantly tighter than those the agency calculated in 1985. Opposition from industry and other agencies led the agency to request the NAS review of its assessment.

Despite the NAS critique, EPA’s new draft cancer risk estimate closely tracks those calculated in the 2003 analysis but will also include a first-time reference dose (RfD) -- the amount EPA considers safe to consume daily over a lifetime without experiencing non-cancer health effects. One of NAS’ key recommendations was for EPA to calculate an RfD. EPA’s 2003 assessment included an oral safety standard to protect against carcinogenic effects from ingestion but did not include a standard to protect against non-cancer effects.

EPA’s Science Advisory Board earlier this year created a panel of experts who will review the latest draft version of the assessment July 13-15 in Washington, DC,

according to a *Federal Register* notice published May 24. The first question they will consider is whether "EPA objectively and clearly presented the three key [NAS] recommendations," It is followed by several other questions regarding whether EPA took NAS' advice in drafting its latest version of the reassessment document.

Two weeks ago, representatives of EPA and other federal agencies held a three-hour conference to discuss the charge questions to the review panel and changes that the other agencies thought EPA should make to the questions, sources say. Some of the representatives argued that EPA should ask the panel whether it had "fully responded to the NAS" recommendations, says one federal agency source.

Their calls are echoed by the chemical industry. The American Chemistry Council (ACC), an organization representing chemical companies, released a statement from its general counsel May 21: "While it's taken over 3 years, EPA has responded to important recommendations made in 2006 by the NAS expert scientific panel, whose independent guidance EPA had specifically requested. We believe that EPA's response is a 'mixed bag.' While EPA's review of the expert panel's recommendations is a step in the right direction, it's unclear why EPA would ultimately reject critical parts of the review it sought from the NAS."

NAS urged EPA to reconsider parts of its analysis, indicating that it thought the agency had over-estimated the cancer risk that TCDD presents. NAS urged EPA to consider non-linear dose-response modeling, which assumes that there is some safe threshold level of exposure to an environmental contaminant. Other agencies and ACC argue that EPA ignored NAS advice regarding its cancer risk estimate because it calculates the risk number with a linear model, after considering non-linear models.

EPA again classifies TCDD as carcinogenic to humans in this draft assessment, based on both human and experimental animal studies. The agency calculates a draft oral cancer slope factor, or estimate of potency by ingestion, of $1x10^{-6}$ per milligrams per kilogram of body weight per day (mg/kg-day), based on a cancer mortality analysis of an epidemiologic study of occupationally-exposed workers published in 2006. The number is similar to those EPA released in 2003.

Calculating Cancer Slope Factor

Both the White House Office of Management & Budget (OMB) and the Defense Department (DOD), supported by the National Aeronautics and Space Administration (NASA), questioned EPA's decision to calculate the cancer slope factor using linear modeling, suggesting that doing so did not follow NAS' recommendations -- and that the reviewers should consider that.

"[A]s NAS recommended that EPA consider nonlinear models, EPA may want to specifically ask a charge question about their choice of relying on the linear model rather than the nonlinear models," according to OMB's May 17 comments on EPA's

charge questions. “Reviewers could also be asked to comment on EPA’s conclusion that linear low dose extrapolation should be preferred.”

The Pentagon notes in undated comments that EPA calculated several risk-specific slope factors, and suggests that EPA ask its peer reviewers “to comment on EPA’s rationale for and presentation of these slope factors.” DOD also provides an e-mail from one of its toxicologists, again arguing that EPA should have used a non-linear model to calculate the cancer slope factor.

“I would like to know further their logic for the log-linear extrapolation from the various [points of departure (PODs)]. To do so assumes that even one molecule has a risk associated with it (that one molecule can cause cancer),” writes Army scientist Mark Johnson in a May 18 e-mail. “The NAS asked the EPA to provide a different curve beyond the POD, and the EPA argued that because they do not have enough info, they will use the conservative approach. However, that is not what the science suggests.”

ACC’s general counsel, David Fischer, adds, “We’re very troubled that EPA disregarded the NAS’ recommendation by opting for a ‘linear’ dose-response model for cancer . . . This approach is not supported by what scientists now know about dioxin. In fact, it runs counter to other respected health and environment authorities, as well as to the specific guidance of the NAS, which recommended that EPA use the scientifically justified ‘threshold’ model of risk assessment.”

EPA, however, responds that while it tried non-linear as well as linear approaches to estimating dioxin’s cancer risks, a linear approach was most appropriate.

“While, based on the 2005 Cancer Guidelines, EPA deemed linear extrapolation to be most appropriate for TCDD, EPA carefully considered the NAS recommendation to provide risk estimates using both linear and nonlinear methods. In this document, EPA has evaluated the information available for identifying a threshold and for estimating the shape of the dose-response curve below the POD, according to the reassessment document. “EPA identifies a number of limitations that prevent making strong conclusions based on the nonlinear dose-response modeling exercises.”

EPA also calculates an RfD, or safe non-cancer risk standard, of $7x10^{-10}$ mg/kg-day. The standard is based on two epidemiologic studies of men with decreased sperm concentration and infants with altered thyroid hormone after their exposure to high environmental amounts of TCDD following the industrial accident at a chemical plant in Seveso, Italy, in 1976. NAS urged EPA to calculate an RfD, noting that primary dioxin exposures occur through food. Because of fears that release of the risk assessment could lead to public concern about the safety of the American food supply, EPA and other agencies have been crafting a communications plan for the reassessment document’s release.

Questioning Necessity Of RfD

The Agriculture Department (USDA) suggests in its comments on EPA's charge questions that EPA ask the reviewers whether an RfD is necessary -- even though it was recommended by NAS. USDA has for several years tested samples of various meats for dioxin content, with the most recent review showing falling levels of dioxin in several meat classes.

"While the [NAS] recommended the derivation of [an RfD], can the [reviewers] please comment on whether the establishment of such a value is the best approach (i.e., truly necessary) for reduction of risk given that many efforts from many U.S. government agencies have focused on reducing sources of dioxins in the food and environment?" writes USDA in its May 18 comments.

ACC also expresses concern about the RfD that EPA has calculated, though it acknowledges that NAS recommended EPA calculate the non-cancer risk estimate. "While EPA appeared to heed NAS' recommendation to develop a dioxin [RfD] using human data, the agency did not use the best available science, and based the RfD on questionable research," according to Fischer's statement. "As a result, the agency exaggerates health effects expected from normal dietary exposure." -- *Maria Hegstad*

Environmentalists Urge FY11 Funding To Restore Congress' Science Office (*Inside EPA*)

A coalition of 90 environmental and activist groups is urging lawmakers to include funding to restore Congress' defunct Office of Technology Assessment (OTA) in the pending fiscal year 2011 legislative branch appropriations bill, though the costs of reviving the long-dormant office have previously drawn bipartisan concerns.

The coalition sent a May 7 "Dear Colleague" letter to members of Congress asking for an unspecified amount of funding to restore OTA, which conducted environmental and other reviews. Between 1972 and 1995, OTA provided reports on science and technology issues to Congress and oversight of agencies including EPA. The OTA was stripped of its funding after the GOP assumed control of Congress in 1994 and ceased operating in 1995.

"Revitalizing the OTA would enable members of Congress to more fully understand the advantages and implications of the science and technologies in which they are asked to invest," the letter reads. "The OTA was never abolished, just stripped of its funding. We urge you to restore its funding ensure Congress has adequate guidance on emerging science and technology issues."

The coalition includes Friends of the Earth, OMB Watch, the Center for Biological Diversity, Clean Air Task Force, Clean Water Action, Republicans for Environmental Protection, and 84 others.

Lawmakers are yet to introduce the FY11 legislative branch appropriations legislation, but President Obama's FY11 budget request to Congress does not include any funding request to restore OTA.

At a hearing earlier this year, Rep. Rush Holt (D-NJ), a former Princeton physicist, urged the legislative branch appropriations panel to provide funds to reinstate the office, arguing that the OTA is needed to deal with increasingly complicated policy questions. Francesca Grifo, senior scientist with the Union of Concerned Scientists, also said OTA could save taxpayer money by identifying ineffective programs.

But some sources have raised concerns about the costs of restoring OTA funding and whether a similar function is fulfilled by the Congressional Research Service or the Government Accountability Office, though OTA proponents say the technology office performed a different function.

A group of academics also recently proposed a different approach designed to improve technology assessment, but said it did not have to be part of a restored OTA.

DeGette withdraws fracking amendment (*Greenwire*)

(05/26/2010)
Paul Quinlan, E&E reporter
Colorado Democrat Diana DeGette withdrew a proposed amendment today from House water legislation that would have expanded regulation of a controversial oil and gas production technique some say has contributed to groundwater pollution.

DeGette's amendment to a water-infrastructure bill (**H.R. 5320**), which the Energy and Commerce Committee went on to pass with only one no-vote, would have required drillers under the Safe Drinking Water Act to disclose the chemicals used during hydraulic fracturing to state regulators or U.S. EPA.

DeGette, who has led House efforts to better regulate the practice, said she believed such reporting would be helpful to both an ongoing committee investigation and a two-year EPA investigation into the practice also under way. But she ultimately withdrew the measure, saying she had been contacted by industry representatives who suggested that compromise language was possible.

"We're going to work with the committee staff and the industry to have some compromise language," DeGette said.

Rep. Henry Waxman (D-Calif.), who chairs the committee and had negotiated extensively with committee Republicans over other controversial amendments to the water bill, acknowledged the need to investigate and cited the parallel EPA and committee investigations before asking DeGette to withdraw the amendment.

"This is an issue that merits further consideration," Waxman said. "Now is not the right time for this change."

Republicans have been staunchly opposed to efforts to further regulate hydraulic fracturing. And five gas-state committee Democrats yesterday signed on to a letter to Waxman and Energy and Environment Subcommittee Chairman Ed Markey (D-Mass.) voicing their support of keeping hydraulic fracturing regulation as is.

Even after DeGette announced she was pulling the amendment, an impassioned debate ensued that highlighted the controversy surrounding the call for regulation. Republicans argued that states currently have the right to require some disclosure of the ingredients used, authority which they called sufficient. They said expanding EPA's role could lead to further regulation that would harm an industry that could tap massive deposits of gas, an important domestic source of energy, they said.

"If you give EPA regulatory authority to require disclosure then implicitly you give them regulatory authority over the process itself, and that could be very detrimental to the oil and gas industry," said Rep. Joe Barton (R-Texas), ranking member of the committee.

Hydraulic fracturing is a decades-old production technique that blasts water, sand and chemicals into a wellbore to break apart compact rock and release trapped hydrocarbons. As the technology's use has swelled in attempts to tap the prolific Marcellus Shale in Appalachia and others, environmentalists and lawmakers have raised concerns about the technology's potential to contaminate groundwater.

Reporter Katie Howell contributed.

EPA, green groups settle farm pollution lawsuit (*Associated Press*)

Story also appeared: *New York Times*

By MICHAEL J. CRUMB (AP

DES MOINES, Iowa — The U.S. Environmental Protection Agency will gather information about factory farms to determine whether more should be regulated as part of a settlement with environmental groups concerned about water pollution.

The EPA reached the settlement Tuesday with the Natural Resources Defense Council, Sierra Club and Waterkeeper Alliance.

The groups filed a federal lawsuit in the 5th Circuit Court of Appeals in New Orleans in early 2009, claiming the EPA gave too much discretion to farm operators in determining which farms needed permits to discharge waste into waterways.

The settlement requires the EPA to gather information about factory farms that don't have discharge permits and determine whether they should be regulated.

Natural Resources Defense Council attorney Jon Devine said it could improve pollution control standards for factory farms.

"This settlement puts the EPA on the path to collecting more data about factory farms and it will in turn give us the tools we need to determine which ones are polluting and how best to regulate them," Devine said.

A telephone message left Wednesday for the EPA was not immediately returned.

Ed Hopkins, the director of the Sierra Club's Environmental Quality Program, touted the settlement as a step forward in protecting the nation's waterways.

"Gathering more information to document factory farms' pollution will lay the groundwork for better protection of our waters," he said.

Michael Formica, chief environmental counsel for the National Pork Producers Council, criticized the EPA for making the deal without talking to farmers.

"There was no outreach to the other side," he said. "It was a one-sided sweetheart deal."

Formica said the settlement conflicts with multiple court decisions and if implemented, would lead to a larger concentration of livestock as pork producers grow their herds to offset the costs of manure management systems the EPA could require.

"It will lead to a greater concentration and more factory farms," he said.

Formica also said that while the pork industry has taken steps over the past 15 years to control runoff, other sectors of the livestock industry, such as beef and poultry don't have the same measures in place.

A telephone message left Wednesday for the National Cattlemen's Beef Association was not immediately returned.

Rush Applauds Unanimous, Bipartisan Markup Vote in Support of Legislation Aimed at Preventing Another Crestwood Tragedy (*Water World)*

Rep. Bobby Rush, D-Ill. (1st CD), issued the following news release:

Today, an amendment offered by U. S. Rep. Bobby L. Rush (D-01) was unanimously adopted and added to H.R. 5320, the "Assistance, Quality, and Affordability Act (AQUA) of 2010" that was marked up by the House Energy and Commerce Committee. The amendment addresses some of the concerns that were unearthed in the Village of Crestwood scandal where contaminated drinking water was knowingly piped into citizens' water supply by village officials for more than 20 years, without EPA intervention.

The Rush amendment would give the Environmental Protection Agency (EPA) 12 months after the date of AQUA's enactment to issue a final rule requiring public water systems and state agencies to submit all compliance monitoring data to EPA electronically.

"With this complete set of data the EPA can make better decisions about proper public notification or if there's a need for additional follow-up activities, as appropriate. This comprehensive data report will also allow the EPA to identify trends that might lead to noncompliance with drinking water violations that might lead to increased risks to public safety," Rush said in a statement to the committee. Rush's amendment was the latest in a series of legislative initiatives the Congressman has enacted over the course of a year following a field hearing he held in the Village of Crestwood, in April 2009, shortly after news of this scandal made headlines.

Rush's office also worked with U. S. Rep. Ed Markey, Chairman of the Subcommittee on Energy and the Environment, to include tough new enforcement language into the base AQUA bill that would require the EPA to set up guidelines for notifying the public served by a water system when different types of violations occur. The EPA would be allowed to use the same categories of violations that have already been developed under subsection (c) of the Safe Drinking Water Act.

Additionally, the new enforcement language would require the EPA to determine which types of follow-up inspections are needed, and how many inspections the state will need to carry out for each category of violation that is identified. These new federal provisions were designed to address the issue of the Illinois EPA not being required to go out and inspect whether the contaminated Crestwood well was still being used for 20 years after safety violations were first brought to its attention in 1986.

Rush's amendment, along with the new inspection and enforcement standards that were incorporated into the manager's mark, will allow the EPA to update their systems to gather accurate and timely data collection that will allow them to act more effectively, especially when the public's health is at risk.

While the EPA already has the statutory authority to inform the public of potential health concerns due to water quality violations, the EPA was not receiving current data because of antiquated rules, system and data collection requirements.

"Mr. Chairman, it is imperative that we establish clear channels of responsibility and accountability for when public health is at risk due to violations of federal drinking water standards. Currently, the rules governing EPA data collection pre-date the advent of the Internet so current guidelines prevent the agency from receiving timely information even when there is a danger to public safety," Rush said.

"By adopting this amendment, in conjunction with the new enforcement requirements in the underlying bill, no longer will health violations go unreported or unchecked by the agencies that are the last line of defense in protecting the public's health."

H.R. 5320, the "Assistance, Quality, and Affordability Act of 2010," was reported favorably out of the Energy and Commerce Committee and will be forwarded to the floor of the House of Representatives where it will receive a final vote.

Contact: Stephanie Gadlin, District Office, 773/224-6500

Kerry staffers hear about stormwater mandate (*Milford Daily News*)

By Melanie Graham/Daily News staff
Milford Daily News
Posted May 27, 2010 @ 12:51 AM
MILFORD — After showing frustration with some federal politicians earlier this week, local officials finally met with staff members from the office of U.S. Sen. John Kerry yesterday to express concern over costly federal regulations on stormwater.

The meeting, which was held at Milford Town Hall, included local officials from Milford and Bellingham as well as staff members from the offices of Kerry, U.S. Rep. Richard Neal, D-2nd, and state Rep. Richard Moore, D-Uxbridge.

As in previous meetings, local officials voiced their concern with the federal mandate coming down from the Environmental Protection Agency.

The regulation, which aims to reduce phosphorous in the Charles River, is expected to cost the town of Milford between $35 million and $60 million as it implements systems that collect stormwater and filter it through the ground.

Businesses in Milford, officials say, will also spend between $30 million and $55 million.

"This is going to destroy our community," Milford Selectman Brian Murray said. "This is a federal problem."

The proposal calls for the regulations to apply only to the towns of Milford, Franklin and Bellingham, which sit at the headwaters of the Charles River. It has been said that the rules may be expanded to other towns at some later date.

Earlier in the week, Milford selectmen met with members from the Milford Area Chamber of Commerce and agreed that action must be taken from a federal level.

Murray and Selectman Chairman William Buckley urged the legislative staff members to relay the concerns to the federal politicians and push for a face-to-face meeting.

"This is going to affect your bosses," Murray said.

Buckley underlined several times in the meeting that local officials want to meet face-to-face with the federal politicians, whether in Milford, Boston or Washington.

"The time table (the EPA) has put in place (for the regulation) and the lack of willingness to listen is just mind-boggling," Buckley said. "The only leverage we can get is from federal officials."

Officials say the stormwater regulations could be approved by the end of the year, with "complete implementation" of the regulation over the next 10 years.

A public hearing for the regulations will be held June 22 at Tri-County Regional Vocational Technical High School in Franklin. The public comment period ends June 30.

In previous meetings, local officials have met with U.S. Rep. James McGovern, D-3rd, as well as staff members from Neal's office. The officials have not yet been able to successfully meet with representatives from the offices of U.S. Sen. Scott Brown.

State lawmakers, officials said, have been very supportive throughout the process and have advocated on behalf of the communities. Officials point out, though, that state lawmakers can only go so far with a federal regulation.

Roger Lau, the deputy state director for Kerry, said at yesterday's meeting that he sees the communities' concerns as "legitimate" and will relay the information back to the senator.

"The (timetable), to me, is a big issue," Lau said.

Many officials, including Milford Town Engineer Mike Santora, feel the regulation is being "rushed" and that further scientific testing should be done before communities are asked to foot the bill.

Lau said he will try to work for a face-to-face meeting between Kerry and local officials.

Meghan Leahy, Kerry's policy adviser, was also present yesterday and confirmed that she had reached out to Brown's office and the EPA to make them aware of the general concern.

Officials said they plan to meet with representatives from Brown's office sometime next week, however, they are still pushing for a meeting in person.

"We'll do everything we can to make sure your concerns are heard by the EPA," said William Powers, a staff member from Neal's office.

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