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Table of Contents
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ADMINISTRATOR JACKSON 3
Backed By EPA, Democrats Eye Legislative Vehicles For Superfund Taxes (*Inside EPA*) 3
White House clears rule on emissions from mines, landfills (*Greenwire*) 5
Municipal, Ag Groups to Intervene in Nutrient Runoff Lawsuit Against EPA (*Wisconsin Ag Connection*) 6
Cleanups of Spill and an Agency Test Salazar (*New York Times*) 7
EDITORIAL / OP-ED / COMMENTARY / LETTERS 9
A Tale of Two Disasters (*Wall Street Journal*) 9
Going Rogue, Part II: Environmental Protection Agency forsakes rationality (*Bluefield Daily Telegraph*) 11
Leaf blowers? Sure -- I love mine (*Contra Costa Times*) 13
AIR 15
Monitoring severely lacking in Mich. (*Greenwire*) 15
Cook: The EPA needs to stop messing with Texas (*Austin American-Statesman*) 15
The EPA should stir things up to bring fresh air to Texas (*Austin American-Statesman*) 17
EPA crackdown on Texas air quality process leaves Crossroads up in the air (*Victoria Advocate*) 18
Proposed EPA Emissions Rules Threaten to Send Biomass Heating Industry Up in Smoke (*Biomass Magazine*) 22
AWARDS 24
U.S. EPA Awards Black Hills Energy 2010 ENERGY STAR(R) Leadership in Housing Award in Iowa (*Charlotte Business Journal*) 24
BP SPILL 26
Draft EPA FY11-15 Strategic Plan Includes Oil Spill Prevention Review (*Inside EPA*) 26

BP oil 'unlikely' to reach Ireland (*Irish Times*) 28
Panel Is Unlikely to Lift Drilling Ban This Year (*New York Times*) 28
FUEL 31
Tests delay U.S. Ruling On Ethanol Blends (*Reuters*) 31
U.S. EPA delays E15 decision yet again (*Ethanol Producer Magazine*) 33
GENERAL 35
Booz Allen Hamilton planning for an IPO (*Washington Post*) 35
GRANT 37
Plainville company wins contract for Riverwalk work (*The Day*) 37
HAZARDOUS WASTE 37
EPA publishes proposed ash rule (*Greenwire)* 37
PESTICIDES 38
Roundup resistant weeds pose environmental threat (*Associated Press*) 38
Story also appeared: *Washington Post, USA Today* 38
Justices Back Monsanto on Biotech Seed Planting (*New York Times*) 41
Justices overturn ruling on seeds (*Los Angeles Times*) 43
SUPERFUND 46
EPA Backs Reinstating Superfund 'Polluter Pays' Tax (*Bloomberg*) 46
EPA asks Congress to revive Superfund tax (*UPI*) 47
Obama, EPA to push for restoration of Superfund tax on oil, chemical companies (*Washington Post*) 48
TOXICS 49
EPA delays rule on lead paint (*Los Angeles Times*) 50
EPA to Delay Enforcing Lead-Paint Regulation (*Wall Street Journal*) 50
Story also appeared: *NewsOK* 50
EPA extends deadline for lead paint training (*Associated Press*) 52
Story also appeared: *Chicago Tribune, Wichita Eagle, Palm Beach Post, Lexington Herald-Leader, Idaho Statesman, Cleveland Plain Dealer, NewsOK, Star Tribune, Fort Worth Star Telegram* 52
Local company receives EPA certification (*South Lake Times*) 53
Federal Officials Delay Enforcement Of New Lead Paint Rules (*Hartford Courant*) 54
Town reels from plant fire (*Evansville Courier & Press*) 55
Wee ones may breathe more toxins than adults (*Coloradoan*) 57
WATER 58
EPA Approves Water Contaminant Testing Methods (*EP Magazine*) 58
Farmers fight bay polluter image (*The Capital*) 59
In fracking debate, 'disclosure' is in the eye of the beholder (*Greenwire*) 60
Utilities Look To Appeals Board To Limit EPA Water Permit Takeovers (*Inside EPA*) 66
EPA Pushes States To Implement Strict Stormwater Permit Requirements(*Inside EPA*) 67
Lancaster Water Quality Report Available (*Lancaster Eagle Gazette*) 69

ADMINISTRATOR JACKSON
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Backed By EPA, Democrats Eye Legislative Vehicles For Superfund Taxes (*Inside EPA*)

Posted: June 21, 2010
Democrats are eying various legislative proposals on jobs, tax and energy policies as potential vehicles for reinstating the long-expired Superfund taxes on industry, with sources saying the effort won a boost from EPA's new push to reinstate the taxes in order to generate billions of dollars in new revenue and help cut the deficit.
EPA Administrator Lisa Jackson sent a June 21 letter to the House and Senate urging lawmakers to take up the Obama administration's proposed one-page language for reinstating the taxes. The letter came one day before a slated Senate Environment & Public Works Committee Superfund panel oversight hearing of EPA's Superfund program, with EPA waste chief Mathy Stanislaus and the Government Accountability Office (GAO) scheduled to testify.
At the hearing, Sen. Frank Lautenberg (D-NJ) is expected to make the case for his legislation that would reinstate the Superfund taxes through Jan. 1, 2017, which he says is necessary given the slow pace of Superfund cleanups -- a problem GAO has previously highlighted.

Rep. Earl Blumenauer (D-OR) has also introduced legislation to reinstate the taxes through Jan. 1, 2018 and a spokeswoman for the lawmaker says the Democrat worked closely with the administration in the run-up to Jackson issuing her letter. Blumenauer, a member of the House Ways & Means Committee that has jurisdiction over tax issues, is now trying to schedule a hearing on his legislation to reinstate the taxes, the spokeswoman says.

Blumenauer introduced his latest version of the bill last year, but at the time told *Inside EPA* that work towards advancing the legislation would likely have to wait until Congress resolved the then-pending debate on health care reform and other high profile legislative priorities. In addition, environmentalists who backed the legislation expected that Congress would not address the issue until after it also settled the debate on climate change legislation.

But the BP oil spill in the Gulf of Mexico has “certainly drawn attention” to broader issues of cleanup liability, the Blumenauer spokeswoman says, adding that Congress must pass legislation to ensure that funding is available for so-called orphan Superfund sites where there is no viable responsible party to pay for the site cleanup.

And because proponents of reinstating the Superfund taxes -- which expired Dec. 31, 1995 -- say it would bring in billions of dollars in new revenue, spur job creation at

cleanup sites and shift the tax burden from citizens to polluting industries, there is a wide range of potential legislative vehicles for which the Superfund tax language could be a germane attachment, sources say, including any bills dealing with taxes or job creation.

Pending legislation on energy and climate change, once seen as an obstacle to reinstating the Superfund taxes, could also provide a potential vehicle for the language, one source says, adding, “There are a lot of options.”

Jackson in her letter said the draft legislation would, if enacted, provide a “stable, dedicated” source of revenue for the Superfund trust fund to pay for the cleanup of contaminated sites. The bill would apply for taxable years beginning Jan. 1, 2011, through Dec. 31, 2020. If enacted this year the bill would bring in $1.2 billion in revenue in 2011, raising up to $2.2 billion in 2020 for a cumulative total of $18.9 billion between 2011 and 2020.

Blumenauer echoed the jobs and funding argument in a June 21 statement on Jackson's letter, saying, “This is a win for the environment, a win for local communities, and a win for the economy.”

But the American Chemistry Council in a statement issued the same day criticized the legislative proposal, saying, “It would be inappropriate and unfair to impose Superfund taxes on companies with no responsibility for site contamination. . . . The budget challenges facing Congress are not a valid justification for taking action that will cost U.S. jobs and damage our nation’s global competitiveness without positively affecting site remediation.”

The administration's language differs slightly from the Lautenberg and Blumenauer bills with an alternative end-date for the taxes. It is notably different from another bill, by Sen. Bill Nelson (D-FL), that would reinstate the taxes and adjust them for inflation, but would drop a broad-based corporate environmental tax on all corporations with an income above $2 million, regardless of whether they produce oil or hazardous chemical-based products. Under the Nelson bill, only the oil and chemical industries would pay the tax.

Accounting For Inflation

While Nelson's bill would adjust the Superfund tax rate to account for inflation, the Lautenberg, Blumenauer, and administration proposals would reinstate the taxes as they were in 1995 without accounting for inflation.

The Superfund cleanup account is currently funded from general revenue transfer, “burdening the taxpayer with the costs of cleaning up abandoned hazardous waste sites,” according to an EPA press release.

The administration's proposed legislation would reinstate excise taxes and corporate environmental taxes on crude oil, imported petroleum products, hazardous chemicals, and important substances that use hazardous chemicals as a feedstock. It would also reinstate a tax on corporate modified alternative minimum taxable income.

“Our taxes should be paying for teachers, police officers and infrastructure that is essential for sustainable growth -- not footing the bill for polluters,” according to Stanislaus' statement on the letter.

In the meantime, “EPA is taking action to better manage the Superfund program to increase cleanups and enhance transparency, accountability, and community input in agency decision-making,” Stanislaus said in an apparent reference to the agency's controversial integrated cleanup initiative. The plan aims to increase the effectiveness of its cleanup programs but has drawn criticism from state regulators and industry officials who say the initiative appears to emphasize redevelopment over site cleanup. -- *Douglas P. Guarino*

White House clears rule on emissions from mines, landfills (*Greenwire*)

(06/21/2010)
Gabriel Nelson, E&E reporter
The White House Office of Management and Budget has completed its review of a U.S. EPA regulation that would subject underground coal mines, landfills, industrial wastewater and magnesium production sites to the agency's greenhouse gas reporting requirements.
Those sectors were included in the agency's proposed reporting rule last year, but were sidelined for additional study when the agency issued a final rule in October. The four sectors could soon be added to the reporting program under a draft final rule submitted to the White House on April 30.

OMB gave the proposal the go-ahead on Thursday, records show, allowing EPA to finalize plans to add the additional facilities to the program. Though no proposal specific to the four sectors has been published in the *Federal Register*, EPA had concluded that their inclusion in the original proposed rule was enough to move forward with a stand-alone final rule.

Having received feedback last year, EPA is now "responding to the comments and going final with those subparts in this action," according to OMB records.

The agency considers the nationwide reporting system an important element of efforts to regulate greenhouse gas emissions. It has continued to widen the program's scope since issuing the final rule last year, proposing new monitoring requirements for carbon dioxide capture and injection sites, additional oil and gas facilities and fluorinated greenhouse gas sources.

"Gathering this information is the first step toward reducing greenhouse emissions and fostering innovative technologies for the clean energy future," EPA Administrator Lisa Jackson said in a March statement announcing that expansion of the program. "Once we know where we must act, American innovators and entrepreneurs can develop new

technologies to protect our atmosphere and fight climate change" (*Greenwire*, March 23).

Facilities emitting more than 25,000 tons of carbon dioxide-equivalent greenhouse gases would be required under the program to provide annual reports on the emissions thought to be having a hand in global warming. It would include about 10,000 facilities producing 85 percent of the nation's greenhouse gas emissions (*Greenwire*, Sept. 22, 2009).

All facilities included in last year's final rule were required to begin monitoring emissions on Jan. 1, with the first reports due in March 2011. Emissions sources added this year were told to begin monitoring on Jan. 1, 2011, with the first reports due in March 2012.

Municipal, Ag Groups to Intervene in Nutrient Runoff Lawsuit Against EPA (*Wisconsin Ag Connection*)

Calling the Friends of the Kaw (FOK) recent notice to sue the U.S. Environmental Protection Agency (EPA) over nutrient runoff groundless, five municipal, agricultural and agribusiness groups filed a letter with EPA today to intervene in the action. On June 2, FOK filed a notice of intent to sue claiming that EPA has failed to enforce federal water quality standards for nutrients like nitrogen and phosphorus in Kansas. The League of Kansas Municipalities, Kansas Corn Growers Association, Kansas Livestock Association, Kansas Agribusiness Retailers Association and Kansas Cooperative Council all signed the letter sent to EPA Administrator Lisa Jackson today that supported the current state program efforts that effectively regulate nutrients when and where problems occur.

The letter provides notice that the groups plan to intervene in the Friends of the Kaw action and be included in any settlement discussions and correspondence; objects to any EPA action that is based on the unsupported position that the Kansas program is in any way insufficient to address nutrient impacts in a sound and scientific manner; and to "place the agency on notice, pursuant to CWA Section 505(a)(2) that if EPA seeks to usurp the authority to set standards from the Kansas Department of Health and Environment we will file a citizen suit action to prevent abuse of authority."

The municipal, farm, ranch and agribusiness organizations stated in the letter that they are concerned that EPA will use the Friends of the Kaw action to impose extremely restrictive and scientifically unjustified nutrient regulations like the agency did in response to a similar lawsuit filed in Florida.

"EPA's action in that state (triggered by a similar NOI) has caused great controversy and is widely opposed by both state and local interests. ... In Florida, to simplify the process of imposing stringent nutrient limitations, EPA has proposed to adopt standards that (1) are admitted to lack any "cause and effect" relationship, (2) are directly at odds with recommendations on proper criteria derivation issued in April 2010 by EPA's

Science Advisory Board and (3) will impose restrictive requirements even where it is acknowledged that nutrients are not causing adverse impacts. The unnecessary cost impact in Florida will be in the billions of dollars. The citizens and agribusinesses (large and small) of Kansas cannot and will not allow similar arbitrary agency action to be imposed in Kansas. These groups cannot afford to have their resources (public and private) expended in such a cavalier manner," the letter states.

In Friday's letter to EPA, the groups called the Friends of KAW action groundless.

The Friends of the Kaw asserted that the agency informed states in 1998 that they should have numeric standards for nutrients in place by 2003 because narrative standards used in Kansas are insufficient. The municipal and agricultural groups say that is incorrect.

Cleanups of Spill and an Agency Test Salazar (*New York Times*)

WASHINGTON — When President Obama boasted in his televised address on Tuesday about his team of leaders fighting the oil spill in the Gulf of Mexico, he spoke glowingly of his energy secretary, his Coast Guard commander, even his Navy secretary.

Obama's Oil Spill Team (June 20, 2010)
Times Topic: Gulf of Mexico Oil Spill (2010)
Then he turned to Ken Salazar, his interior secretary. “When Ken Salazar became my secretary of the interior, one of his very first acts was to clean up the worst of the corruption at this agency,” Mr. Obama said, referring to Mr. Salazar's oversight of the Minerals Management Service, the agency responsible for regulating offshore drilling. “But it's now clear that the problem there ran much deeper, and the pace of reform was just too slow.”

Shortly before the speech, the White House announced that Mr. Salazar would be getting a powerful new deputy, Michael R. Bromwich, a veteran investigator and former prosecutor, to supervise the remaking of the minerals service. What was not mentioned was that Mr. Salazar had appointed two aides to do the same job just a month before, and that Mr. Bromwich's new assignment essentially reversed not only that move but also perhaps Mr. Salazar's entire overhaul plan for the minerals service.

Mr. Salazar's job is not in immediate jeopardy, and the president values the work he has done and will continue to do at the Interior Department, said Robert Gibbs, the White House press secretary.

But a senior administration official, who spoke of a delicate personnel matter only on the condition of anonymity said, “The president and the White House are watching very, very closely the pace of reform at Interior to see that progress is being made that truly cleans it up.”

Mr. Salazar is a core member of what some environmentalists called a “green dream team” of environmental advisers appointed by Mr. Obama shortly after his inauguration. Others include

Steven Chu, the energy secretary; Lisa P. Jackson, the Environmental Protection Agency administrator; and Carol M. Browner, a White House adviser.

But the Deepwater Horizon disaster and its fallout appear to have shifted the roles of the team members. Mr. Salazar, who started his job billing himself as the “new sheriff in town,” has become noticeably less visible since the minerals agency's regulatory laxity came under attack, while Dr. Chu and Ms. Browner have moved to the fore. Ms. Jackson has focused closely on issues of air and water quality relating to the spill and has remained largely out of the limelight.

In the first weeks after the oil rig exploded on April 20, Mr. Salazar was one of the administration's chief spokesmen on the disaster. On May 2, he sat for interviews with four Sunday morning TV talk shows. For weeks, he appeared routinely at hearings on Capitol Hill, often saying of BP that “we have our boot on their neck to make sure they get the job done.”

But in a May 27 news conference, Mr. Obama scolded Mr. Salazar for his cowboy rhetoric and acknowledged his impatience with the pace of change at the minerals service. In his address last week, Mr. Obama singled out Dr. Chu for praise, pointing out that he was a Nobel Prize winner leading a team of scientists and engineers working on the leak.

Meanwhile, criticism of the interior secretary by some environmental advocates has mounted since the spill. A group of scientists and conservation organizations wrote to Mr. Obama last week demanding Mr. Salazar's resignation, citing what they called his “flawed record on natural resources issues,” including oil drilling, endangered species and coal leasing decisions.

Even former Interior Secretary Bruce Babbitt, who described himself as a friend of Mr. Salazar, said in an interview that the administration's response to the disaster had been slow and that its reform proposals too tepid.

“The administration took way too long getting its act together and in mounting a coordinated, aggressive response to the spill,” Mr. Babbitt said.

In an interview Wednesday, Mr. Salazar defended his actions and said he continued to have Mr. Obama's support.

“I feel good about what I'm doing,” he said, “and I'm very confident and I'm very resolute in our ability to get the job done, and I feel very good about my relationship with President Obama.”

Mr. Salazar said that Mr. Bromwich was his choice for the job to overhaul the minerals service, although he said that Mr. Bromwich's name along with nine others had been given to him by the White House. “It was my decision and my offer,” Mr. Salazar said.

And while he acknowledged that his overhaul of the service had been too slow, he said quicker moves would not have changed the outcome of the spill. “BP is the culprit here,” he said.

Perhaps in response to the criticism, a posse of senators rode to Mr. Salazar's defense last week in a rescue operation coordinated by the administration.

Senator Richard J. Durbin, a powerful Illinois Democrat, noted in an interview that the president and Mr. Salazar had joined the Senate at the same time.

“There is a special bond there when you come in new to the Senate,” Mr. Durbin said. “You're making the same mistakes and asking the same naïve questions. They went through that together. They trust one another and like one another.”

The Senate majority leader, Harry Reid of Nevada, said Mr. Salazar was invaluable in lobbying senators during the health care debate and continued to have great support in the Senate.

“I don't think Ken Salazar has been taken to the woodshed or reprimanded,” Mr. Reid said. “Salazar is someone who is held in high esteem by the White House.”

Several officials painted Mr. Salazar as a tireless worker operating behind the scenes to stop the leaking oil well. “He's a workhorse,” said Kendra Barkoff, the Interior Department press secretary. “Just because he's not out there doing TV doesn't mean he's not working his tail off.”

Among the defenders was Mr. Salazar's older brother, Representative. John Salazar, Democrat of Colorado, who said the two of them had been visiting their ailing mother when the rig exploded.

“Ken was on his way back to D.C. the following morning to meet with BP and the other oil companies,” Mr. Salazar said. “That night I called him at 10 and he was still working with them trying to figure out a strategy to best fix this situation.”

He added, “He's actually enjoying the fight.”

EDITORIAL / OP-ED / COMMENTARY / LETTERS

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JUNE 22, 2010

A Tale of Two Disasters (*Wall Street Journal*)

Bush was blamed for local failures after Katrina. Obama got a free ride for weeks as federal failures mounted during the Gulf spill.

By PAUL H. RUBIN

In many respects, the Deepwater Horizon disaster and Katrina are mirror images of each other. The harm from Katrina was on state land—mainly Louisiana, but also Florida, Alabama and Mississippi. As a result, President George W. Bush and the federal government were limited in what they could do. For example, Homeland Security Secretary Michael Chertoff wanted to take command of disaster relief on the

day before landfall, but Louisiana Gov. Kathleen Blanco refused. Federal response was hindered because the law gave first authority to state and local authorities.
State and local efforts—particularly in New Orleans, and Louisiana more broadly—interfered with what actions the federal government could actually take. New Orleans Mayor Ray Nagin was late in ordering an evacuation and did not allow the use of school buses for evacuation, which could have saved hundreds of lives. President Bush had no power to change that decision.

The Deepwater Horizon oil spill is on federal offshore territory. The federal government has primary responsibility for handling the situation, while state and local governments remain limited in what they can do. For example, the Environmental Protection Agency has repeatedly changed its mind regarding the chemical dispersants that Louisiana is allowed to use. In the Florida Panhandle, Okaloosa County officials voted to disregard any restrictions from higher branches of government and allow its own emergency management team to do what it views as best, such as creating an underwater "air curtain" of bubbles to push oil to the surface, and using barges to block the oil once it rises. They believe that the federal government is undermining their efforts.

Associated Press

Rescue personnel help flood victims from a boat in the flooded city of New Orleans after Hurricane Katrina.

As opposed to Katrina, state and local attempts to address the oil spill have been hindered by an ineffectual and chaotic federal response.

The Coast Guard has played an important role in both disasters. During Katrina, it rescued over 33,000 stranded people and received commendations from the president and Congress. In the current disaster, the Coast Guard has received widespread criticism for forbidding 16 barges from skimming oil because they were not inspected for life preservers. Louisiana Gov. Bobby Jindal tried to get the barges working, but was for a long time unable to convince the Coast Guard to permit them to deploy.

Two days after Katrina's landfall, Mr. Bush suspended the Jones Act (which restricts the ability of non-American ships to work in U.S. waters) to allow assistance for Katrina victims. During Katrina, over 70 foreign countries pledged emergency assistance. In the current situation, President Barack Obama has not suspended the Jones Act. Many countries such as the Netherlands, which would like to help and have expertise in cleaning oil spills, can offer only limited relief. This is significantly delaying the cleanup.

The Jones Act, which requires American crews, is a favorite of organized labor, a major supporter of Mr. Obama.

Mr. Bush was a Republican, and elected Democrats controlled Louisiana and New Orleans, the main victims of Katrina. Many claimed Mr. Bush neglected New Orleans for this reason. Mr. Obama is a Democrat, and the states affected by Deepwater Horizon—Louisiana, Alabama, Mississippi, and Florida—all have Republican governors. I have

not seen anyone, even on the right, claim that the ineffectual response of the Obama administration is due to partisan politics.

The final difference is in the press handling of the two issues.

Mr. Bush responded quickly to Katrina but was handicapped by regulations giving power to the states. Nonetheless, the federal response was well coordinated and helpful overall. But Mr. Bush was rapidly and widely blamed for the result of Katrina and for failures that actually occurred at other levels of government.

Now Mr. Obama has much more power than did Mr. Bush, but the federal response is ineffective and often stands in the way of those in the best position to know what to do. It is only in the last week or two that the mainstream press has voiced any criticism of Mr. Obama.

This is because the media's default position for Mr. Bush was "Bush is wrong," and it sought stories aimed at justifying this belief. For Mr. Obama the media's default is "Obama is right," and it takes a powerful set of facts to move it away from this assumption. As oil continues to gush from the unplugged well, this set of facts has unfortunately come to the fore.

Mr. Rubin is a professor of economics at Emory University, and held several senior government positions in the 1980s. He has a summer residence on the Florida Panhandle, where he is fearfully awaiting the arrival of the

June 22, 2010

Going Rogue, Part II: Environmental Protection Agency forsakes rationality (*Bluefield Daily Telegraph*)

By JAMES H. "SMOKEY" SHOTT Bluefield Daily Telegraph
“The U.S. Environmental Protection Agency took a rare step against a planned ‘mountaintop’ coal mine in West Virginia,” The Washington Post reported in March, “proposing to block the mine, despite the fact that it has a federal permit.” The story outlined the EPA’s authority to take such action, noting that “it has used that power only 12 times since 1972. It has never used the power in a case such as this, where the mine has a permit.”

Those concerned about water quality might think it is good that the government is looking out for the quality of streams affected by coal mining. However, for the EPA to protect streams from contamination it must compare the level of contaminants against realistic thresholds. That is not what the EPA does.

The agency's recent guidance on water quality requirements relies completely on measuring conductivity — which is the ability of water to carry an electric current — to determine whether water is contaminated.

Stream biologist Ben Faulkner explains in a video produced by FACES of Coal that pure water does not conduct electricity; conductance requires solid material dissolved in water to do that. He also said that low conductivity is not a guarantee that water is safe.

The EPA has set 300-500 microSiemens per centimeter as the threshold for water purity; water with greater than 500 is contaminated, according to the EPA. But Faulkner notes that Evian bottled water has 558 microSiemens, Perrier has 712, apple juice has 1,919, and Gatorade has 2,580. By EPA standards, all of these products are harmful.

Iron, zinc, selenium and copper are common components in streams affected by mining, Faulkner said, and in combination over 500 microSiemens render a stream contaminated under the EPA standard. But he points out that these substances are vitamins, not toxic chemicals. Their presence in water is not automatically a problem. It's the concentration of substances that is important, and when these metals or other contaminants are present in streams at elevated levels, mining processes are modified to control them. Even so, critics say the EPA threshold is too low; FACES of coal asserts that it is not achievable; and Faulkner says that conductivity is "a poor way to evaluate whether the stream is healthy or not."

Yet conductivity at that level is how the EPA determines stream contamination. Is water quality the objective of the EPA, or is this a way to accomplish a political goal of the Obama administration?

The minority staff of the U.S. Senate Environment and Public Works Committee issued a report last month that answers that question: "Our investigation found that the Obama Administration is using the Clean Water Act Section 404 permitting process to dismantle the coal industry in the Appalachian region."

The EPA also has the power — and according to the US Supreme Court, the duty — to regulate "greenhouse gases" under the Clean Air Act, and its December endangerment finding formalized its conclusion that these gases threaten the environment.

This finding sets the stage for the agency to act to reduce the emission of the six gases that are allegedly responsible for global warming/climate change, "allegedly" because manipulation of scientific data and outright fraud in the climate science arena have destroyed the credibility of evidence of manmade global warming/climate change. Furthermore, a sizable body of climate scientists argues that human activities do not cause changes to Earth's climate.

Despite this raging controversy over an unproved and vigorously debated theory, the EPA stampedes merrily ahead to restrict greenhouse gas emissions, with particular emphasis on carbon dioxide.

But industry sources say the Clean Air Act was designed to regulate localized air pollution, and is a clumsy tool for broader application. The U.S. Chamber of Commerce, among others, thinks the endangerment declaration could lead to litigation that will harm the economy.

Carbon dioxide, like the vitamins dissolved in streams, is vital to the ecosphere; CO2 exhaled by humans and other animals is essential for plant life; the oxygen plants emit is essential for animal life, and a significant faction of scientists believe more CO2 is good, not bad.

The Center for the Study of Carbon Dioxide and Global Change says on its website, CO2 Science, “Clearly, the panic-evoking extinction-predicting paradigms of the past are rapidly giving way to the realization they bear little resemblance to reality. Earth’s plant and animal species are not slip-sliding away” to extinction. And the Center’s Dr. Craig Idso concludes that “Clearly, there is no way that these real-world observations can be construed to even hint at the possibility that a significant increase in atmospheric carbon dioxide will necessarily lead to any global warming.”

A resolution in the U.S. Senate to stop unelected government officials at the EPA from micromanaging the economy was defeated 53-47 last week with just six Democrats joining Republicans in trying to protect us from runaway bureaucratic malfeasance, precisely what this column warned of in December in the first “Going rogue.”

The EPA has become nothing more than a political tool of leftist ideology that is taking aim at American industries, and may well be a key element in unraveling the U.S. economy.

James H. “Smokey” Shott, a resident of Bluefield, Va., is a Daily Telegraph columnist.

Leaf blowers? Sure -- I love mine (*Contra Costa Times*)

I'm joining those who support leaf and dirt blowers. I've lived in Orinda over 15 years and marvel at how popular they've become. So many neighbors use them, I feel left out — almost defenseless, you might say — so I bought my own. I love it so much, they'll have to pry it from my cold, dead hands!

To my fellow Orinda "blowers" — your arguments make such perfect sense! One can only stand back in awe of such brilliance, such erudition, such trenchant analyses underpinning your forceful defenses of the leaf blower.

I once worried about the way that toxic particles, settled on the ground, were blasted back into our neighborhood's atmosphere. I read that diesel exhaust, pesticides, animal

fecal matter, brake lining dust, etc. can stay airborne for up to two days. I considered the EPA's report on particulate matter causing cardiac and respiratory illnesses and deaths; I respected the Bay Area Air Quality Management District's admonition that "leaf blowers should not be used in residential areas."

However, Orinda's letter-writing blower advocates set me straight. One writer called blower-generated particulate/exhaust pollution a "Trojan horse." Others said "respiratory symptoms are nonsense" and "why don't we ban cars, too." In the face of such irrefutable counterarguments, I'm irresistibly compelled to disregard the settled science.

I also worried about the tranquility-shattering noise,

disturbing and distracting literally scores of properties from just one blower. Noise creates stress, high blood pressure and an inability to focus, relax or concentrate. What about those at home trying to work, to unwind, to nap, to recover from illness, to enjoy their retired years, to raise children? I learned that more than 100 cities in California restrict or ban the leaf blower, specifically because of how it disrupts.

However, thanks to the pro-blower letter-writers and their manifold, cogent counterpoints, my concerns were assuaged. For example:

"Give it a rest! We all make noise "... fascists are behind a ban on leaf blowers "... Mind your own business "... Use earplugs "... We're not home during the day "... Go ask your neighbors to stop "... I can't hear any where I live "... What about barking dogs "... Why should we have to change just to please you "... Deal with it "..."

Who could ever whine about Orinda's noise pollution after hearing such pithy, enlightened rejoinders? Certainly not I.

Finally, I thought I had a right to enjoy my property, free from unnecessary, excessive noise. I expected that before some new, polluting activity was introduced into our community, it would first have to be city-approved.

However, my "misconceptions" have been forcefully realigned by voices of enlightenment:

"We're saving so much time and money "... Blowers and wood chippers are necessary "... our budget for yardwork is limited "... rakes and brooms are a great hardship "... we have a 7,000-square-foot deck/driveway "... it will cost us double and triple to give up the blower "... we're too old/busy/sick/to revert to rakes and brooms "... blowers represent progress "... I don't need you dictating how I should do my gardening "... it's your problem, not mine."

Now I get it: if leaf blower noise drives you crazy, just remember your neighbors are saving themselves time and money, and remind yourself to "deal with it!"

After all, it's only a problem six days a week, right? And just look at all these lovely, leaf-free yards!

Peter G. Kendall is an Orinda resident.

AIR
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Monitoring severely lacking in Mich. (*Greenwire*)

(06/21/2010)
Severe budget cuts have hindered Michigan's air quality monitoring program, putting residents at risk, according to environmental groups. The air quality division for Wayne County, which includes Detroit, was cut from 50 to 10 staff members, making it impossible for the division to adequately monitor the region's industrial plants.
The Sierra Club and other environmental groups filed a complaint with U.S. EPA, asking the agency to investigate. "The state is failing to implement significant portions of the Clean Air Act," they wrote.

EPA could take over air pollution regulation, monitoring and enforcement if it finds Michigan is not meeting its responsibilities under the Clean Air Act.

When the state's air quality chief, Vince Hellwig, was asked if he agreed that residents' health was at risk, he said, "No comment" (Tina Lam, *Detroit Free Press*, June 21). **-- LP**

Cook: The EPA needs to stop messing with Texas (*Austin American-Statesman*)

State Rep. Byron Cook, SPECIAL CONTRIBUTOR
Texas is under attack by the federal government and countless jobs and quality of life are at risk. The Environmental Protection Agency is seeking pervasive control over the state's energy and petrochemical industry, which could propel the state into as grave of an economic condition as the rest of the country.

Despite months of communication about Texas' air quality permitting process, between the EPA and the Texas Commission on Environmental Quality, the EPA abruptly asserted oppressive federal control over an individual Texas facility. The TCEQ is the environmental agency for Texas, operating at the direction of the Legislature and public participation.

In late May, the EPA notified a refinery in Corpus Christi that it was federalizing the air quality compliance process, known as a "Title V Operating Permit" for the facility by

exerting federal power to supersede the established authority legally assigned to the Texas agency. This Title V permit rolls up all federal and state air permit requirements, which include emission levels, reporting and monitoring, into one document for purposes of ensuring compliance. The reason for this unprecedented action is directly tied to the EPA's disagreement with TCEQ over a state air permitting process known as a "flexible air permit."

All of this may sound like a just another bureaucratic fight, but this is how it affects you:

Higher costs to consumers for energy, as well as other products and services.

• Loss of competiveness in these industries, resulting in fewer opportunities for contractors and the service industries that support them.

The worst is yet to come as the regional administrator of the EPA, Al Armendariz, has stated that this facility was the first of many Texas facilities it planned to federalize. Subsequently, the EPA announced the federalization of two more Texas plants. This far-reaching federal takeover could impact the price of goods and services, potentially eroding the daily lives of hard-working Texans in immeasurable ways.

The state's flexible permitting program, which was designed by the TCEQ to address older and less controlled units "grandfathered" by Congress in 1977 from meeting newer and tighter controls, was submitted in 1994 to the EPA for its approval. The EPA is required by federal law to issue a response within 18 months of the submission of a proposed program, however, Texas has just received direction from the EPA years after the fact. In those years, the administrations of Bill Clinton and George W. Bush have come and gone. Plenty of time, one would suppose, for the EPA to review and comment on each permit individually. Outside of improved air quality, what has changed? Why now?

It should be noted that during these 14 years the TCEQ and the Texas Legislature began a process to completely eliminate grandfathered facilities operating in Texas. Today, there are no remaining grandfathered facilities in Texas.

For the EPA to claim that derailing the state's flexible permit program will reduce emissions and improve air quality is incorrect. In fact, the opposite is true. A flexible permit creates an emission cap, which can never be exceeded.

The flexibility afforded by the program has enticed grandfathered facilities to voluntarily comply with more stringent emissions standards, from which they were exempt. That flexibility allows companies to compete globally.

Texas' permitting process is working and has effectively improved the state's air quality. Despite the Texas population increasing by more than 1,000 residents per day, air emissions and pollution concentrations are at their lowest in the past 20 years. In fact, Texas has improved its air quality more aggressively than the rest of the United States.

Between 2000 and 2008, Texas reduced nitrogen oxide emissions by 53 percent, compared to national reductions of 27 percent. In that same time period, Texas reduced ozone levels by 22 percent with the rest of the nation only reducing levels by 8 percent.

Texans must be doing something right, so why is the federal government intervening?

Cook, R-Corsicana, is chairman of the House Committee on Environmental Regulation.

The EPA should stir things up to bring fresh air to Texas (*Austin American-Statesman*)

Judge Roy Bean, the "Law West of the Pecos," a despot who hanged people at will, was defeated in an 1896 election. Considering the doubling of asthma rates in Texas and the estimated several hundred deaths annually from air pollution, Gov. Rick Perry's railing against clean air reminds me of Bean's lawlessness.

The federal Clean Air Act was law in 1971 and is still the law. Perry and the Texas Commission on Environmental Quality need to stop fighting the law and start protecting public health.

Perry is attacking two U.S. Environmental Protection Agency programs: 1) new, more protective, health science-based air quality standards; and 2) the unraveling of TCEQ's "flexible permitting" program, which has allowed oil refineries and coal plants to violate the Clean Air Act for years.

Three big questions surround Perry's attacks: Is Texas' air quality safe and healthy, or not? Is the TCEQ enforcing the Clean Air Act in Texas? Can we afford to live and do business in Texas under the Clean Air Act?

Air quality in Texas is neither safe nor healthy. Nearly 18 million Texans and nearly 5 million children live in high smog areas. The air in Dallas-Fort Worth, Beaumont-Port Arthur, and Houston-Galveston contains ozone levels above current safe limits. When new EPA ozone rules are finalized, Austin, San Antonio and other areas also will be non-compliant.

Evidence shows ozone smog is more dangerous for humans to breathe than we previously knew. We need a higher standard. Ozone inflames airways, aggravates asthma and other respiratory illnesses, reduces lung function and leads to heart disease. Children are at increased risk because their lungs are still developing and they are more likely to be active outdoors. Ozone days in 2010 are up from 2009: 123 versus 95 through May 31. Texas air is not safe or healthy, especially for our most vulnerable populations. TCEQ has not enforced the Clean Air Act in Texas. It has failed in permitting, transparency and public participation, monitoring, and enforcement.

TCEQ takes money for permits and allows pollution. Of 90,000 permits requested by major industrial facilities since 1971, TCEQ has denied only 12. Under the illegal flexible permit program, TCEQ requires no public notice by the polluters. There have been no public notices about these "flexible permits" that are in violation of the Clean Air Act. Commissioners consistently overrule administrative law judges and permit facilities that pollute. Perry's rush since 2005 to build more coal plants than any other state is the worst example of TCEQ permitting run amok. If the 12 new coal plants in various stages of development are allowed to go online in Texas — six have already received permits from TCEQ — Texans will face thousands more tons of ozone-forming pollutants.

TCEQ allows major industrial facilities, once permitted, to monitor themselves by accepting industry-collected data. TCEQ rarely fines industrial polluters and when it does, it does not fine enough; firms still profit while polluting.

Perry and the TCEQ argue industry would lose money and our economy would lose jobs if the EPA makes TCEQ deny permits or requires cleaner technologies. The bottom line is that Texans are already paying the price of excessive fossil fuel use.

Beside the rising costs at the pump and on our electricity bills, Texans cannot afford the medical costs from the health impact of air pollution — asthma medications, treatments, doctors, emergency rooms, hospital admissions and a ruined environment. Requiring new technologies will create new jobs in pollution control technology. A recent study found that Texas has already created more green jobs, including pollution control, renewable energy and energy efficiency between 1997 and 2007, than any other state except California.

TCEQ is undergoing a review by the Texas Sunset Advisory Commission, with recommendations to the next Texas Legislature. This is the time for citizens and the EPA to help Texas clean our air by cleaning up the TCEQ.

It's time to obey the law and wisdom of the Clean Air Act, even out here in the wild, wild west.

Ascot is a former member of the City of Austin's Environmental Board.

EPA crackdown on Texas air quality process leaves Crossroads up in the air (*Victoria Advocate*)

· By JJ VELASQUEZ •
Originally published June 21, 2010 at 6:45 p.m., updated June 21, 2010 at 6:45 pm
The Flint Hills Resources oil refinery at the center of this issue is the 11th largest oil refinery in the U.S. and produces 288,468 barrels of oil a day, according to 2009 data from the U.S. ...

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IF YOU GO
The Texas Commission on Environmental Quality will hold public meetings on the EPA's reduction of the ozone standard. Several other areas could fall out of the attainment when the new standard is announced later this year.

The state agency will hold a meeting in Victoria, whose ozone levels fall within the proposed range for the new standard.

WHERE: City of Victoria, 700 N. Main St., Room 204

WHEN: 1 p.m. Tuesday

The meeting is open to the public.

The Environmental Protection Agency stopped last month a Texas agency from giving an operating permit to a Corpus Christi oil refinery.

It was the first action the agency took to get Texas plants and oil refineries to meet federal air quality requirements, said Dave Bary, a spokesman for the federal agency.

So just how will this affect Texas and the Crossroads? The answer is still up in the air, experts say.

Environmentalists and federal officials say they hope that by cracking down on some of the largest sources of harmful emissions, air quality in Texas will improve.

Business leaders, meanwhile, worry stricter regulations could increase operating costs and thus reduce jobs.

"It's premature to even guess where this may lead," Bary said. "What we're hoping ... is to sit down with the state, continue our discussions and come to an agreement that will allow the state to continue to issue permits, but fully in compliance with the requirements of the Clean Air Act."

The question is whether the state's flexible permits, which set a plant-wide cap rather than source-specific limits, meets minimum requirements of the Clean Air Act. The Environmental Protection Agency says it does not.

It's a lax permitting system put in place by the Texas Commission on Environmental Quality that air quality expert and environmentalist Neil Carman says contributes to the public health hazard that is ozone pollution.

OZONE STANDARD TIGHTENED

In 2006, the Environmental Protection Agency enlisted the help of a panel of ozone experts to review the agency's research.

In a 2007 letter, the panel recommended the agency reduce the ozone standard, which was 80 parts per billion then, to somewhere in the range of 60 to 70 parts per billion. The next year, a new standard was announced: 75 parts per billion.

The panel wrote the outgoing environmental agency administrator of the Bush administration again in 2008:

"It is the committee's consensus scientific opinion that your decision to set the primary ozone standard above this range fails to satisfy the explicit stipulations of the Clean Air Act that you ensure an adequate margin of safety for all individuals, including sensitive populations."

In January, the EPA, under new administrator Lisa Jackson, announced the new federal standard would be reduced to the recommended range. The official standard will be announced Aug. 31.

Carman said the panel's recommendations have set off more action on ozone. Before 2008's reduction, the ozone standard had not been lowered since 1997.

But if Texas's permitting system remained in place, it would allow plants to circumvent these federal requirements, Carman, who works with the Texas chapter of the Sierra Club, said.

"Major areas of the TCEQ's air permitting program have some flaws in them," Carman said.

Carman said the environmental group sought changes to the state's air permitting program since 1995.

Air pollution became an even greater cause for concern when new scientific research emerged pointing to more severe health effects from ozone, Carman said.

"There's new scientific medical research showing that ozone damages sensitive lungs, like asthmatics and children, at 75 parts per billion," Carman said.

THE IMPACT

Texas Gov. Rick Perry chided the federal agency for killing Texas energy jobs and a state air permitting program that he said has helped clean Texas air for 16 years.

Last Tuesday, the federal agency asked more facilities to bypass the state permitting program and apply for a federal permit.

The state responded by filing a lawsuit against the agency.

Dale Fowler, president of the Victoria Economic Development Corp., said more stringent standards could force refineries and plants to buy more expensive equipment used to abate and monitor emissions.

Further, facilities could face the prospect of halting operations if they fall out of regulatory standards and have to resubmit federal permits. The effect on area jobs could be significant.

The government also limits industrial expansion in areas that fall out of attainment for the ozone standard. Local businesses, such as gas stations, could also face government sanctions. Victoria is one of several areas at risk of becoming a non-attainment area when a reduced ozone standard is announced in August.

"We currently use it as an advantage for this area that we are in an attainment area," Fowler said. "However, even in non-attainment areas industry can grow."

The possible federalization of the permitting program could also create problems for the plants and refineries applying for new permits.

"We'd have to start from scratch again," Steve Rice, a Formosa spokesman, said. "And that's a lot of time and effort to prepare and re-submit brand new applications for something that we have already done."

He added, "You just don't fill these out in an afternoon. These are weeks and weeks of people's efforts."

Rice hopes the issue between the state and federal governments is resolved soon, so the plant can begin re-submitting its applications, he said.

Mike Fields, a spokesman for Coleto Creek Power, said coal plants are less exposed to federal changes than are chemical plants and oil refineries, which are typically larger and have more sources of emissions.

Flexible permits allow plants to cover all their emissions sources under one plant-wide cap, Fields said.

So where flexible permits set a cap for the entire facility, standard air permits, such as the one the Coleto Creek power plant holds, set source-specific emissions caps, measuring emissions at boilers, fire pumps and other units in the plant.

While adhering to conditions set in flexible permits is "easier," Fields said, the plant takes the precaution of applying for the standard permits.

"We don't want to have any issues come up when you go through the permitting process," he said.

But for smaller plants like Coleto Creek Power, being under a standard permit is a little bit more practical than it is for oil refineries and chemical plants.

"It certainly can be done," he said regarding what it would take for larger plants to meet federal air permit requirements. "It would take a lot of work."

CLEANER AIR?

While many hope the outcome of stricter regulation of Texas plants is cleaner air, the effect on air quality is still unclear, said Jerry James, Victoria's environmental services director.

For 15 years, Victoria has been near non-attainment for ozone levels.

Victoria is at risk of falling out of acceptable levels mostly because of pollution imported from other areas, a University of Texas researcher said at an air quality meeting in April.

Calls made to the University of Texas office of Cyril Durrenberger, who is contracted by the city to measure ozone emissions, were not returned.

According to the researchers' modeling studies, 91 percent of Victoria's ozone emanates from outside Victoria County.

Most of Victoria's ozone problems come from the northeast, ranging from the industrial areas of Houston and Galveston, to Louisiana and the Ohio River Valley.

Area chemical plants are not significant contributors to the ozone problem, according to the studies.

Last year, ozone levels in Victoria were at 66 parts per billion.

Because transport is a big part of Victoria's ozone problem, it's unknown whether hunkering down on Texas plants will clean the Crossroads' air.

"Until it works its way a little bit further along, I'm not sure whether it will have a positive or negative impact on our local air quality," Jerry James said. "But we'll certainly be watching that."

From the July 2010 Issue

Proposed EPA Emissions Rules Threaten to Send Biomass Heating Industry Up in Smoke (*Biomass Magazine*)

Last month in this column, Biomass Thermal Energy Council Chairman Charlie Niebling outlined the recent progress to raise the profile of biomass heating at the national level. However, on April 29, the industry was confronted with a major challenge. Because of action brought by the Sierra Club and other petitioners, the U.S. EPA proposed new emissions regulations. The proposed regulations would impact existing and new commercial, industrial and institutional boilers burning coal, oil and biomass. BTEC sympathizes with the need to decrease emissions of hazardous air pollutants (HAP) and believes the best way to achieve this is through the application of practical performance testing and maintenance regimes that achieve significant emissions reductions without burdening boiler owners, especially small-scale ones, with onerous compliance costs.

The proposed rule differentiates between small boilers under 10 million Btu (MMBtu) and large boilers over 10 MMBtu. Existing large biomass boilers will not be tested for particulate matter (PM) emissions, but will be required to demonstrate carbon monoxide (CO) emissions of fewer than 160 parts per million (PPM) at 7 percent oxygen (O2). These facilities must also undergo a certified energy conservation assessment. Rightly, EPA believes that by reducing the heating load with conservation measures emissions will also be reduced. Existing small biomass boilers will not require testing due to technological limitations and relatively high costs for testing. However, a record of certified tune up must be submitted to the EPA every two years. This is a tough regimen, but it is doubtful that owners of these older, dirtier boilers will consider upgrading to more modern technology given the proposed requirements for new boilers.

Under the proposed rule, new biomass boilers must meet strict emissions limits for CO and PM, which are 100 PPM CO at 7 percent O2 and PM limits of 0.03 pounds per MMBtu. Initial compliance must be demonstrated by a stack test and retested annually. After demonstrating initial compliance, a monthly fuel record must also be maintained. If the fuel type is changed a new compliance test must be performed. For biomass boilers, initial compliance cannot be obtained without the performance of a facility energy assessment. These emissions levels are, at a minimum, two times more stringent than what is required to meet strict German and Austrian Eco-Label requirements. New oil boilers will also be challenged to meet similar strict criteria at 1 PPM CO at 7 percent O2 and PM limits of 0.03 pounds per MMBtu.

Advanced boiler designs control fuel combustion time, temperature and turbulence to achieve complete burn-out of the fuel which results in low HAP, such as tars and creosotes. The remaining ash PM from highly efficient wood combustion is mostly inorganic salts (calcium, magnesium) not heavy metals (mercury, cadmium) as are found in coal or heavy oil. As a result, wood particulate emissions are less toxic than other fossil fuel sources; however in the proposed rule, only PM weight is considered, not composition. Consequently, the surrogate tests—CO for HAP and PM for heavy metals—may not accurately reflect the differences between biomass boiler and fossil fuel boiler emissions.

Installing exhaust testing ports and instrumentation along with advanced emissions control technology such as filter bag houses or electrostatic precipitators (ESPs) and other equipment can add immensely to installations costs—approximately $100,000 for even the smallest sized boilers. Testing and control technology can easily cost more than the boiler itself. Annual testing alone is reported to cost $5,000 to $20,000 per boiler. For boilers under 3 MMBtu the required additional emissions controls and testing make new biomass boilers unaffordable.

Schools, churches and small businesses will be disproportionately affected by these regulations, which could turn a cost-effective, locally available, job-producing heat source into an economic nonstarter. Many of these applications may utilize more than one boiler, which could easily lead to a doubling, tripling or quadrupling of costs. There is a human component too. In small-scale installations finding trained personnel to manage the filter bag houses, ESPs and test reporting will be difficult. EPA’s favored

fuel, natural gas, is not available in many rural communities, where biomass has played a cost-effective heating role. In the Northeast, a region heavily dependent on fuel oil for heating, biomass has materially reduced that dependence, but now biomass heating could be bound and shackled by the proposed rule.

As one reads this article the initial 45-day comment period is complete. The EPA administrator is under court order to complete the final rule by Dec. 16. It will then be three years before compliance is mandatory. Seemingly, this is reasonable time to achieve compliance until one considers that the rule is retroactive to the day it is published in the federal register, scheduled for June 4. Potential biomass boiler customers are now putting purchasing decisions on hold while the EPA reaches a final decision. This is a major blow to an industry that is already challenged by a struggling economy. Coordinating our industry's response, BTEC aims to ensure that the final air quality regulation integrates clean air goals with encouragement for cost-effective, renewable biomass heat for customers throughout the U.S.

Scott Nichols is BTEC director and president of BioHeatUSA. To learn more about the BTEC, go to www.biomassthermal.org.

AWARDS

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U.S. EPA Awards Black Hills Energy 2010 ENERGY STAR(R) Leadership in Housing Award in Iowa (*Charlotte Business Journal*)

WEST DES MOINES, Iowa, June 21 /PRNewswire-FirstCall/ -- Black Hills Energy has received a 2010 ENERGY STAR® Leadership in Housing Award from the U.S. Environmental Protection Agency. This award recognizes the contribution Black Hills Energy has made to energy-efficient construction by verifying and incenting the construction of 270 ENERGY STAR qualified homes last year throughout its Iowa service territory. According to ENERGY STAR, these homes will save Black Hills Energy customers approximately $84,000 on utility bills each year.

"Black Hills Energy is honored to receive the ENERGY STAR award from the U.S. Environmental Protection Agency for the second consecutive year," said Linn Evans, president and chief operating officer - utilities. "We are committed to helping customers be more energy efficient without sacrificing comfort in their homes and offices. By doing simple things like adjusting thermostats when away, customers can reduce energy waste that can lead to potential savings on their monthly bill."

To earn the ENERGY STAR qualification, a home must meet strict guidelines for energy efficiency set by the EPA. These homes are at least 15 percent more efficient than homes built to local code, and include additional energy-saving features that typically

make them 20 percent to 30 percent more efficient than standard homes.

"EPA is privileged to work with a diverse group of utilities, state programs, and home builder associations who effectively support ENERGY STAR Qualified Homes," said Sam Rashkin, National Director of ENERGY STAR for Homes. "Thanks to the leadership of these sponsors, home buyers across the country have greater access to ENERGY STAR Qualified Homes that cost less to own while improving comfort, indoor air quality, durability, and our environment."

ENERGY STAR qualified homes offer homebuyers all the features they want in a new home, plus energy-saving features such as effective insulation systems, high performance windows, tight construction and ducts, properly-sized and installed efficient heating and cooling equipment, efficient products, and third-party verification of energy performance.

For more information about the energy efficiency programs available to Black Hills Energy's residential, commercial and industrial natural gas customers in Iowa, visit www.BHEhowto.com or call 888-567-0799.

Black Hills Energy – Iowa*

Black Hills Energy serves 149,700 natural gas customers in 130 Iowa communities, and is a proud recipient of the U.S. EPA 2010 ENERGY STAR® Leadership in Housing Award. Black Hills Energy is part of Black Hills Corp. (NYSE: BKH).

*Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy

Black Hills Corporation

Black Hills Corp. — a diversified energy company with a tradition of exemplary service and a vision to be the energy partner of choice — is based in Rapid City, S.D., with corporate offices in Denver, and Omaha, Neb. The company serves 763,300 natural gas and electric utility customers in Colorado, Iowa, Kansas, Montana, Nebraska, South Dakota and Wyoming. The company's non-regulated businesses generate wholesale electricity, produce natural gas, oil and coal, and market energy. Black Hills employees partner to produce results that improve life with energy. More information is available at www.blackhillscorp.com.

About ENERGY STAR

ENERGY STAR was introduced by the U.S. Environmental Protection Agency in 1992 as a voluntary market-based partnership to reduce greenhouse gas emissions through increased energy efficiency. Today, ENERGY STAR offers businesses and consumers energy-efficient solutions to save energy, money and help protect the environment for future generations. More than 17,000 organizations are ENERGY STAR partners committed to improving the energy efficiency of products, homes, buildings and

businesses. For more information about ENERGY STAR, visit www.energystar.gov or call toll-free 1-888-STAR-YES (1-888-782-7937).

BP SPILL

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Draft EPA FY11-15 Strategic Plan Includes Oil Spill Prevention Review (*Inside EPA*)

Posted: June 21, 2010

In response to the Gulf of Mexico oil spill, EPA is planning to undertake a broad review of its rules, guidelines and procedures for preparing and responding to oil spills on land and at “fixed” facilities that could discharge oil into U.S. waters, according to the agency's draft strategic plan for fiscal years 2011 through 2015.

EPA is also reassessing two existing key water program goals for the next few years to possibly make changes to account for the spill's impact, according to the plan. One goal sets a target for reducing nutrients throughout the Mississippi River Basin to cut the hypoxia “dead zone” in the Gulf, and the other on improving regional coastal aquatic ecosystem health, which is measured by indicators for sediment, fish contamination and other criteria.

The strategic plan, which was in the works long before the Gulf spill began in April, details the agency's broad “long-term vision, strategic goals and objectives, and strategies to achieve them,” according to EPA's website. To achieve the goals, the plan includes strategic measures -- “the specific measurable environmental and human health outcomes the agency will achieve over the next five years.” EPA will take comment on its draft strategic plan through July 30.

The plan identifies five strategic goals that mirror many of EPA Administrator Lisa Jackson's stated priorities: protecting America's waters, cleaning up communities, ensuring the safety of chemicals and preventing pollution, enforcing environmental laws, and taking action on climate change and improving air quality.

But in the wake of the Gulf oil spill, EPA has made last-minute changes to the draft strategic plan that reflect early steps to reassess the agency's regulations for preventing and responding to oil spills.

EPA has several rules on oil spills, including a spill prevention, control and countermeasure rule that requires facilities to prepare and implement plans to address the potential for an oil discharge. The agency also has a facility response plan rule that requires certain facilities that store and use oil to submit plans to respond to a worst-case discharge of oil and to a substantial threat of such a discharge, according to EPA's website.

Other regulations and guidance include a National Contingency Plan schedule of spill-mitigating devices and substances that may be authorized for use on oil discharges, and requirements that facilities must report discharges of oil or releases of hazardous substances to EPA and other federal, state or local agencies.

With the spill posing “one of the largest environmental disasters” and an “urgency” to respond to cleanup and restoration of the Gulf of Mexico, EPA says that by 2015 it will review and update its current rules, guidelines and procedures on spills. According to the draft plan, EPA will “ensure that is has the appropriate tools to prepare, respond and recover from such incidents, acting within its jurisdiction, as defined by appropriate authorities.”

Oil Spill Preparedness

In a footnote to the draft plan, EPA says several federal agencies have jurisdiction and authority for oil spill preparedness, response and recovery in addition to EPA, including the Department of Transportation and the U.S. Coast Guard. “EPA's efforts will focus on those aspects of the national oil spill program for which they have authority and responsibility, primarily the inland area and fixed facilities,” according to the draft plan.

EPA says that while it is still assessing the “unprecedented” environmental damage from the spill and the agency actions necessary to address the damage and prevent similar disasters in the future, it has added two new measures to the plan as a “preliminary step to reflect the urgent challenge ahead” -- efforts to clean up the environmental damage, and efforts to modernize the agency's oil spill program and regulations.

EPA also intends to reassess its targets for cutting hypoxia, or oxygen depletion, in the Gulf and for protecting aquatic life.

The agency's current draft objective for FY11-15 is to reduce releases of nutrients throughout the Mississippi River Basin to cut the size of the Gulf of Mexico hypoxic zone to less than 5,000 square kilometers (km2), as measured by a 5-year running average of the size of the dead zone. EPA is using a baseline from 2005-2009 that says the average size of the zone is 15,670 km2. But the spill has prompted some concerns that the oil gushing into the Gulf could grow the size of the dead zone, because it may encourage the growth of bacteria that feed on the oil but consume oxygen.

The spill is also prompting EPA to reassess its water program objective of improving regional coastal aquatic ecosystem health, as measured on a “good/fair/poor” scale in its National Coastal Condition Report, which describes the ecological and environmental conditions in U.S. coastal waters.

EPA's 2009 baseline from the report says a “fair” or 2.8 rating is based on a five-point system ranging from 1.0 to 5.0 in which 1 is poor and 5 is good, using the report's indicators for water and sediment, coastal habitat, fish contamination, and benthic index -- a measure of a habitat's biological integrity.

In the draft plan EPA also suggests it may need to make further changes to its goals to address the spill. “The magnitude of the impacts have yet to be fully understood and assessed, so further adjustments may be needed in the future, particularly if significant resource redirections become necessary,” EPA says. -- *Anthony Lacey*

BP oil 'unlikely' to reach Ireland (*Irish Times*)

PAMELA NEWENHAM
Mon, Jun 21, 2010

Fears that the Gulf of Mexico oil spill could contaminate Irish shores were today dismissed by the Environmental Protection Agency (EPA), which said it was “unlikely” that remnants of the BP leak could reach Ireland via the Gulf Stream.

“Due to the distance between the Gulf of Mexico and Europe and also the nature and frequency of autumnal storms in the Atlantic Ocean, the likelihood is that the oil will disperse and evaporate in the ocean, possibly leaving “tar balls” which should sink to the bottom before reaching Ireland,” a spokeswoman for the agency said.

The Marine Institute has said that there is a “very remote” possibility that oil leaking from the BP well in the Gulf of Mexico will reach European waters.

It said it had no details on the chemical composition of the oil spilled, but in most cases the fuel evaporates into the atmosphere after some days and “the rest generally sinks to the bottom”.

Professor Mark Johnsonm, of the Environmental Change Institute at National University of Ireland Galway, said any tar balls appearing on Irish beaches as a result of the oil spill, would not be much of an increase on the tar balls already present.

"It would take months before it [the oil] would come to Ireland," he added.

The ruptured well has been gushing oil since the Transocean-owned Deepwater Horizon rig exploded and killed 11 people aboard on April 20th. To minimize the leak's environmental impact, BP is capturing as much as 24,000 barrels a day of crude using two containment systems but that is a fraction of the 35,000-60,000 barrels the US Coast Guard says is pouring from the well.

Panel Is Unlikely to Lift Drilling Ban This Year (*New York Times*)

June 22, 2010 Tuesday
Late Edition - Final

Section A; Column 0; National Desk; Pg. 17
By JOHN M. BRODER
WASHINGTON -- The bipartisan commission named by President Obama in May to study the Deepwater Horizon oil spill and the future of American offshore drilling will hold its first formal meeting in mid-July at the earliest, most likely delaying the delivery of its final report into next year, a co-chairman of the panel said Friday in an interview.

The co-chairman, William K. Reilly, who served as administrator of the **Environmental Protection Agency** under the first President George Bush, also said it was unlikely that the panel would recommend the lifting of the six-month moratorium on deep-water drilling before it completed its report. Such a move would require profound changes in industry practice and government oversight that could not be done that quickly, Mr. Reilly said in his first extensive remarks on the commission's work.

The oil industry, its supporters in Congress and Gulf Coast officials have called for swiftly lifting the moratorium, saying that the ban was causing severe economic hardship and that drilling could resume safely under tighter interim rules. Interior Secretary Ken Salazar and some other Obama administration officials had given the industry hope that the ban would be lifted as soon as new regulations were in place.

But Mr. Reilly said that ending the moratorium would require that the industry adopt safer drilling techniques and that the government regulatory agencies, particularly the Minerals Management Service, a part of the Interior Department, be markedly strengthened."Those things would have to happen faster than past history would suggest is possible," he said.

He also noted that a Congressional hearing last week revealed that the five major oil companies relied on a common and clearly inadequate plan for responding to a major offshore spill.

"I would be very wary of encouraging more deep-water development until I was confident that the response plans were more realistic," Mr. Reilly said in the telephone interview. "They are not realistic at this time."

Mr. Reilly has taken a leave from the board of ConocoPhillips, one of the oil companies whose chief executives testified before Congress last week.

Mr. Obama set a six-month deadline for the panel to produce its report, but the clock does not begin until the seven-member body officially meets. The group's start has been set back by delays in naming the other five members and by a complicated White House vetting process for staff members.

On Monday evening, a senior administration official said Richard J. Lazarus, a Georgetown University law professor and a former Justice Department environmental law specialist, would be the panel's executive director.

Mr. Obama named the two co-chairmen, Mr. Reilly and former Senator Bob Graham, a Democrat from Florida, on May 22. But the White House did not designate the other five members until June 14. They are Frances G. Beinecke, president of the Natural Resources Defense Council; Donald Boesch, president of the University of Maryland Center for Environmental Science; Terry D. Garcia, an executive vice president at the National Geographic Society; Cherry A. Murray, dean of the Harvard University School of Engineering and Applied Sciences; and Frances Ulmer, chancellor of the University of Alaska Anchorage.

The panel as yet has no staff or budget, although the White House has requested $15 million from Congress for the group.

Mr. Obama said that the mandate of the commission was to find the causes of the BP disaster and to make recommendations for preventing such accidents in the future. The president was explicit, both in public comments and in private statements to him and to Mr. Graham, Mr. Reilly said, that the United States would depend for the foreseeable future on oil and natural gas from beneath the Gulf of Mexico. The investigative panel is not charged with determining whether offshore oil development can be conducted safely; rather, its mission is to show how it can resume with greater safeguards.

"The president was clear," Mr. Reilly said. "He was not inviting us to revise his energy policy. He said he was much more concerned to look ahead than look backward."

Mr. Reilly said he expected his group to examine the reliability of blowout preventers, the toxicity of dispersants, the quality and frequency of inspections, and the possible need for simultaneous relief wells in deep water.

Officials with experience in earlier investigative panels said it was essential to understand why the Deepwater Horizon accident happened before meaningful recommendations could be made about future actions.

Bruce Babbitt, who served on the commission that investigated the Three Mile Island nuclear accident in 1979 and later was President Bill Clinton's interior secretary, said the entire culture of the offshore drilling industry would have to change.

"You have to strengthen regulation," Mr. Babbitt said, "but there has to be some way of implanting some safety DNA across the entire industry."

The Three Mile Island panel's recommendations led to the creation of a nuclear safety institute that trains plant operators and inspectors. Mr. Babbitt said something similar might be needed in the oil and gas industry.

He also said that the Minerals Management Service should be blown apart, not merely restructured, as Mr. Salazar has proposed. Environmental regulation must be taken out of the Interior Department and transferred to the **E.P.A.**, Mr. Babbitt said.

Philip D. Zelikow, who served as executive director of the commission that investigated the Sept. 11, 2001, terrorist attacks, urged the new panel to follow his group's path by writing a narrative history of the gulf accident. That is the best way, Mr. Zelikow said, to understand the factors that led to the disaster and to generate public and political support for the changes that will be needed to prevent a recurrence.

"To explain is not necessarily to excuse," he said, "but it is the first step in understanding."

He said that in studying previous disasters, like the shuttle Challenger explosion, he learned that government agencies and private corporations engaged in cutting-edge endeavors, like deep-sea drilling or space exploration, began over time to "normalize" and discount the risk.

"Here is an industry increasingly obliged to engage in ultrahazardous activity," Mr. Zelikow said. "I wouldn't look just at BP. They are functioning in a much larger institutional culture. Everyone who worked on this rig has worked on other projects, maybe at other companies. What you want to discover is if there is something distinct and pathological about all of these institutions, or something distinctly pathological about BP."

He added that it might be impossible for Mr. Reilly and the other commissioners to avoid the question of whether deep-water drilling should be pursued at all before recommending how it could resume, even though that matter was beyond their presidential mandate.

"I don't think you can answer one question without answering the other," Mr. Zelikow said.

FUEL
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Exclusive:

Tests delay U.S. Ruling On Ethanol Blends (*Reuters*)

Date: 21-Jun-10
USA
By Timothy Gardner

U.S. environmental regulators said testing on higher ethanol blends in motor fuels will not be finished until September, a delay ethanol groups said would hurt jobs and worsen a supply glut.

The Environmental Protection Agency told Reuters that tests on boosting the blend rate of gasoline to 15 percent ethanol, or E15, on new vehicles built after 2007 would not be completed until the end of September.

Originally the EPA said testing on E15 on cars as old as 2001 models would be finished by mid-year.

The EPA said on Thursday the Energy Department is also testing some vehicles built before 2007, while testing tanks and other fuel handling equipment for E15 gasoline. The current legal limit in gasoline burned in traditional cars is 10 percent ethanol.

"Based on DOE's schedule, EPA believes it will be able to make a final determination on whether to approve the use of higher ethanol blends this fall," the EPA told Reuters.

The ethanol industry balked at the delays.

"While initial plans to approve the use of E15 for only 2001 and newer vehicles was bad, this plan borders on shameful," said Bob Dineen, the president of the Renewable Fuels Association.

"Confusing the market as EPA seems intent upon doing likely will lead to little if any additional ethanol being sold," he added.

Agriculture Secretary Tom Vilsack said even with the delays, the United States was eventually moving toward a more robust ethanol industry.

"EPA is taking a significant step forward by discussing their timeline to expand E15 to more vehicles. This provides a roadmap to build a stronger domestic biofuels industry by creating a market to expand the use of ethanol in America," Vilsack said in a statement.

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

Growth Energy, another ethanol group, wrote a letter to President Barack Obama on Thursday saying E15 could create 136,000 new jobs.

Ethanol makers, suffering from a glut of the fuel typically made from corn in the United States, want the government to boost the blend rate as Washington mandates the industry to use increasingly higher volumes.

U.S. mandates, which aim to aid U.S. farmers while helping to reduce crude oil imports, require ethanol volumes to reach a maximum of 15 billion gallons a year by 2015 from 10.5 billion gallons this year.

A delay could hurt the rebound of the industry after a difficult year in which many of its businesses went bankrupt.

Archer Daniels Midland, which makes agricultural products including ethanol, has said it wants EPA to consider blends of E12 saying it is practically the same as E10.

With one out of three bushels of corn produced in the United States going to ethanol, U.S. farmers depend on strong ethanol markets. The U.S. Department of Agriculture said last week that corn used for ethanol would hit record highs this year and next.

Some aid groups, however, have long opposed the alternative fuel, saying that using food to make fuel drives up world prices and is hard on the world's poor.

Automakers want thorough testing of the higher blends because they fear fuel hoses and other parts of engines in older cars could be damaged by fuels that contain more than 10 percent ethanol.

The Alliance of Automobile Manufacturers has lobbied against raising the ethanol blend rate, saying it would affect vehicle emissions, performance and durability. The trade group represents 11 car and light truck manufacturers including BMW Group, Chrysler, Ford, and General Motors.

The oil refining and fuel service station industries also want the DOE to do thorough testing on the higher blends. They fear consumers would sue them if the fuels they sell are unsafe.

(Additional reporting by Charles Abbott; Editing by Sofina Mirza-Reid, Gary Hill and Balazs Koranyi)

From the July 2010 Issue

U.S. EPA delays E15 decision yet again (*Ethanol Producer Magazine*)

by Holly Jessen
Posted June 21, 2010
At a time when most people were hoping the U.S. EPA would announce a decision on the E15 waiver, the agency instead delayed it until fall. It’s a big disappointment to many in the industry, who have already waited through multiple delays.

The reason for the delay, the EPA said, is to allow the U.S. DOE time to complete its testing on the impact of moving from E10 to E15. According to a statement from the EPA, by the end of September the DOE plans to complete testing on vehicles built after 2007. In addition for some vehicles built before 2007, tanks and other fuel handling equipment is also being tested. “While results from the tests conducted to-date look good, EPA will not make a final decision until DOE completes its current comprehensive testing of the newer vehicles,” the statement said.

Growth Energy, which filed the E15 Green Jobs Waiver with the EPA more than a year ago, sent a letter to President Obama, Secretary of Agriculture Tom Vilsack, Energy Secretary Stephen Chu and EPA Administrator Lisa Jackson, urging that steps be taken to accelerate the completion of that testing. ““As you have said yourself, Mr. President, accelerating the production of domestic ethanol would create U.S. jobs, help clean our environment, and strengthen our national security,” wrote Tom Buis, CEO of Growth Energy, in the letter. “Every day we delay the decision on the Green Jobs Waiver for E15 is another day we continue our addiction to foreign oil.”

Although the waiver process requires a decision in 270 days, Buis said, the EPA said at the end of last year that the decision would be delayed until mid-2010. Growth Energy considers the current delay a promise broken. “As you would expect, we find this further delay unacceptable,” he wrote. “The fact that the federal agencies involved here cannot meet their own deadlines – on a decision that means so much to our nation – reinforces a public perception that government bureaucracy does not work in the best interests of the public.”

The Renewable Fuels Association called the delay “as much disappointing as it is a dereliction of duty.” The RFA added that EPA plans only to approve E15 for model year 2007 and newer in September and plans to approve E15 for model year 2001 and newer later in the fall. “EPA is dropping the ball, and for no scientifically justified reason,” said RFA President and CEO Bob Dinneen. “While initial plans to approve the use of E15 for only 2001 and newer vehicles were bad, this plan borders on shameful. Confusing the market as EPA seems intent upon doing likely will lead to little if any additional ethanol being sold.”

Equally concerned by the delay was the American Coalition for Ethanol (ACE). “It is frustrating that EPA appears to be slow-walking this E15 decision, especially as oil has been spilling from the Gulf of Mexico for 59 days and counting. What more evidence do government bureaucrats need that our nation desperately needs to take action to reduce our use of oil? Further delay is unacceptable to the American people who deserve to have greater access to a cleaner, less expensive alternative to oil.”

Legislators spoke up as well. Illinois Rep. Bill Foster and Nebraska’s Sen. Ben Nelson both expressed disappointment. “While the EPA sits on its hands, ethanol producers will soon hit the E10 cap or ‘blend wall,’ producing more ethanol than can be used under current restrictions,” Nelson said. “This is yet another delay on a decision that was supposed to have been made in December of last year.”

Of course, there were those that felt differently. It pleased the American Petroleum Institute, which is conducting its own testing and had previously called for a delay. “We remain committed to finishing the extensive testing that is underway in order to find the right market solutions for renewable fuels, and we look forward to continuing our work with the EPA as it proceeds with important decisions about ethanol and biofuel blend rates,” API said in a statement.

GENERAL

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Booz Allen Hamilton planning for an IPO (*Washington Post*)

By Thomas Heath
Tuesday, June 22, 2010; A15
Booz Allen Hamilton, a McLean-based government consulting firm and one of the Washington region's largest private-sector employers, filed papers Monday with regulators announcing its intent to make an initial public offering of stock.
The company, majority-owned by the Carlyle Group, plans to sell up to $300 million worth of shares to the public, according to a filing with the Securities and Exchange Commission. A share price has not been set.

Carlyle does not plan to sell any of its stake as part of the offering. It will use the proceeds to reinvest in Booz Allen and pay down debt, according to the SEC filing.

The stock sale is part of a recent trend by Carlyle and other private-equity firms to take the companies in their portfolios public, further evidence that the economy is strengthening and that credit markets may be healing from the financial crisis.

"The fact that they are able to go public is an indication that capital markets are receptive to new public companies," said William Walton, former chairman of District-based Allied Capital, which bought and sold companies before it merged with a New York firm this year. "It's healthy."

Booz Allen, which employs about 15,000 people in the Washington region, provides consulting services in strategy, operations and information technology to major firms, government agencies and institutions, according to Carlyle's Web site.

Its major clients include the Defense Department, including all branches of the military, as well as the departments of Energy, Health and Human Services, Homeland Security, and the Treasury; U.S. intelligence agencies; and the Environmental Protection Agency.

"It's good for the area to have a prominent, public international firm headquartered here," Walton said. "It adds prestige to the area, and it's a sign that Washington is a place that's good for business. They will want to stay close to their customers."

The consulting firm, founded by Edwin G. Booz in 1914, went public in 1970 and taken private six years later. It had been owned by 300 top executives and had about $4 billion in revenue before the Carlyle purchase. About half of that came from the government.

In August 2008, Booz Allen Hamilton completed the separation of its government and commercial businesses, selling a majority stake in the government unit to Carlyle for $2.54 billion.

The split had its roots in the vast differences that developed between the firm's two units earlier this decade. The goal of the spinoff was to create a company focused solely on its government contracting business, refining the culture and aligning the interests of its management.

The commercial unit, now known as Booz & Co., grew, but not at the same pace. The majority of the firm's revenue during the past 10 years had come from its government business.

Carlyle, which usually buys companies, shakes them up and then tries to sell them for a higher price, had said at the time of purchase that it would leave Booz Allen largely alone.

Carlyle is now one of the largest asset-management firms in the world, managing $90.5 billion in 67 funds in 19 countries in 260 companies in three asset classes (private equity, real estate and credit alternatives), according to its 60-page annual report.

A marriage between Carlyle and Booz Allen made sense for the private-equity giant, which has a long and lucrative history of owning and doing business with government defense contractors working on aerospace and ground-based military programs.

Booz Allen had enjoyed rapid growth because of increased government spending after the Sept. 11, 2001, terrorist attacks. The firm has pioneered some of the top ideas in consulting, including supply-chain management, now broadly used by others to manage the flow of goods and people.

Booz Allen sponsors high-profile events and spent $1 million to support the Edward Hopper exhibit at the National Gallery of Art in 2007 and early 2008.

As a measure of the company's size, when Booz Allen rented the National Air and Space Museum's Steven F. Udvar-Hazy Center near Dulles International Airport for its holiday party in December 2007, employees were not allowed to bring guests because of concern that the building's capacity would be exceeded.

GRANT

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Article published Jun 22, 2010

Plainville company wins contract for Riverwalk work (*The Day*)

By Julianne Hanckel Day Staff Writer

Preston - Manafort Brothers, Inc., of Plainville, has won the contract for site salvage, abatement and demolition at the Preston Riverwalk site.

Once on site, Manafort will start phase one, which includes securing the border of the Riverwalk site, establishing site access control, taking inventory of all 55 buildings for salvage and scrap value and estimating final abatement and demolition costs per building.

The Preston Redevelopment Agency will pay for the abatement work with the use of grant funds but agency Chairman Kent Borner said Manafort expects to recoup the cost of demolition through salvage and scrap value.

Thus far, the agency has received $600,000 in grants from the Environmental Protection Agency. The agency needed to match 20 percent of the $600,000, bringing the total grant amount to $720,000. Borner said he hopes to win the $500,000 Community Development Block Grant that the agency applied for earlier this month. In October, Borner said the agency plans on applying for three more $200,000 EPA grants.

Twenty-nine contracting firms responded to the request for qualifications and four members of the review committee chose the most qualified submissions to recommend to the agency. Six contracting firms were selected to receive the request for proposals in mid-April.

Borner hopes to meet with Manafort within the next week to finalize the terms of the contract.

HAZARDOUS WASTE

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EPA publishes proposed ash rule (*Greenwire)*

(06/21/2010)

Patrick Reis, E&E reporter

U.S. EPA today published its proposed regulations on coal ash in the Federal Register, launching a three-month period for public comment.

One of the proposals, which were announced last month, would regulate the ash -- which contains arsenic, lead and mercury -- under the "hazardous waste" section of

federal waste disposal law. The hazardous waste proposal would phase out the disposal of the ash in wet storage ponds and set new requirements for storing and monitoring the waste in dry landfills (E&ENews PM, May 4).
The other proposal would classify the waste as nonhazardous, setting federal guidelines for state disposal that mandate the installation of liners on new wet storage ponds to keep the slurry from leaching into groundwater. Existing ponds would have to be retrofitted with liners or stop receiving ash within five years.

Last October, EPA sent a proposed rule to the White House that would regulate the waste as hazardous, but the non-hazardous option was added after review at the Office of Management and Budget (*Greenwire*, May 7).

EPA's notice today expresses no preference between the two options.

Environmental groups are pushing the agency to regulate the waste as hazardous, saying it is the only alternative that provides adequate environmental and public health protections.

Industry groups say the hazardous regulations overstate the risks of coal ash and would end up sending more of it to landfills by stigmatizing recycling programs, a charge EPA has denied.

EPA began considering federal regulations on coal ash after a wet storage pond at a power plant in Kingston, Tenn., failed in December 2008, spilling about 1 billion gallons of sludge.

PESTICIDES
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Roundup resistant weeds pose environmental threat (*Associated Press*)

Story also appeared: *Washington Post, USA Today*

By DAVID MERCER
The Associated Press
Monday, June 21, 2010; 4:48 PM
CHAMPAIGN, Ill. -- When the weed killer Roundup was introduced in the 1970s, it proved it could kill nearly any plant while still being safer than many other herbicides, and it allowed farmers to give up harsher chemicals and reduce tilling that can contribute to erosion.
But 34 years later, a few sturdy species of weed resistant to Roundup have evolved, forcing farmers to return to some of the less environmentally safe practices they abandoned decades ago.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(This version CORRECTS the second paragraph to say that it is 34 years after the introduction of Roundup, not 24.)

Justices Back Monsanto on Biotech Seed Planting (*New York Times*)

June 22, 2010 Tuesday
Late Edition - Final
Section B; Column 0; Business/Financial Desk; Pg. 5
Justices Back Monsanto on Biotech Seed Planting

By ANDREW POLLACK

In its first-ever ruling on genetically modified crops, the Supreme Court on Monday overturned a lower court's ban on the planting of alfalfa seeds engineered to resist Monsanto's Roundup herbicide.

The decision was a victory for Monsanto and others in the agricultural biotechnology industry, with potential implications for other cases, like one involving genetically engineered sugar beets.

But in practice the decision is not likely to measurably speed up the resumption of planting of the genetically engineered alfalfa.

A federal district judge in San Francisco had ruled in 2007 that the Agriculture Department had approved the genetically engineered alfalfa for commercial planting without adequately considering the possible environment impact, as required by federal law. The judge vacated approval, known as deregulation of the crop, and also imposed a nationwide ban on planting those seeds. The ban was later upheld on appeal.

But the Supreme Court, in a 7-to-1 decision, said the lower court judge had gone too far, ruling that the national ban prevented the Agriculture Department from considering a partial approval. That avenue, the court said, would have allowed some of the alfalfa to be grown under certain conditions; for example, isolating it from conventional alfalfa.

"The district court barred the agency from pursuing any deregulation -- no matter how limited the geographic area in which planting of RRA would be allowed," Justice Samuel A. Alito Jr. wrote in the opinion, referring to Roundup Ready alfalfa.

Justice John Paul Stevens was the lone dissenter. Justice Stephen G. Breyer did not take part because his brother, District Judge Charles Breyer, had issued the original decision.

Because the Supreme Court left in place the lower court's rejection of approving the crop, the Agriculture Department must either fully or partly approve it before growing can resume.

"I think the practical impact is nil," said George A. Kimbrell of the Center for Food Safety, a Washington advocacy group that was part of a coalition of environmental groups and organic and conventional alfalfa farmers who had challenged the crop's

approval.

The Agriculture Department said Monday that it was on track to complete its environmental impact statement and approve the crop in time for next spring's planting.

Speeding up planting beyond that could only occur if the agency pursues a partial approval while finishing its environmental assessment. But getting partial approval in time for this fall's planting season -- beginning in two months -- might be difficult.

Still, David F. Snively, Monsanto's general counsel, called the decision a significant victory. "Monsanto and farmers in the United States are thrilled with this decision, which is far-reaching in its look at the regulatory framework that should govern biotech crops," Mr. Snively told reporters in a conference call.

The Supreme Court's ruling could affect a similar case, also brought by the Center for Food Safety, involving Roundup Ready sugar beets.

In that case, a different federal judge in San Francisco ruled last September that the Agriculture Department had failed to adequately assess the environmental impact.

Planting has continued, however, because the judge, Jeffrey S. White, has not yet ruled on a remedy. A hearing on the matter is scheduled for July 9. The Supreme Court's decision makes it highly unlikely that he will issue a blanket ban on the growing of the genetically engineered beets.

The decision could also sway environmental law in general. Organizations like the National Association of Home Builders and the American Petroleum Institute had filed friend-of-the-court briefs supporting Monsanto, while environmental groups as well as the states of California, Oregon and Massachusetts had weighed in on the side of the Center for Food Safety.

Mr. Snively of Monsanto said the decision made it clear that courts must meet the same strict test in granting injunctions in environmental cases as in other cases. But Nathaniel S. W. Lawrence, an attorney for the Natural Resources Defense Council, said the decision also contained wording that would make it easier in some instances for lawsuits to be filed in cases of possible environmental dangers.

Roundup Ready alfalfa and sugar beets were the newest additions to Monsanto's extremely successful lines of Roundup Ready soybeans, corns and cotton.

The crops contain a bacterial gene that allows them to withstand spraying with Roundup or its generic equivalents, known as glyphosate. That allows farmers to spray their fields to kill weeds while leaving the crop intact, making weed control easy.

The environmental groups and others had said that the foreign gene might spread to organic or conventional nongenetically engineered crops, hurting sales of organic

farmers or exports to countries like Japan that did not want genetically engineered varieties.

Court Upholds Verdict

The Supreme Court rejected Pfizer's appeal of a verdict for an Arkansas woman, Donna Scroggin, who blamed the company's menopause drugs for her breast cancer, leaving intact a $2.7 million award that may grow with punitive damages.

The justices let stand on Monday a lower court decision upholding that award, which was the first federal verdict against Pfizer's Wyeth unit over its Prempro hormone-replacement treatment.

The appeal by Wyeth and Pfizer's Upjohn unit sought to leverage a different part of the appeals court ruling ordering a new trial on punitive damages, which a jury had set at $27 million. Pfizer argued that the new trial should cover all aspects of the case, including the jury's finding that the drugs had helped cause Ms. Scroggin's cancer.

Justices overturn ruling on seeds (*Los Angeles Times*)

June 22, 2010 Tuesday
Home Edition
BUSINESS; Business Desk; Part B; Pg. 1
AGRICULTURE;
Justices overturn ruling on seeds;
But Monsanto's genetically modified alfalfa seeds can't be planted until USDA completes a study.
By James Oliphant, P.J. Huffstutter
WASHINGTON AND LOS ANGELES

The Supreme Court overturned a lower court's nationwide ban on genetically modified alfalfa seeds Monday, handing a victory to Monsanto Co. in a long-running dispute.

Monday's 7-1 decision enables the U.S. Department of Agriculture to complete a study on whether the alfalfa will harm the environment before deciding on whether to approve the seeds for planting, a process that could go into next year.

The high court ruled that a federal judge in San Francisco went too far when he issued an order that overturned the Agriculture Department's decision to allow some farmers to plant Monsanto's Roundup Ready alfalfa seeds before the government had completed its full study of the environmental issues. The plants are resistant to the company's herbicide. An appeals court upheld the ban.

Soon after the Supreme Court decision was issued, both Monsanto and its critics claimed victory.

"This is a great day for farmers, as they can look to the government to set the regulatory rules as opposed to individual litigants," said David Snively, Monsanto's general counsel. "This should give growers great hope that new technologies in alfalfa are coming, and coming soon."

But environmental groups noted that the government must still approve the seeds' use for widespread planting and that its determination can be further challenged in court.

"To the extent Monsanto is claiming this as a victory, it's a very hollow one since no one can plant their crops," said Paul Achitoff, an attorney for the ecological law firm Earthjustice.

Andrew Kimbrell, executive director of the Center for Food Safety and a plaintiff in the case, said: "Nothing in practice has changed. This is still an illegal crop to plant. You cannot go out and plant this tomorrow."

The decision marked the first ruling by the nation's highest court over genetically modified organism, or so-called GMO, crops, and further fueled the long-running environmental dispute over such high-tech agricultural products.

It also comes at a time when Monsanto is fighting criticism over its genetically modified organisms and business practices on several fronts.

The company is embroiled in a similar fight in federal court in California regarding its genetically modified sugar beet products. The Justice Department is investigating Monsanto amid claims of antitrust violations and mounting complaints about unfair competitive practices.

At least three state attorneys general also have begun probes into whether the St. Louis firm has abused its market dominance to undermine rivals and raise prices.

U.S. farmers spent about $17 billion on seeds last year, up 56% from 2006, according to the USDA. Yet over the last decade the number of independent seed companies in the U.S. has shrunk to fewer than 100 from more than 300, according to the nonprofit Farmer to Farmer Campaign on Genetic Engineering, a network of 34 farm groups.

At the same time, environmental advocates and farm groups alike have voiced growing concern over the long-term effects of raising genetically modified crops that are immune to Monsanto's popular herbicide glyphosate, or Roundup.

Ninety-two percent of the U.S. soybean acres and 85% of the fields planted with corn are grown with seeds that use Monsanto technology, according to a 2009 report issued by Farmer to Farmer.

Yet a number of so-called superweeds -- weeds that have developed an immunity to Roundup, including pigweed and horseweed -- are growing on millions of acres of farmland in 22 states, including California.

That, in turn, has farmers using far more potent herbicides on their land and chemical companies starting to sell old chemical compounds that posed more environmental risks than Roundup.

USDA officials said Monday that the agency was ready to move forward on completing its environmental statement on Monsanto's variety of Roundup Ready alfalfa seed. "Nothing in the Supreme Court's decision affects that ongoing process," USDA spokesman Caleb Weaver said.

The USDA approved the modified alfalfa seeds' use in 2005, and more than 5,500 farmers planted the crop. But U.S. District Judge Charles Breyer in San Francisco found that the agency had violated federal law by not fully assessing the seeds' effect on the environment.

The seeds were eventually removed from the market. The U.S. 9th Circuit Court of Appeals upheld the ban.

Supreme Court Justice Samuel A. Alito Jr., writing for the majority, said Breyer overstepped his authority by issuing an injunction that was too sweeping.

Justice John Paul Stevens, in dissent, argued that the trial court was in a better position to conduct an inquiry into the facts of the case and that the justices should have deferred to its judgment.

Justice Stephen G. Breyer, who is the trial judge's brother, recused himself from the case.

Some Democrats in Congress condemned the decision. Rep. Dennis J. Kucinich (D-Ohio) said he would introduce a bill detailing a new regulatory framework for genetically engineered plants and animals.

Monsanto's Snively said the company was prepared to work with the government to accelerate making the seeds available to alfalfa growers as soon as the USDA grants its final approval.

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SUPERFUND

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EPA Backs Reinstating Superfund 'Polluter Pays' Tax (*Bloomberg*)

June 21, 2010, 5:16 PM EDT (Updates with comments from environmental, industry groups starting in second paragraph.)
By Jim Efstathiou Jr.
June 21 (Bloomberg) -- The U.S. Environmental Protection Agency told Congress it backs reinstating the lapsed Superfund "polluter pays" tax used for cleaning up abandoned hazardous- waste sites.
The tax would provide a predictable source of funding and lift the burden of cleanup costs from taxpayers, said Lois Gibbs, executive director of the Center for Health, Environment and Justice, a group formed after the 1978 discovery of the Love Canal toxic-waste dump in Niagara Falls, New York.

The Superfund tax on oil and chemical companies lapsed in 1995. Since then Congress has appropriated about $1.2 billion a year for hazardous-waste cleanups. About $3 billion a year is needed, said Gibbs, whose group is based in Washington.

Reinstatement of the levy also would "increase the pace of Superfund cleanup," the EPA said today in a statement. The agency sent a letter to lawmakers about the provision. The Senate Environment and Public Works Committee has scheduled a hearing for tomorrow on the Superfund program.

Reinstating the tax would force companies with no responsibility for waste sites to pay, according to the American Chemistry Council, an industry trade group.

"Since the taxes expired in 1995, responsible parties have continued paying for the cleanup of Superfund sites and continue to reimburse EPA for all of its cleanup costs," the Arlington, Virginia-based group said in a statement. "America's chemical makers and others targeted by the Superfund tax have paid for site remediation several times over."

International Attention

Love Canal drew international attention when it was discovered that thousands of tons of toxic waste had been buried beneath the neighborhood by Hooker Chemical Co. The government relocated more than 800 families and paid them for their homes. That led Congress to pass a 1980 law that allows the EPA to recover cleanup costs from responsible parties.

"Superfund is something that really needs its own revenue stream," said Gibbs, a former Love Canal resident. "It should come from those who created the mess, not taxpayers."

--Editors: John Lear, Steve Walsh

EPA asks Congress to revive Superfund tax (*UPI*)

Published: June 21, 2010 at 5:22 PM
WASHINGTON, June 21 (UPI) -- The U.S. Environmental Protection Agency sent a letter to Congress Monday, supporting the reinstatement of the Superfund polluter tax.

Superfund is the federal government's program that investigates and cleans up most complex, uncontrolled or abandoned hazardous waste sites in the United States. If reinstated, the so-called "polluter tax" would provide a stable, dedicated source of funding for the program and pick up the pace of the cleanup, the EPA said in a release.

The tax also would ensure entities benefiting from the manufacture or sale of polluting substances at hazardous waste sites pay for their cleanup when the responsible parties can't be identified, not the taxpayers, the agency said.

"Since the beginning of this administration we have made it clear that we support the reinstatement of the polluter pays system for the Superfund program," said Mathy Stanislaus, assistant administrator for EPA's Office of Solid Waste and Emergency Response. "Our taxes should be paying for teachers, police officers and infrastructure that is essential for sustainable growth -- not footing the bill for polluters."

In the interim, the EPA is working to better manage the Superfund program to increase cleanups and "enhance transparency, accountability and community input in agency decision-making," Stanislaus said.

The Superfund taxes expired Dec. 31, 1995, and since cleanup has been funded largely through general revenue transfers to the Superfund Trust Fund, thus burdening the taxpayer with the costs of cleaning up abandoned hazardous waste sites.

The administration is proposing reinstatement of the taxes as they were on crude oil, imported petroleum products, hazardous chemicals and imported substances that use hazardous chemicals as a feedstock, and on corporate modified alternative minimum taxable income. The proposal also calls for the excise tax and corporate environmental taxes to be reinstated for a 10-year period beginning in January 2011.

Since the fund ran out of money at the end of fiscal year 2003, the annual appropriation of public funds has slowed the cleanup of the orphaned sites, which account for 606 of the 1,279 sites across the nation. The program completed 19 sites last year, compared with 89 in 1999, when the fund was flush, the EPA said.

Obama, EPA to push for restoration of Superfund tax on oil, chemical companies (*Washington Post*)

By Juliet Eilperin
Washington Post Staff Writer
Monday, June 21, 2010; A05
There is no question that the Superfund program, first established 30 years ago to clean up sites around the country contaminated with hazardous waste, is facing a budget crunch.
For 15 years, the government imposed taxes on oil and chemical companies and certain other corporations. The money went into a cleanup trust fund, which reached its peak of $3.8 billion in 1996. But the taxes expired in 1995, and because Congress refused to renew them, the fund ran out of money.

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

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

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

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

"It's clearly slowed down as the money's dried up," said Mike Charles, senior manager for government relations at the American Society of Civil Engineers.

Superfund sites are found in the District of Columbia and every state except North Dakota (whose one site was restored to health). Orphaned sites abound, including Ordinance Products in Cecil County, Md., and Atlantic Wood Industries in Portsmouth, Va. The Washington Navy Yard is still struggling with contamination dating from the 1800s, and federal authorities have yet to remove all the toxins from the area's groundwater.

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

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

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

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

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

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

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

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

"It is blatantly inequitable and unfair for the administration or Congress to reinstate a Superfund excise tax," Dooley said in an interview. He said it would undermine the goal of "an economic recovery in the manufacturing sector in the United States" because it would result in "shifting jobs outside the United States to chemical manufacturers that would not be subject to this tax."

TOXICS

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EPA delays rule on lead paint (*Los Angeles Times*)

June 22, 2010 Tuesday
Home Edition
MAIN NEWS; National Desk; Part A; Pg. 11
NATIONAL BRIEFING;
WASHINGTON, D.C.;
By Times Wire Reports
Home improvement contractors will have more time to meet new federal requirements for dealing with lead paint.

The Environmental Protection Agency said it would delay until Oct. 1 enforcement of a rule requiring contractors to take additional precautions when renovating houses where children could be exposed to lead dust from old paint.

The delay comes amid a storm of complaints from industry groups and congressional Republicans, who said the government had not provided enough trainers to help contractors meet an April deadline.

The EPA rule requires contractors to use "lead safe" practices when working on homes, day-care centers and schools built before 1978, the year lead paint was banned for residential use because of health risks.

JUNE 22, 2010

EPA to Delay Enforcing Lead-Paint Regulation (*Wall Street Journal*)

Story also appeared: *NewsOK*

By STEPHEN POWER
WASHINGTON—The Environmental Protection Agency has decided to delay enforcing a new lead-paint regulation following pressure from home builders and members of Congress.
The rule would require contractors who work in older homes to become certified by a government-approved trainer and follow a series of safety precautions.
The delay follows an outcry from businesses and trade groups, including the National Association of Home Builders, Home Depot Inc. and Lowe's Cos., as well as lawmakers in both parties. Industry groups charged the regulation would drive up costs and expose contractors to fines and litigation. Some also contended the regulation could derail Washington's efforts to promote energy efficiency because EPA has not approved enough instructors for the required training programs.

The regulation took effect in April and covers tens of millions of homes built decades ago. It aims to reduce the amount of lead dust created during home renovation and repair. Some of the precautions for contractors include covering floors with plastic

sheeting and dressing workers in protective clothing. The regulation would also have driven up costs for homeowners, though the amounts have been a point of dispute between the industry and the EPA.

A soft, bluish metallic element, lead was often used as an ingredient by paint manufacturers decades ago. The EPA says lead-based paint was used in more than 38 million homes until the government banned it from housing in 1978.

The average concentration of lead in the blood of young children has fallen sharply since then, but EPA officials say too many are still being poisoned by lead-based paint in their homes. The agency says that from 1999 through 2004, about 285,000 children between the ages of one and five years were estimated to have elevated lead levels in their blood each year.

In a memorandum to EPA regional offices on Friday, Cynthia Giles, the EPA's assistant administrator for enforcement, said the agency will not take enforcement action against renovation and repair firms for violations of the rule's certification requirement until October. For individual renovation workers, the agency will not take enforcement action as long as those workers have applied for, or enrolled in, training classes by Sept. 30.

Ms. Giles said the agency continues to believe "a disturbing number of America's children are...poisoned by lead-based paint in their homes," resulting in learning and behavioral disorders. But she acknowledged concerns raised by home-repair firms about a shortage of government-approved trainers, as well as "numerous disaster declarations" in some areas that have heightened demand for home repairs. Industry groups and some lawmakers calling for a relaxation of the rule said it threatened to slow recovery from Tennessee floods in May.

In a statement Monday, the National Association of Home Builders welcomed the EPA's move, saying the agency "listened to our concerns and did the right thing."

The EPA has also come under fire from Congress. Last month, the Senate voted 60 to 37 to bar the EPA from fining companies or individuals found to have violated the rule, a rare instance of Republicans and Democrats supporting legislation to limit the EPA's power.

In a statement, one of the co-sponsors of that legislation, Sen. James Inhofe (R., Okla.) said he was "pleased that the EPA listened to the clear bipartisan message sent by the Senate that the implementation of the lead-based paint rule was a disaster."

The rule's supporters expressed dismay Monday about the EPA's decision to delay enforcement.

"Industry voices have apparently drowned out those of our nation's children who bear the long-term ramifications of lead exposure," said Rebecca Morley, executive director of the nonprofit National Center for Healthy Housing.

Ms. Morley said she was relieved, however, the EPA will continue to enforce certain work-practice rules, such as those requiring the use of special equipment filters during renovations and repairs.

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EPA extends deadline for lead paint training (*Associated Press*)

Story also appeared: *Chicago Tribune, Wichita Eagle, Palm Beach Post, Lexington Herald-Leader, Idaho Statesman, Cleveland Plain Dealer, NewsOK, Star Tribune, Fort Worth Star Telegram*

By MATTHEW DALY (AP)
WASHINGTON — Home improvement contractors will have more time to meet new federal requirements for dealing with lead paint.
The Environmental Protection Agency said Monday it will delay until Oct. 1 enforcement of a rule requiring contractors to take additional precautions when renovating houses where children could be exposed to lead dust from old paint.

The delay comes amid a storm of complaints from industry groups and congressional Republicans, who said the government has not provided enough trainers to help contractors meet an April deadline.

The EPA rule requires contractors to use "lead-safe" practices when working on homes, day-care centers and schools built before 1978, the year lead paint was banned for residential use because of health risks.

The delay allows contractors to sign up for training by Sept. 30. Training must be completed by Dec. 31.

The EPA said in a statement that it remains committed to protecting children and families from the dangers of lead poisoning, adding that "EPA can and will take enforcement action when contractors violate those work practices."

The decision simply gives firms more time to file needed paperwork to demonstrate they are following lead-safe work practices, as well as more time for contractors to enroll in and complete the required training courses, said EPA spokesman Brendan Gilfillan.

Sen. Jim Inhofe of Oklahoma, senior Republican on the Senate Environment and Public Works Committee, hailed the delay.

"We won," Inhofe said, referring to industry groups and lawmakers who had pushed the EPA to back off its earlier deadline for enforcement of the rule.

Inhofe said he supports the lead paint rule, but he called the EPA's handling of the issue a "disaster."

The National Association of Home Builders said the delay will give contractors and remodelers much-needed time to get the training to meet the stricter requirements.

"EPA listened to our concerns and did the right thing," said NAHB Chairman Bob Jones, a builder and developer in Bloomfield Hills, Mich.

Online:
EPA lead-paint rule: http://www.epa.gov/lead/pubs/renovation.htm

Local company receives EPA certification (*South Lake Times*)

Published: Monday, June 21, 2010 2:13 PM CDT

Southlake Restoration and Remodeling has recently received Lead Safe Certification from the Environmental Protection Agency (EPA).

Our intent is to protect families, said Gary Rae, president of Southlake Restoration and Remodeling, The EPA estimates 24 percent of homes built between 1960 and 1978 and more than 35 percent of all houses in the US contain lead, so we decided it was critical to earn this certification for the safety of homeowners in North Texas.

In April, the EPA implemented sweeping new safety rules designed to protect homeowners from lead-based paint dangers that may be present in homes built before 1978, when lead paint was banned for residential use. Two years in the making, the rules are the first federal regulations in the remodeling industry, and they will affect almost all work performed in older homes where paint is disturbed.

According to the EPA, for any remodeling work greater than six square feet on houses built prior to 1978, remodelers will be required to have this EPA certification. Lead dust can easily be stirred up during renovations of homes built before 1978, leading the EPA to its recent regulation

This certification should give peace of mind to our customers that we are able to safely contain lead in a home as it is being disturbed and reduce exposure to people and pets, said Rae. Its more than a good idea now its the law.

Homeowners should make sure any contractor or company renovating or remodeling their home is certified by the EPA.

Southlake Restoration and Remodeling provides home renovations throughout the north Texas area, serving Tarrant County, one of the fastest growing urban counties in the United States. Southlake Restoration and Remodeling is affiliated with Rae-Waldman

Homes, a builder of custom homes at an affordable price. Rae-Waldman Homes serves Southlake, Trophy Club, Keller, Forney, Frisco and DFW Metroplex.

Contact: Gary Rae at 817-676-7958 or 817-946-8065 for information. Or visit the companys website at www.southlakerr.com.

Federal Officials Delay Enforcement Of New Lead Paint Rules (*Hartford Courant*)

By KENNETH R. GOSSELIN, kgosselin@courant.com
6:20 PM EDT, June 21, 2010
Contractors who haven't been trained and certified in tougher lead paint standards for renovations in homes built before 1978 will get a reprieve of a few more months.

The federal Environmental Protection Agency said contractors who didn't meet the April 22 deadline for certification now will have until Oct. 1 to comply or face a fine for not being certified.

All contractors, however, still are required to adhere to the new standards for performing work in homes constructed before 1978, the year when lead paint was banned. Contractors who aren't certified, for example, would be required to hire certified sub-contractors to perform the work.

"EPA is simply giving firms more time to file the appropriate paperwork demonstrating that they are following the lead-safe work practices," according to an EPA statement Monday. "Moreover, EPA is also giving individual contractors more time to enroll in and take the required training courses."

The lead paint rules, first proposed in 2008, were intended to help prevent developmental problems in young children when lead paint particles are released into the air during home renovation projects.

In Connecticut, the new rules will have a big effect because much of the state's housing stock is older. In Hartford County, 79 percent if homes were built before 1978.

The new rules have been controversial. Some construction companies and contractors argue that the required precautions, which include enclosing work areas and using special vacuums, would significantly add to renovation costs.

Bob Hanbury, owner of House of Hanbury Builders in Newington and an opponent of the new rule, said the delay isn't much of a reprieve.

"It doesn't help anyone who complied with the deadline," Hanbury said. "It will help the stragglers and late-comers but that's a small subset."

Town reels from plant fire (*Evansville Courier & Press*)

EPA calls in crews to fight blaze
By Mark Wilson
Tuesday, June 22, 2010
FORT BRANCH, Ind. — Contractors hired by the U.S. Environmental Protection Agency began demolishing a building at the former Emge meat processing plant Monday so firefighters could extinguish a fire that had been smoldering inside its walls since Saturday.

Emergency officials expected crews from Summit Environmental Services, of Evansville, and firefighters to work as long as necessary to put out the fire.

Some residents expressed hope that the fire would lead to the complete demolition of the formerly bustling meat packing plant, which has stood as a reminder of the economic boon it once was to the town. The plant closed in 1999 after more than 90 years of operation.

"It's a very negative feeling just seeing it deteriorate and not be kept up," said Donna Emge Mason.

Her father, Charles Emge, was a co-owner and vice president of the company before it was sold to Excel Corp., a Cargill subsidiary, in 1990. She remembered how many people in town worked at Emge, walking the short distance from their homes to the plant.

"It was like a family," she said.

Excel closed the pork processing plant in 1999, but the Emge brand name was retained and still can be found on the shelves of the Holiday Food market in Fort Branch and in stores throughout the area. When Excel closed the plant, 340 hourly and 64 salaried jobs were lost in Gibson County.

The structure, which abuts the western edge of Fort Branch, is owned by David Mounts of Evansville, said Terry Hedges, Gibson County Emergency Management Agency director. Mounts was unavailable for comment on Monday.

Fort Branch Volunteer Fire Department Chief Pete Lewis said insulation that apparently had been smoldering between concrete walls at the vacant Gibson County plant erupted in flames again early Monday.

He said local officials were concerned about smoke from burning insulation and issued a voluntary evacuation of neighborhoods near the area.

Few, if any people appeared to leave, although many town residents expressed concern, and the town hall was closed early.

Sherry Campbell, who lives a few blocks from the Emge plant, said Monday she smelled smoke from the plant fire at her home.

On Monday she decided to check on her father because he lives near the former plant and she was worried the smoke would aggravate his health problems.

"My dad worked there all of his life. I worked there for eight years. Most of my family have worked there," Campbell said. "I'm ready to see some closure on this building."

Campbell and friend Cindy Fields, who also lives in Fort Branch, said this is not the first time there has been a fire at the abandoned meat plant. They said something should be done about the vacant building.

The building caught fire in June 2007, burning the northwestern corner of the building and its warehouse roof in a blaze that brought firefighters from across the area.

EPA: Smoke not toxic

Lewis said EPA officials said the smoke is not toxic, however it is a health hazard because of its potential as a lung irritant. The flare-up Monday happened after a major structure failure caused part of the burning building to collapse, exposing more insulation and other materials to the fire and increasing the amount of smoke.

The collapse happened while EPA officials were at the scene taking more air samples, Lewis said.

Officials said the level of particulate matter in the smoke spiked dramatically, leading to the decision to battle the fire by knocking down the building walls and putting water directly on the burning material as it was uncovered.

Firefighters had been dousing the structure with water supplied from the town and numerous water tankers from fire departments in other communities and counties. But officials backed off from that after consulting with the EPA about bringing in a contractor, Hedges said.

Gibson County and Fort Branch have been declared disaster areas, Hedges said. He said the declaration was the first step in the process of qualifying for financial compensation from the government for fighting the fire.

While the EPA agreed to pay for the demolition, Hedges said the county will pay for the expenses of fighting the fire, such as fuel. Lewis said the cause of the fire was undetermined. He speculated it could have been lightning from storms that recently

moved through the area or possibly by workers reported to have been demolishing or dismantling parts of the facility.

He compared the impact Emge had on the community and Gibson County, in its day, to the impact that Toyota Motor Manufacturing of Indiana had in more recent years when it located near Princeton.

"They did good for the town. They supported the community, and the community supported the company," Lewis said.

Wee ones may breathe more toxins than adults (*Coloradoan*)

By LIZ SZABO • USA Today • June 22, 2010
A crawling baby learns about her world with every step, building her muscles as she discovers the difference between smooth bathroom tiles and squishy living room rugs. To her burgeoning taste buds, both taste great.

But research shows that babies pick up more than new skills as they explore their environments.

Infants may take in two to five times as much household dust as adults, even though they weigh only one-eighth as much, said Alan Greene, a pediatrician at Stanford University's Lucile Packard Children's Hospital. Because of that dust, babies are more likely to be exposed to pesticides and other potentially harmful chemicals inside the home than outside, he said.

Children younger than 2 are also more vulnerable to toxins than adults because they're still developing, Greene says. On average, children that age who are exposed to a carcinogen are 10 times more likely than an adult to develop cancer, according to the Environmental Protection Agency.

"It's a sound assumption that we should be 10 times more careful with children," Greene said.

Pediatrician Harvey Karp, author of The Happiest Baby on the Block, suggests parents open their

windows to ventilate the air once a day, if weather permits. He notes that indoor air is often more polluted than outdoor air, partly because of solvents and other chemicals found in paint, flooring, rugs, furniture and dry cleaning.

Yet toxic exposures often start long before babies can crawl. Babies today are typically born "pre-polluted," exposed to potential carcinogens even before birth, a report by the President's Cancer Panel said in May.

In a study of umbilical cord blood by the Environmental Working Group, researchers found 180 carcinogens in babies and 217 chemicals that were toxic to the brain or nervous system.

The American Cancer Society estimates that about 6 percent of cancer deaths — nearly 34,000 a year — are caused by environmental pollutants.

Because so little research has been done on cancer and the environment, it's possible the true number of pollution-related cancer deaths is actually much higher, the President's Cancer Panel said.

WATER

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EPA Approves Water Contaminant Testing Methods (*EP Magazine*)

- Jun 22, 2010

The U.S. Environmental Protection Agency has approved 12 new, alternative (and optional) testing methods for use in measuring the levels of contaminants in drinking water and determining compliance with national primary drinking water regulations.

The Safe Drinking Water Act (SDWA) authorizes EPA to streamline approval of the use of alternative testing methods through publication in the *Federal Register*. This expedited approach provides public water systems, laboratories, and primacy agencies with more timely access to new measurement techniques and greater flexibility in the selection of analytical methods, thereby reducing monitoring costs while maintaining public health protection.

The 12 alternative methods test for Dalapon; Radium-226; Uranium; Radioactive Cesium, Iodine and Gamma emitters; Tritium; and E. coli in drinking water.

Farmers fight bay polluter image (*The Capital*)

Annapolis, Maryland
'Everyone's in this ballgame, not just farmers'
By PAMELA WOOD, Staff Writer
Published 06/21/10
Sick of being branded as polluters of the Chesapeake Bay, Maryland farmers are striking back.
More than 200 farmers have penned a letter to Gov. Martin O'Malley, urging him to work with them - and not against them - when it comes to cleaning up the Chesapeake Bay.
"We want everyone to realize everyone's in this ballgame, not just farmers," said Maryland Farm Bureau President Patricia Langenfelder of Kent County.
The farm bureau organized the petition effort, which grew from farmers' frustration at constantly being blamed for the bay's unhealthy state. The petition was delivered on Wednesday.
Shaun Adamec, an O'Malley spokesman, said the governor acknowledges the contributions farmers have made toward reducing pollution.
"There's nobody more appreciative of farmers than the governor when it comes to cleaning up the bay," Adamec said.
The petition was intended mainly to counteract negative attention that has been cast on farmers, Langenfelder said.
Farmers have built manure storage structures, planted buffers along streams, grown winter cover crops and instituted other "best management practices" to reduce nutrient and sediment pollution, Langenfelder said.
While the government often contributes some of the cost of such practices, farmers have to put up their own money, too, Langenfelder said.
She noted that nutrient and sediment pollution from farms has decreased over the years due to such practices. Meanwhile, other sources of pollution - particularly urban and suburban stormwater runoff - are increasing.
Langenfelder said farmers have made "major strides" in reducing pollution, but "we're getting accused of not doing our fair share."
The farmers' letter took a stab at a group of professors and activists whose recommendations on pollution control are heavy on agricultural reductions.
The farmers wrote: "Environmental fringe groups with little regard for the facts and the truth continue to recommend ill-conceived draconian regulatory regimes that will place Maryland farmers in economic turmoil, unable to compete against producers in the other states or other countries."

The academic group, self-described as "senior scientists and policy leaders for the bay," sent a flotilla of boats to Annapolis City Dock earlier this month to unveil its latest set of recommendations.
Farmers have a difficult task when it comes to explaining to the public how much pollution they cause.
Throughout the six-state Chesapeake watershed, farming is the top source of nitrogen pollution to the bay. But in urban and suburban areas such as Anne Arundel County, farming often is at the bottom of the list.
For the "Lower Western Shore," which runs from the Magothy River watershed down to south county, farming is dead last as a cause of nitrogen pollution, according to the state's BayStat program.
Farming contributes just 7 percent of nitrogen in the Lower Western Shore. The top polluter locally is stormwater runoff - rainwater that rushes across roofs, parking lots and streets, carrying pollution into waterways. That contributes nearly 44 percent.
When the nutrients nitrogen and phosphorus flow into rivers and the bay in large amounts, they trigger the growth of algae blooms. The algae block light from reaching underwater grasses, and when the algae die, they suck life-sustaining oxygen from the water.
Similarly, sediment pollution clouds the water and smothers oysters and other bottom-dwelling creatures.
Maryland, other bay states and the federal government are drawing up a new "pollution budget" that will set enforceable limits for nutrient and sediment pollution.
Langenfelder, from the farm bureau, conceded that farmers will be a key part of the plans for meeting the new pollution limits.

In fracking debate, 'disclosure' is in the eye of the beholder (*Greenwire*)

(06/21/2010)
Mike Soraghan, E&E reporter
In the intense but inscrutable debate about the chemicals that drillers inject underground to flush out natural gas, this much can be said: Everyone is for disclosure. But there's no agreement on what "disclosure" means when it comes to the oil and gas process called hydraulic fracturing, or fracking. And that means they disagree on nearly everything.

Fracturing -- vital to extracting gas from shale formations -- involves injecting tanker-loads of water and sand into a gas well to blow apart the rock and release the gas. A small fraction of that concoction is a mixture of chemicals as mundane as ice cream thickener and as toxic as benzene.

Worried that those chemicals could contaminate groundwater, environmentalists, community groups and some Democratic lawmakers are demanding detailed, well-by-well information about the type of chemicals that drillers inject. And they want it put on the Internet for all to see.

"Disclosure would shine a light and encourage companies to use less toxic chemicals," said Amy Mall, an analyst who works on fracturing issues for the Natural Resources Defense Council. "It gives individuals the ability to know what's being used."

Companies say they, too, are for full disclosure of the ingredients, but only to state regulators and medical personnel willing to sign confidentiality agreements. Making public detailed lists of chemical constituents, they say, gives away valuable trade secrets. And they see the drive for disclosure as a stalking horse for harsh new restrictions on drilling that would bog down gas production in the United States.

"Our position is, 'We do support it.' It's a question of what legal channel you're using to get disclosure," said Chris Tucker, a spokesman for Energy in Depth, an industry group formed to fight federal regulation of fracturing. "But we believe there's a lot more information out there than you think right now."

The vastly different interpretations of disclosure could lead to confusion among policy makers as they get into the weeds of climate and energy bills. Some Democrats in Congress have stepped up their efforts to regulate fracturing under federal law as Congress prepares for an end-of-session rush of energy legislating.

The Senate climate bill authored by Sens. John Kerry (D-Mass.) and Joe Lieberman (D-Conn.) would order fracturing companies to post the worker-safety documents for the chemicals on the Internet (*E&E Daily*, May 12).

In the House, Rep. Diana DeGette (D-Colo.) has pending legislation to rescind fracturing's exemption from regulation under the Safe Drinking Water Act. Her bill (H.R. 2766) would also require companies to tell regulators the "chemical constituents" in their fracturing fluid, but not the formula for how those chemicals are mixed together. The legislation would order regulators to make those ingredients public by publishing them on the Internet.

At a recent hearing, DeGette proposed an amendment that would have included the disclosure portion of her bill. She then withdrew it, saying she planned to negotiate the issue further with industry representatives (*Greenwire*, May 26).

Many industry executives say they support full disclosure. But they don't believe that means a well-by-well list of the chemicals injected underground.

For example, Chesapeake Energy Chairman and CEO Aubrey McClendon shook up the industry last year with a call for transparency.

"We as an industry need to demystify [hydraulic fracturing]," McClendon told an energy conference in September. "We need to disclose the chemicals that we are using and search for alternatives to the chemicals we are using" (*Greenwire*, Oct. 1, 2009).

But Chesapeake doesn't have a policy mandating disclosure to the public of the chemicals used in each well. Company spokesman Jim Gipson noted that the ingredients are listed in the worker-safety documents called "material safety data sheets," or MSDS, posted at each well site. In addition, the company has listed "typical" fracturing ingredients on its website.

"As an operating company that obtains fracturing services from a number of different vendors, we have disclosed what we can," Gipson said. "I don't know much more that we can do."

Debate over data sheets

The industry firmly agrees that MSDS documents amount to full disclosure, though some oil and gas industry representatives don't like being singled out with an order to post them online.

"Easily the most mischaracterized and misunderstood element of the debate over hydraulic fracturing, some in Congress seem to believe that the slight percentages of chemical additives found in the water- and sand-based fracturing solution are secret -- and further, that industry continues to resist the disclosure of these elements," Lee Fuller, executive director of Energy in Depth, wrote to lawmakers in March. "Neither assertion is true" (*E&E Daily*, March 24).

Fuller, who is also vice president of government relations at the Independent Petroleum Association of America, continued, "The materials used in the fracturing process are widely disclosed. At every well site in America where chemicals are present, you'll find a detailed listing of those materials printed and maintained on Material Safety Data Sheets (MSDS), which are mandated by the federal government. MSDS are searchable online. Additionally, several states and industry organizations, such as Energy in Depth, have provided information on their websites describing the kinds of additives used in the fracturing process, as well as their purpose."

Exxon Mobil Corp. cited the MSDS documents in fending off a stockholder proposal demanding more information about fracturing. The company said "there is public disclosure" of chemicals at fracturing sites because the MSDS are posted on-site. The board of directors also said that the chemicals used can be found on the company's websites. The stockholder proposal was voted down in May (*E&ENews PM*, May 26).

Halliburton, a major provider of services for the oil and gas industry, posts MSDS for each of its products on its website, but does not list where the products have been used. Another large servicer, BJ Services, does not post the MSDS on its website.

The MSDS documents are what the Kerry-Lieberman climate and energy bill orders posted to the Internet, saying that will "provide adequate information for the public and State and local authorities."

But the NRDC's Mall said the information on the worker safety documents isn't adequate. They lack crucial information, she said, namely, the ingredients of fracturing fluids.

"Bottom line, they don't have all the information," Mall said. "They're certainly not sufficient to inform a landowner worried his water has been polluted."

MSDS are designed for workplace safety, not the protection or monitoring of groundwater. The Occupational Safety and Health Administration requires the sheets to be posted in workplaces so employees and employers understand the hazards of the chemicals they're working with.

Additionally, MSDS are not public records kept on file by federal officials. Instead, the companies are required to maintain the records for 30 years. And manufacturers don't have to disclose chemical ingredients if they're a trade secret.

The MSDS documents are online only if the company decides to post them. If pollution were found years after well was fractured, there's no guarantee in some states that authorities would have a list of the chemicals used.

For example, Halliburton's website includes the MSDS for "frac fluid with additives" among the data sheets for all of its other products. Nowhere on the sheet does it list what the additives are. The sheet lists no chemical ingredients. Its toxicity and carcinogenicity are listed as "not determined." A bottle of Coca-Cola, by comparison, lists at least one chemical, phosphoric acid.

Halliburton spokeswoman Teresa Wong said the MSDS "does not list any specific chemical ingredients because the product contains no hazardous substances."

Another MSDS for Halliburton's HAI-OS acid inhibitor lists chemicals, methanol and propargyl alcohol, which are often found in antifreeze. Workplace safety rules say workers should not be exposed to more than 1 part per million of propargyl alcohol during an eight-hour work shift.

Omitting details

Some environmentalists question the assertion that all fracturing chemicals are disclosed in MSDS documents.

The Endocrine Disruption Exchange, an environmental group that has been highly critical of fracturing and gas production methods, assembled the names of 435 fracturing chemicals and determined that only 36 percent of them had no MSDS documents. Of the 282 that did have MSDS, three listed no ingredients, while 32 disclosed more than 95 percent of the product ingredients. Also, the group said, the sheets don't have to be submitted to regulators for verification.

Even when companies list fracturing fluid ingredients on their websites, they sometimes omit key details.

On its website, Energy in Depth lists one of the most controversial ingredients in fracturing simply as "petroleum distillate," which, the site notes, is used in "Make-up remover, laxatives, and candy." Chesapeake's site says it is "Used in cosmetics including hair, make-up, nail and skin products." Some distillates are also used to make candy like gummy bears.

But "petroleum distillates" are essentially anything distilled from crude oil. According to a **guide** produced by Purdue University and EPA, they can also include flammable toxins and carcinogens like naphthalene, benzene and kerosene.

Chesapeake's Gipson said his company's chart refers to "aliphatic hydrocarbons." That can include methane, propane and kerosene. He said the company used the more generic term because that is what is generally listed on MSDS documents.

Range Resources, whose chairman, John Pinkerton, also called for disclosure last year, has a somewhat more expansive view of disclosure than most other companies.

"We'll list specific quantities," said Range spokesman Matt Pitzarella. "You know exactly what we're using and how much."

The company distributes a fact sheet that lists the amounts of chemicals it uses. For example, the chart indicates that the company uses methanol or propargyl, "diluted at two gallons per 1,000 gallons of water."

But the chart notes that "individual wells may vary based on geologic and other conditions," and it offers no way for a neighbor to find out specifically what chemicals were used in a nearby well.

East vs. West

Fracturing has been an important drilling technique for decades in conventional drilling, often used to increase production from a well or flush the remnants out of an old well.

But it is the only way to extract gas from concrete-like shale formations like the Marcellus Shale, which runs through Appalachia from West Virginia to New York. The vast shale reserves found there have brought drillers to places like Pennsylvania and New York, where residents aren't as comfortable with drilling as Westerners and are less hostile to regulation.

Over the years, state regulators' methods of handling disclosure have evolved in very different ways. Regulators mix and match from different layers of disclosure and the different constituencies allowed access to the information.

Wyoming's Oil and Gas Conservation Commission decided earlier this month to order drillers to report the chemicals used in hydraulic fracturing to commission staff, the first such requirement in the nation. But the measure specifically shields the information from the public. Gov. Dave Freudenthal (D) directed the agency to draft the rules as a way to assure federal officials that Wyoming adequately regulates fracturing (*Greenwire*, June 9).

Colorado, which overhauled its oil and gas laws in 2007, requires companies to maintain a well-by-well chemical inventory for the life of the well plus five years. Companies don't have to file the list with state regulators, but are required to provide it to the Colorado Oil and Gas Conservation Commission if asked. The agency can share the information with health officials, or a treating physician, subject to a confidentiality agreement. The inventory can be shared more broadly if the company does not request trade secret protection.

The Pennsylvania Department of Environmental Protection requires MSDS to be attached to every drilling plan, said Tom Rathbun, spokesman for the agency, and be available to landowners, local governments and emergency responders.

The agency posts online a **list** of the chemicals each major company uses in fracturing, but those relying on it might still want to do more homework.

The agency's website notes that one of the chemicals BJ Services uses is "hydrotreated light distillate." The U.S. Department of Health and Human Services' Household Products Database lists hydrotreated light distillate as a synonym for kerosene.

There is disagreement among different regulators and company officials on the value of posting "typical" or even company-by-company information on websites, as opposed to a well-by-well inventory of chemicals.

Pennsylvania's Rathbun said that each company uses the same ingredients in each of its wells. But Chesapeake's Gipson said the chemicals used vary between each site, and are often changed as the crews fracture the wells. And Range's Pitzarella said, "In some instances, you may not know specific amounts until you're doing it."

'Foot in the door for EPA'?

Energy in Depth's Tucker said the group's members wouldn't necessarily oppose calls for additional disclosure, but that efforts to impose those requirements as part of the Safe Drinking Water Act are a non-starter for drillers -- suggesting that production could be shut down for months or years while U.S. EPA writes regulations.

"The question isn't the level of disclosure, it's the venue," Tucker said.

But Tucker maintains that the ultimate goal of those who say they want more disclosure is strict federal regulation and the curbing of gas production in the United States.

"I don't think the NRDC is spending millions on this because they want a a longer inventory sheet," Tucker said.

The NRDC's Mall said she doesn't see disclosure driving more regulation, because the broad range of chemicals is already public.

"Industry is portraying it as a foot in the door for EPA," Mall said. "But asking for disclosure is not part of a strategy to get more regulation."

Utilities Look To Appeals Board To Limit EPA Water Permit Takeovers (*Inside EPA*)

Posted: June 21, 2010

The water utility industry is looking for a forthcoming decision from EPA's Environmental Appeals Board (EAB) to clarify under what circumstances EPA can take over state-issued water discharge permits, as well as whether there are limits to EPA's discretion in requiring new permit conditions once the agency has decided to invalidate a state permit and issue its own.

EAB heard oral arguments June 7 for *In Re: San Jacinto River Authority* (SJRA), where EPA Region VI defended a challenge by a Texas water authority to the agency's decision to take over a state water discharge permit in 2007 and the inclusion of whole effluent toxicity (WET) limits in the new permit EPA issued last year.

SJRA was joined at oral arguments by the National Association of Clean Water Agencies (NACWA), which had expressed concern in an *amicus* brief filed ahead of the hearing that if EPA is allowed to revoke a state permit and replace it with a more stringent one with impunity, as the wastewater treatment utility group feels occurred in the SJRA case, then EPA could do the same with permits for utilities elsewhere.

At issue in the SJRA dispute is the inclusion of a sublethal WET limit in the new 2009 SJRA permit. Sublethal WET limits require dischargers to consider not only whether the levels of individual effluent contaminants are below acceptable levels, but whether the aggregate toxicity of those contaminants is still below levels required for the protection of aquatic life.

The state permit only included a lethal WET limit, where the threshold for failure would have been whether or not the river receiving the discharges could even sustain marine life.

NACWA contended in its *amicus* brief that the agency is requiring the WET tests without any scientific justification, but EPA insists that it has consistently required the use of WET testing in instances where state authorities have not.

An industry source familiar with the arguments says the plaintiffs during oral arguments raised questions about the grounds on which EPA is permitted to invalidate a state-issued permit and what limits there should be, if any, to new requirements in a permit the agency issues instead.

In the SJRA case, the source says, EPA appears to have withdrawn a permit that it had already approved in 2002, which constitutes a policy reversal and therefore requires a rulemaking procedure to allow stakeholders to comment on the decision. "EPA clearly reversed themselves," the source says. "They had gone along with the state permitting rules, and then they go back and say [the permit is invalid]. They can't just reverse themselves like that."

Further, industry remains concerned about what EPA may include in a new permit, the source says. "EPA tends to take the position that, once they've decided to take over a permit, they have a lot of discretion" in what to include in that permit, the source says. "That discretion can't be unbounded. There need to be some constraints on what EPA can do or not do, and I think this case is a perfect example of that."

Technical Determinations

While EAB tends to defer to EPA on technical determinations, the source says the plaintiffs "made some good points" and the board's decision, which may not be published for six to 12 months, will likely address industry's concerns. Whether those issues are addressed substantively or not is difficult to say, the source says, but generally EAB rigorously addresses every aspect of a case that is argued during oral arguments, so industry has reason to expect that the matter will become clearer.

Industry had filed a motion to strike from the proceedings a reply from EPA to NACWA's *amicus* brief, wherein EPA defended its revocation of the SJRA permit because its 2002 approval of the state's WET implementation procedures was an approval of a state guidance document, not an approval of water quality standards. Industry contended that if that defense were to be taken at face value, the 2002 approval would be meaningless in its entirety.

During oral arguments, EPA Assistant Regional Counsel Thomas David Gillespie maintained that the 2002 approval of the state guidance document was reflective of both internal policy priorities that favored the development of a lethal WET limit instead of a sublethal limit. Further, a 2004 decision by the U.S. Court of Appeals for the District of Columbia Circuit in *Edison Electric Institute v. EPA* determined that sublethal and lethal limits were permitted under the Clean Water Act, and gave the agency a firm standing with which to develop sublethal limits. Following the D.C. Circuit decision, the agency informed its permitting states that it would be seeking sublethal limits in future permits, he said.

When SJRA sought a new permit in 2006 that did not include sublethal WET limits, Gillespie said, the agency denied the permit and drafted its own permit that included sublethal WET limits, to which the state and industry object.

"We said look, we've informed you that this is going to be what's required," Gillespie said. "It's required under the Clean Water Act. It's required under your Water Quality Standards. And so that's when we objected to their permit." -- *John Heltman*

EPA Pushes States To Implement Strict Stormwater Permit Requirements(*Inside EPA*)

Posted: June 21, 2010

EPA regional offices are increasingly scrutinizing draft Clean Water Act (CWA) permits issued for stormwater by states with delegated authority, which some sources say

underlies EPA's new aggressive push for tightened stormwater permits that bring more entities and properties under regulation.

One environmentalist says the recent comments from EPA Regions I and II on draft municipal separate storm sewer system (MS4) permits marks a change from EPA's previous approach of only commenting on final permits, if at all. "For five years . . . I never saw an EPA comment on a delegated state's permit," the source says.

But in April 22 comments on a Vermont-proposed MS4 permit, Region I says, "EPA normally reviews draft permits for purposes of determining consistency with federal requirement and, if necessary, identifying any objections."

The focus on MS4 draft permits comes as EPA is expanding the range of its stormwater permits by using extra authority within the CWA -- residual designation authority -- to require that private property owners be covered by MS4 permits, and as the agency is exploring ways to address post-construction stormwater runoff. Additionally, EPA is launching a new urban waters program to primarily deal with stormwater problems, including a new grant program aimed at helping disadvantaged communities "access, restore and benefit from their waters and the surrounding land," according to EPA.

Region I, in its comments to Vermont, suggests "that within this next iteration of the MS4 permit that the permit also include specific waste load allocations [(WLAs)] for each of the MS4 communities." The environmentalist source says, "Arguably that would be a numeric limitation."

The comments say that references to a Lake Champlain [total maximum daily load (TMDL)] should be expanded to "include specific phosphorus WLAs for each MS4 along with a specific process for addressing Lake Champlain TMDL requirements. . . . While the TMDL did not include MS4-specific WLAs, the permit should still include WLAs for each MS4 derived from information contained in the TMDL."

A TMDL is a measure of the maximum amount of a pollutant that can enter a waterbody without it violating water quality standards. Incorporating stormwater runoff into TMDL allocations has long been a problem for EPA and states.

In Region II, EPA is urging the New York State Department of Environmental Conservation (NYSDEC) to define what the term "maximum extent practicable (MEP)" means for an MS4 permit.

In an April 27 response to Region II, NYSDEC quotes EPA as saying the state "should . . . specify in objective terms what is expected of an MS4 to meet the MEP standard," something the state is insisting that it has done. NYSDEC says the permittee cannot choose the least expensive methods of controlling stormwater, noting that the permit "provides a specific list of required [best management practices] . . . which limits the ability of inappropriate interpretations, as to what meets the MEP standard."

Environmentalists in Region I have pushed for MS4 permits to require use of low impact development techniques to meet MEP requirements in permits, pointing to EPA's 2009

federal facilities stormwater guidance and a closely watched case in Washington state where an administrative law court ruled in 2008 that LID techniques should not simply be allowed in permits, but required.

Lancaster Water Quality Report Available (*Lancaster Eagle Gazette*)

June 22, 2010
The annual Consumer Confidence Report has been released by the Lancaster Division of Water. The report, which is designed to inform consumers about the quality of their drinking water, is required by the U.S. Environmental Protection Agency.

The annual report will be mailed to customers of the Lancaster water system. Expect the report within the next few days. Free copies of the report are available at the Lancaster Utilities Office, the Fairfield County District Library, the Lancaster post office, and also on the City of Lancaster website at ci.lancaster.oh.us.

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