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AIR

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City, university seek air pollution facts around San Bernardino rail yard (*Contra Costa Times*)

Andrew Edwards, Staff Writer

Posted: 04/16/2009 05:39:11 PM PDT
Updated: 04/17/2009 12:18:44 AM PDT

SAN BERNARDINO - Local scientists are pursuing federal dollars to fund a study of the health effects of living near the rail yard on the Westside.

The BNSF Railway yard in western San Bernardino is both a major employer and an important link in the transportation chain for imports that enter the United States from the ports of Los Angeles and Long Beach.

But the diesel-fueled locomotives, cranes and big rigs that rail yard employees and truckers use to move those goods are also a source of pollution.

The California Air Resources Board released a report in 2008 that concluded that people living in neighborhoods near the rail yard face elevated cancer risks compared to other Inland Empire and Los Angeles area residents.

That report, however, relied on estimates to provide a worst-case scenario type assessment of the health hazards posed by the tiny particles that enter the air when diesel engines do their work. Loma Linda University professor Samuel Soret said he and others want to collect data near the yard to obtain a clearer picture of where pollution goes and what happens to people who are exposed to the airborne toxins.

"My hypothesis is that there's likely a greater burden of disease in the communities that are immediately adjacent to the rail yard," Soret said Thursday. "I'm not sure we'll be able to show whether the greater burden of disease is directly related to the railyard."

A BNSF spokeswoman expressed skepticism that the study could pinpoint the rail yard as the source of observed pollution, since the train facility and adjacent neighborhoods are also close to the heavily traveled 215 Freeway.

Spokeswoman Lena Kent also said BNSF sent an application Wednesday to the South Coast Air Quality Management District to obtain funding that could help finance the purchase of cleaner locomotive technology.

Kent said the rail company is asking for $3 million to help buy four GenSet switching locomotives that would move freight around the yard.

GenSets use multiple diesel engines instead of a single large engine, enabling the machines to use less fuel when hauling relatively light loads.

Kent also said that more than 500 people, including contractors, work at the rail yard.

In regard to the planned study, Soret said faculty from Loma Linda University and Cal State San Bernardino are likely to take part in the study, as are local community groups.

The study would monitor pollutants observed at sites near BNSF's property and collect health data from residents and students who live or attend classes near the train yard.

The research plan also proposes to collect data from a neighborhood that's near a freeway - but not close to a railroad - and a third neighborhood that's not in the vicinity of neither a train yard nor a freeway to better understand how much pollution can be expected to have its origin at a train yard.

Soret said the study could cost about $1 million and require two years to complete. He said scientists plan to ask the National Institute of Health and Environmental Protection Agency for financial backing.

He expects the results will enable the scientists to propose policy recommendations related to the rail yard's freight moving activities.

"We need to move things, we all benefit from it, but the question is should just a specific community pay for us in terms of all the hidden costs?," he asked.

Jim Morris, chief of staff to Mayor Pat Morris said the Mayor's Office supports both the study as well as BNSF's application for cleaner locomotive technology that could be used at the Westside train yard.

andrew.edwards@inlandnewspapers.com
(909) 386-3921

EPA edges closer to carbon endangerment finding (*Business Green*)

Landmark ruling on whether carbon emissions can be regulated under the Clean Air Act could be just weeks away

Danny Bradbury, BusinessGreen 17 Apr 2009

The US Environmental Protection Agency (EPA) is inching closer to an endangerment finding that will enable it to regulate carbon emissions in the US, after the Office of Management and Budget this week approved a proposal from the Agency that would allow it to regulate carbon emissions as a pollutant under the Clean Air Act.

According to reports, the endangerment finding – which would revolutionise the way greenhouse gases are regulated in the US and could open the door for many legal cases against heavy emitters – could be officially announced within the next few days.

However, it remains unclear how the finding would be reconciled with draft legislation currently working its way through Congress that aims to regulate emissions through a nationwide cap-and-trade system.

The American Clean Energy and Security Act of 2009, drafted by Henry Waxman and Edward Markey and launched last month, would impose a cap-and-trade system in the US, but would also prohibit the EPA from regulating greenhouse gases under the Clean Air Act.

Congress is likely to be caught in a race to pass the legislation, which would directly address the carbon emissions problem using market dynamics, rather than accept regulations from the EPA, which essentially adapt existing legislation to new ends.

The EPA was forced to consider the possibility of regulating carbon dioxide emissions following a 2007 lawsuit filed against it by the State of Massachusetts. That case, which Massachusetts won, set a precedent by classifying carbon dioxide as a pollutant and forcing the EPA to consider whether or not it should be regulated under the Clean Air Act.

The forthcoming endangerment finding will be the culmination of years' worth of work by environmental groups to get the EPA to regulate the gas, following y ears of stalling from the Bush administration which argued that the Clean Air Act should not be used to tackle carbon emissions.

Upon taking office, President Obama instructed the EPA to reach a conclusion on the Endangerment Finding, which if adopted could result in additional regulatory barriers to public sector and commercial projects based on their emissions profiles.

Permalink: http://www.businessgreen.com/2240548
www.businessgreen.com/2240548

EPA to review system gauging air emissions (*USA TODAY*)

By Blake Morrison and Brad Heath, USA TODAY

In a move that could signal a fundamental shift in how industrial pollution is regulated, the U.S. Environmental Protection Agency has pledged to reconsider how it estimates the amount of toxic chemicals that refineries and petrochemical plants release.

The EPA's plans, outlined in a letter sent to Houston Mayor Bill White earlier this month, offer no assurances that the process for estimating chemical releases will be changed. But the letter does detail a variety of steps the agency will take to try to develop a more complete picture of what the industries emit. Among the steps: comparing chemicals actually released by Houston refineries to the pollution estimates those companies are required to disclose under public right-to-know laws.

FULL TEXT: EPA responds to Houston Mayor Bill White
FULL COVERAGE: Toxic Air and America's Schools

Based on such comparisons, the agency would examine the formula it uses to predict emissions at facilities across the nation, the letter indicated. White, environmentalists and others have contended for years that those estimates understate what industries release into the air.

"This would apply to every refinery in the country," said Elena Craft, a toxicologist with the Environmental Defense Fund, a non-profit advocacy group. "If the refining industry is underreporting the emissions, then we're underestimating the health risks. These are pollutants that cause cancer — that end people's lives."

In December, a USA TODAY investigation used those emissions estimates to identify schools in toxic hot spots — locations where chemicals from nearby industries appeared to permeate the air. Children are particularly susceptible to the chemicals, and a dozen of the schools where problems appeared most pronounced were in Harris County, Texas, which includes Houston and other parts of the industrialized ship channel.

White charged in a July letter to the EPA that emissions estimates "significantly undercount" the level of pollution in his city, the nation's fourth largest. He cited studies that indicated emissions "can be 100 times greater" than the estimates.

ANNOUNCEMENT: EPA to monitor 62 schools' air
PEACE OF MIND: Schools glad to have EPA sample air
TELL US: Has the USA TODAY toxic schools report helped you?

In a response to White, dated April 7, the EPA's acting assistant administrator essentially agreed. "We share your concerns about the accuracy of emissions estimates," Elizabeth Craig wrote. Her letter said the EPA had begun to develop a new way to account for "upsets" — accidental chemical releases that are generally unaccounted for in emissions estimates.

"Sometimes a single upset can release as much (pollution) as a full year's of 'business as usual,' " said Elena Marks, Houston's director of health and environmental policy. "Getting them to acknowledge that the current protocols are inaccurate and incomplete was the huge first step. And the huge next step is getting them to say, 'And we're going to fix it.' "

The EPA's response offers a number of dates for possible changes — some this year, some next.

Ky, other states get funds to cut bus emissions (*WZTV*)

April 17, 2009 07:00 EDT

LEXINGTON, Tenn. (AP) -- Kentucky school systems will share in a federal grant to reduce diesel school bus engine emissions.

The states are getting $1.73 million each.

The Kentucky Department for Environmental Protection will administer the grant to Kentucky.

The federal environmental protection agency said the project will reduce premature deaths, asthma attacks and other heath problems while helping create and retain jobs.

The money will be used to retrofit the engines of more than 300 school buses to make them run cleaner.

US: EPA previews hydraulic hybrid truck (*Automotive World*)

17/04/2009, AutomotiveWorld.com

The US Environmental Protection Agency (EPA) and its industry partners will offer a preview of a hydraulic hybrid truck for transferring cargo containers later this month at the Society of

Automotive Engineers World Congress.

The cargo mover, called a series hydraulic hybrid ‘yard hostler’, applies EPA's patented series hydraulic hybrid vehicle (HHV) technology to the heavy-duty truck as part of the EPA National Clean Diesel Campaign's Clean Ports USA programme.

Hostlers are large, off-road vehicles used to transfer cargo containers at marine ports, rail yards, warehouses and distribution centres. The trucks spend about half of their time idling and contribute to air pollution generated in ports throughout the world.

EPA's series HHV powertrain stores and releases regenerative braking energy hydraulically rather than as electric energy, while significantly reducing idling and optimising engine operation to use less fuel and reduce air pollution. HHV technology has to date been demonstrated and field tested in a number of vehicles, including package delivery vehicles and refuse trucks. EPA believes this vehicle design can improve the efficiency of the yard hostler operation by 50-60%.

STATES AIM TO RESOLVE EPA, BLM CLASH OVER FUTURE OIL, GAS EMISSIONS (*Inside EPA*)

4/17/2009

Western air officials are crafting proposals to address increasing air pollution from oil and gas development, in part to overcome a clash between EPA and the Bureau of Land Management (BLM) over how to address cumulative air pollution from oil and gas projects when conducting National Environmental Policy Act (NEPA) reviews.

The Western States Air Resources Council (WESTAR) at an April 6-9 business meeting presented a range of recommendations to address the air quality impacts from burgeoning oil and gas development in Western states, including requesting increased monitoring and modeling to detect areas that have recently slipped out of attainment with EPA’s national ambient air quality standards, in particular its ozone standard.

While states want to avoid being designated in nonattainment with air standards, one state official says that if monitoring shows heavy oil and gas development in rural areas is causing emissions increases it could pressure EPA and BLM to resolve their differences and take steps to reduce the pollution.

For example, the agencies could be forced to address increased emissions under general conformity law, which mandates that federal actions not contribute to a violation of air standards, the source says.

A second state source says the main point of contention between the federal agencies is how to address the cumulative impacts of oil and gas development, which include the total present and likely future air quality impacts of current and potential development. The agencies continue to disagree about whether and how cumulative impact analyses should be done in the NEPA process, the source says.

Generally, EPA appears to be advocating for more cumulative analysis, and appears to encourage land managers to conduct the analysis earlier in the process. BLM recommends that the analysis should be done later in the process, when they say it is easier to predict the impact of a project.

In a recent example of the clash, EPA's enforcement office sent a Feb. 27 letter to BLM and the Forest Service urging them to abandon an agreement signed in the final days of the Bush administration for assessing the air quality impact of energy leasing and planning, arguing the agreement ignores air pollution in the early phases of land management planning and is inconsistent with NEPA (*Inside EPA*, March 20).

In addition, EPA Region VIII last year sent comments to BLM raising a host of concerns with the bureau's NEPA programmatic environmental impact statement for oil shale development, which helps BLM develop a land-use plan for administering public lands. Among other things, the region argued that future NEPA analyses will need to consider cumulative and indirect environmental impacts of oil shale development, including impacts of new coal-fired or nuclear power plants that may be built to supply additional energy for extraction (*Inside EPA*, July 25).

And at a fall WESTAR oil and gas meeting, Larry Svoboda, director of EPA Region VIII's NEPA program, said the agency had developed a NEPA checklist due to a "'string' of poor air quality analyses," according to a presentation from the meeting. EPA recommends that early, planning level NEPA analyses consider the "potential for adverse impacts to air quality from projects in adjacent planning areas," the presentation says.

States say the ongoing disagreement between BLM and EPA is adversely impacting their ability to protect air quality from oil and gas development. Many states in the West have state laws that bar them from setting regulations that are stricter than EPA's, the first state source says. Therefore if land managers approve too many projects in an area without sufficient air mitigation requirements, and EPA's rules are not stringent enough to address emissions from the new development, the state has limited tools to improve air quality, the source says.

In addition, there is no federal permitting program for small, area sources of emissions in the sector, and states are barred by federal law from regulating mobile sources like drill rigs, the source says.

In part due to states' concerns over the dispute between BLM and EPA and possibly unchecked emissions spikes from new oil and gas projects, WESTAR's oil and gas recommendations at the meeting focus on improving planning and protecting air quality. *Relevant documents are available on InsideEPA.com.*

WESTAR recommends that states develop an inventory of monitoring sites in order to make recommendations about new monitoring sites, according to a document from the group. WESTAR also recommends that the states continue to support interagency efforts to produce regional-scale modeling for air quality planning and mitigation, the document says. The group also recommends

that states develop a clearinghouse for emission factors, emission controls, best management practices and other issues, the document says.

The first state source says the monitoring is the most important recommendation from the group. Currently, states have monitors near population centers, where industry and auto pollution have traditionally caused air quality problems. However, air monitors are needed in rural areas where concentrated oil and gas development is increasingly raising air quality concerns, the source says.

It is likely that new monitors will show that some of these rural areas are out of attainment with air standards, the source says, citing a recent effort by Wyoming Gov. Dave Freudenthal (D) to have EPA designate Sublette County, an area in southwest Wyoming with heavy oil and gas development, in nonattainment with the ozone standard -- a move that could result in new emission controls for the oil and gas sector in the region.

If new areas are found to be out of attainment with air quality standards, general conformity law could force the federal agencies to consider the air quality impact of oil and gas development, the source says. And at the recent meeting WESTAR members recommended developing a white paper to identify how general conformity law could be used in the context of oil and gas development.

However, the second state source says WESTAR has still not decided what the impact of conformity requirements could be. In some regions, a significant portion of oil and gas development occurs on private land, where conformity does not apply, the source says. For example, in Colorado, over 50 percent of oil and gas development occurs on private land, the source says.

But environmentalists are already using general conformity to threaten a lawsuit against federal actions they say do not adequately address air quality impacts from oil and gas development in the West, a move that may signal the idea is gaining traction in the region (*Inside EPA*, Feb. 27). -- *Kate Winston*

RULING GRANTS EPA ‘SUBSTANTIAL DEFERENCE’ CRAFTING AIR QUALITY PLANS (*Inside EPA*)

4/17/2009

In a just-issued ruling a federal appellate court has granted EPA “substantial deference” in its ability to craft air quality plans in the absence of state plans, the second of two recent legal rulings that counter a slew of court decisions that cut back the Bush EPA’s discretion.

The U.S. Court of Appeals for the 10th Circuit April 14 ruled to uphold EPA’s federal implementation plan (FIP) for reducing emissions from a power plant on Navajo land in New Mexcio, and denied arguments raised by industry and environmentalists that the plan was arbitrary and capricious. The 10th Circuit also granted EPA’s request to remand a portion of the plan that dealt with “fugitive” emissions that are not emitted from a stack or vent so that the agency could better explain the requirement in the FIP.

The ruling is significant because appellate courts have in recent years significantly restrained the agency's discretion to interpret federal law, with the U.S. Court of Appeals for the District of Columbia Circuit tossing out core Bush administration rules for emissions of mercury, sulfur oxides and nitrogen oxides.

The Obama administration has indicated that regaining discretion for EPA rules is a key priority. The 10th Circuit ruling may boost the new administration's effort to restore courts' deference to EPA on policy matters, and comes just weeks after a Supreme Court ruling that backed EPA's discretion to consider cost in setting cooling water intake technology standards and undermined activists' efforts to block the use of cost-benefit analysis.

The 10th Circuit in its ruling granted the agency discretion in crafting the FIP, which the agency put in place to fill a regulatory void in the area. The Clean Air Act requires that all areas be covered by air plans, but New Mexico's state implementation plan does not cover tribal land and the Navajo nation had not developed its own air quality plan for the power plant.

The court defended EPA's plan against charges from environmentalists that EPA arbitrarily ignored a legal requirement to conduct comprehensive modeling and charges from industry that the agency arbitrarily set its opacity limit, which is an indicator of soot pollution, and unfairly applied limits to pollution during plant malfunction. *The ruling is available on InsideEPA.com.*

Legal precedent gives EPA the most discretion when it comes to interpreting its own regulations, which in this case is the 1998 Tribal Authority Rule (TAR), and the TAR does not mandate that EPA conduct the modeling that activists were seeking, the court ruled. "Because the EPA's interpretation of its own regulation is not 'plainly erroneous or inconsistent with the regulation,' we must defer to the EPA," the court said.

The court also rejected industry's arguments that the opacity limit is arbitrary, because industry did not challenge the particulate matter limit that underlies the opacity limit and because industry did not provide a good basis for its arguments. The court also found that EPA's decision to apply the pollution limits to malfunction is consistent with agency policy."We have found no authority saying that we can prevent the agency to which we owe substantial deference from implementing" a plan that is as or more strict than federal requirements, the court says.

EPA AGREES TO AMEND METHOD FOR ESTIMATING REFINERY EMISSIONS (*Inside EPA*)

4/17/2009

EPA has agreed to a request to overhaul its methods for estimating air toxics and other emissions from refineries and chemical plants by revising its estimates for sources such as flares and cooling towers, creating new estimates for previously uncounted sources and for the first time accounting for emissions during malfunction.

The move is significant because it could lead to stricter regulation of the emissions. Environmentalists and some air officials have long argued that the agency is underestimating the emissions and human health risk from the facilities, which they say leads to lax regulation of the sectors.

It is also significant because EPA rarely grants so-called data quality requests to revise the data and methods it uses for decision-making.

However, the petroleum industry underscores that EPA's risk assessments have found the human health risks of refineries are acceptable. And in the past, industry has been critical of the request, saying if successful it could force EPA to strengthen refinery and chemical plant pollution controls, despite a lack of evidence that the emissions factors correlate to health risks.

In an April 7 letter, the agency granted a request from Houston Mayor Bill White (D) to revise its emission estimates, or factors, for refineries and chemical plants. In response to the request, the agency has begun development of a new protocol for estimating emissions of volatile organic compounds (VOCs), an ozone precursor, and air toxics from the sectors, Elizabeth Craig, the acting assistant administrator for the air office, said in the letter to the mayor. *The letter is available on InsideEPA.com.*

EPA says the new protocol is essential for accurately assessing the emissions from the refining and chemcial plant sectors. "Ultimately, we believe the lack of such a protocol can lead to omission of emission sources, improper characterization of process data and subsequent emissions data, and inconsistent reporting from one facility to the next," the letter says.

However, EPA is delaying for now a response to the mayor's request to change the sectors' emission monitoring and reporting requirements. The agency will wait to decide whether to conduct a new rulemaking for the sectors until it has evaluated the data produced by the protocol and other agency initiatives, the letter says.

The move comes in response to a July 9 request under the Data Quality Act (DQA) for a correction of the emission estimates for refineries and chemical plants. The mayor argued revisions to the estimates are necessary because the existing emission factors "significantly undercount emissions from petroleum refineries and chemical manufacturing plants," leading to invalid emissions inventories.

The mayor's request asked EPA to revise the relevant emissions factors based on accurate data from direct observation; require larger refiners and chemical plants to use remote-sensing technologies and fence-line monitors to verify emissions once a year; and require sources undergoing modifications to document emissions reductions directly in order to receive exemptions from new source review and prevention of significant deterioration requirements.

The DQA was enacted as an unnoticed rider to a 2000 spending bill and since then has been used largely by industry in an effort to fight regulation, though a federal appellate court held that the law did not bestow litigation rights. The request from White was significant because it appeared to be the first to be filed with EPA by a municipality. EPA's decision to grant a portion of the request is also significant because the agency rarely grants requests under the DQA.

In response to the mayor's request, EPA is creating a new protocol for estimating emissions, the letter says. In developing the protocol, EPA will review and possibly revise existing emission factors for sources at refineries and chemical plants, the letter says. In addition, the agency will create new

emission factors for sources, such as delayed cokers, which currently have no emission factors, the letter says.

EPA says its efforts represents a shift in the way the agency calculates emissions for the sectors. “We believe the issue is larger than just the quality and coverage of specific emission factors and speaks to the need for a comprehensive protocol for developing emission inventories,” the letter says.

For example, the protocol will address increased emissions during abnormal conditions, such as startup, shutdown and malfunction, the letter says. Since emission factors, by definition, are intended to deal with normal operating conditions, EPA will be combining the factors with other engineering calculations to account for non-routine conditions, the letter says.

The protocol will also go beyond emission factors to address site-specific operational variability of equipment such as tanks and flares, which produce different amounts of emissions depending on the condition of the fittings, seals and the ambient conditions for tanks and flow and concentration for flares, the letter says.

The American Petroleum Institute (API) commented on the proposed protocol, saying “API has worked with EPA for years to develop and improve emission factors and monitoring methods and will continue to be a part of this process as EPA develops their proposed protocol. After conducting risk analyses for all refineries and determining the health risk to the public is acceptable, EPA has written a final rule that requires additional controls that will further reduce these emissions.”

In the past, industry has criticized the Houston Mayor’s request as an effort to inflate the risk from industrial emissions in order to strengthen refinery controls, despite a lack of evidence of health risks.

EPA STANCE ON AIR PERMIT TO TEST OBAMA POLICY ON NSR EMISSIONS TEST (*Inside EPA*)

4/17/2009

EPA’s pending response to environmentalists’ petition challenging a power plant air permit will provide an early test for the Obama administration’s position on the key issue of what method utilities should use to calculate their emissions to determine whether facility upgrades trigger new source review (NSR) requirements.

EPA will respond by May 29 to a 2007 petition from the Sierra Club that objects to a Title V operating permit for Wisconsin Electric Power Company’s (WEPCO) Oak Creek power plant, according to a recently proposed consent decree. The petition alleges that the facility failed to follow the proper procedure for comparing emissions before and after a modification in determining whether NSR applies, among other issues. *Relevant documents are available on InsideEPA.com.*

An industry source downplays EPA’s pending decision, saying the decree is likely to be dropped because WEPCO is applying for a new permit. But an activist disagrees and says the response will

be highly relevant as the pending new permit application contains only slight revisions from the original.

NSR applies in areas out of attainment with EPA air standards, while prevention of significant deterioration (PSD) applies to areas in attainment. NSR and PSD require companies to calculate whether their emissions will increase by a “significant” amount due to a facility upgrade or modification, and if the emissions trigger NSR/PSD it can result in a requirement to install expensive controls to reduce air pollution.

Previous administrations have adopted different methods for calculating comparisons of emissions before and after a modification. The Clinton EPA allowed power plants to use one of two emissions tests, an “actual-to-potential” emissions test or alternatively an “actual-to-projected actual” emissions test.

The actual-to-potential test assumes a facility will operate at its full capacity all year round, and the determination of a need for NSR review is based on the facility’s maximum potential emissions, a methodology which easily triggers NSR review and possible control requirements.

The actual-to-projected-actual test requires sources to determine whether they need NSR permits by comparing actual emissions before the change to their projections of actual emissions after the modification. Operators must track annual emissions for a minimum of five years in order to substantiate the projection under the new test. Sources can also exclude any emissions that are “unrelated to the project” or that resulted from demand growth before the change under the new test. One environmentalist says facilities frequently misuse the actual-to-projected-actual test, leading to an underreporting of significant emissions increases.

EPA POISED TO ISSUE STANCE ON ADDRESSING VIOLATIONS IN TITLE V PERMITS (*Inside EPA*)

4/17/2009

EPA’s agreement to respond to two long-pending permit challenges will test the Obama administration’s position on whether Title V air permits should include compliance schedules to address alleged Clean Air Act violations, an approach environmentalists have long advocated but which has divided appellate courts.

Environmentalists, who favor inclusion of compliance schedules for alleged violations in Title V permits, also argue the approach could allow the agency to address years-old violations that are otherwise time-barred by the statute of limitations -- an approach recently backed by a federal trial court.

Over the past few weeks, EPA has announced two proposed consent decrees that would settle deadline lawsuits in which environmentalists have sued EPA for failing to respond to their petitions asking the agency to object to power plant permits in part because they did not include compliance schedules.

The agency announced April 14 that it was proposing to settle the lawsuit *Sierra Club, et al. v. Jackson*, filed in federal district court in Washington, D.C., by agreeing to respond by June 13 to environmentalists' petition asking the agency to oppose a permit for the Tennessee Valley Authority's Paradise Power Plant in Kentucky. EPA also announced April 2 that it was proposing to settle a separate lawsuit filed in federal district court in Wisconsin, also called *Sierra Club v. Jackson,* by agreeing to respond by May 29 to activists' petition asking the agency to oppose the permit for the Oak Creek Power Plant in Wisconsin.

Activists argue that the Title V permits, which are umbrella permits that house all air act requirements for a facility, should also address past violations of the prevention of significant deterioration (PSD)/ new source review (NSR) programs, even if EPA has not completed an enforcement action against the facilities for the violations.

Including a compliance schedule in the permit makes the permit enforceable, so that citizens or the agency can sue the facility if it violates the permit, activists say.

Over the past few years, environmentalists have stepped up their efforts to challenge EPA approval of Title V permits as a way to block construction of coal-fired power plants, saying the challenges offer them a more efficient legal mechanism to force facilities to install pollution controls than citizen suits against industry.

However, in the past EPA has sided with industry to argue that the permits cannot contain additional mandates, including mandates to comply with enforcement allegations that have not been proven in court.

So far the courts have been divided on the issue. The U.S. Court of Appeals for the 2nd Circuit ruled in favor of environmentalists in the 2005 case *New York Public Interest Research Group v. Johnson.* But the 11th Circuit and the 6th Circuit both have ruled in the last year that the agency has the discretion not to include compliance schedules. Environmentalists' efforts to address the issue in the 7th Circuit failed when the court sidestepped the issue.

Amid this controversy, activists say EPA's promised response to the petitions provides the Obama EPA a chance to begin requiring compliance schedules in permits. "EPA has the opportunity to change its position or nuance its position," one attorney for environmentalists says.

In addition, the attorney says EPA would benefit from adopting the stance that compliance schedules are required in Title V permits because it would allow the agency to address years-old violations that would otherwise be immune to enforcement under the 5-year statute of limitations, which courts have been strictly enforcing.

The attorney cites the March 31 ruling in the case *Sierra Club v. Otter Tail Corp.* in which a federal district court in South Dakota found that activists' air act claims against the Big Stone power plant were barred by the statute of limitations but suggested that Title V permits may be an appropriate regulatory scheme for addressing the violations. *Relevant documents are available on InsideEPA.com.*

"[T]he strict application of the five-year limitations period is not unjust here because defendants' alleged [air act] violations could at least arguably be addressed in a citizen suit Title V claim or in an equitable enforcement claim by the EPA," District Judge Charles Kornmann said in his opinion granting the defendant's motion to dismiss.

In addition, the attorney for environmentalists argues the details of the Oak Creek and Paradise cases make them better test cases for the compliance schedule issue than past lawsuits. In fact, the two cases are distinct enough from the appellate cases that the agency could decide to require schedules in the Oak Creek and Paradise cases without reversing its previous arguments, the attorney says. “EPA could grant the petitions and still be consistent with the reasons it gave for denying past petitions,” the attorney says.

For example, in past cases environmentalists have relied upon notices of violation (NOVs) issued by EPA to argue that the compliance schedules are warranted, the attorney says. In the past, EPA has rebutted these arguments, saying that in some circumstances a NOV alone is not enough to prove a violation, the attorney says. However, in the Oak Creek and Paradise cases, activists provided additional information, such as statements from the companies and evidence from an EPA environmental appeals board case, to prove the violations, the attorney says.

In addition, in past cases pending consent decrees between the facility and EPA have complicated activists’ lawsuits because the agency has argued that the consent decrees are a better venue than the Title V permits to resolve the alleged violations, the attorney says. However, there is no pending consent decree in the Paradise case and only a limited consent decree in the Oak Creek case, the attorney says. -- *Kate Winston*

NUCLEAR EMERGENCY GUIDE ON HOLD PENDING MCCARTHY CONFIRMATION (*Inside EPA*)

4/17/2009

EPA is likely to wait until the Senate has confirmed President Obama’s pick to head the agency’s air office, Gina McCarthy, before deciding whether to advance a controversial draft guide for responding to nuclear emergencies, a key EPA official tells *Inside EPA.*

Jonathan Edwards, director of the Office of Radiation & Indoor Air’s (ORIA) Radiation Protection Division, said the agency is unlikely to take further action on the document known as the *Protective Action Guidance for Radiological Incidents*, until after McCarthy can be confirmed and briefed by staff on the document. Edwards spoke to *Inside EPA* during the Radiation Advisory Committee’s March 23-25 review of ORIA’s new draft radiation risk estimates in Arlington, VA.

Former Bush EPA Deputy Administrator Marcus Peacock approved the controversial nuclear guide on Jan. 15., but days later the Obama administration halted its publication in the *Federal Register* pending further review after activists raised concerns the document could lead to drastically weakened public protections, particularly in drinking water.

Activists following the issue say it is unclear how McCarthy’s appointment will affect the controversy surrounding the nuclear emergency guide and radiation protection issues generally. But one activist has preliminary reservations based on the fact that McCarthy, most recently the head of the Connecticut Department of Environmental Protection, has served primarily under Republican administrations and has a relatively limited amount of experience with radiation issues.

The nuclear emergency guide was not discussed during McCarthy's April 2 confirmation hearing. But according to the activist, Sen. Bernard Sanders (I-VT) has submitted a written question to McCarthy pertaining to the guide for the hearing record.

Sanders' staff could not immediately be reached for comment.

The nuclear emergency guide, which is intended to provide emergency responders at the federal, state and local levels with guidance on dealing with a wide variety of nuclear emergencies -- including so-called "dirty bomb" attacks and accidents at nuclear power plants and industrial facilities -- has created a firestorm of controversy since *Inside EPA* obtained an August 2007 internal draft of the document.

On Oct. 30, a coalition of more than 60 environmental and public health groups cited the August 2007 draft in a letter to then-EPA Administrator Stephen Johnson urging him not to approve the document. A detailed report the coalition attached to the letter echoed concerns raised by state regulators and some EPA staff that the draft guide suggests emergency officials need not consider providing alternative drinking water sources -- such as bottled water -- to people living in areas affected by a nuclear emergency until contamination reaches levels thousands of times higher than existing EPA guidance and regulations.

Since then, activists have threatened to sue EPA if it does not produce documents showing the agency complied with the National Environmental Policy Act (NEPA) when it developed the guide, a move some activists hope will deter the agency from moving forward with the document.

Public Employees for Environmental Responsibility (PEER) in February filed a Freedom of Information Act request seeking "all records relating to NEPA compliance in connection" with the draft guidance. In its request PEER says it "strongly suspect[s] the records show that EPA is in violation of NEPA in this important matter" and that "the response to this request may itself may be evidence in a lawsuit against the Agency for non-compliance with NEPA," which generally requires the government to assess the impacts of its actions on the environment.

In a Feb. 27 response EPA says it has no such records, noting that "[a]ctivities for the development of federal radiation regulations and guidance in accordance with the Atomic Energy Act of 1954 are functionally equivalent to NEPA." The agency adds that "[c]onsequently, the PAGs Manual updates meet NEPA policy goals by carrying out analyses, documentation and review procedures that are functionally equivalent to NEPA." *The response is available on InsideEPA.com.*

Environmentalists are now seeking further clarification on the issue, a second activist says, adding that environmentalists "do not think they are exempt from NEPA" and believe "nothing they have done is remotely equivalent." -- *Douglas P. Guarino*

INDUSTRY CITES MAJOR LEGAL HURDLES FOR REVERSING BUSH GHG WAIVER DENIAL (*Inside EPA*)

4/17/2009

Industry groups are warning the Obama EPA it faces major legal hurdles if it tries to overturn the Bush agency's denial of California's request for a Clean Air Act waiver to issue vehicle greenhouse gas (GHG) standards, saying the new administration has failed to provide a reasoned legal basis for potentially reversing the denial.

States and activists supportive of the waiver request, however, say that a new test that the Bush EPA created to determine whether the California standards meet an "extraordinary and compelling need" is illegal and at odds with past waiver decisions. The claims foreshadow potential litigation arguments over EPA's final decision on the waiver reconsideration, which is widely anticipated to result in a reversal of the Bush agency's denial.

President Barack Obama directed EPA Administrator Lisa Jackson on her first day in office to reconsider the former administration's waiver denial. The agency is under a congressional deadline to issue its decision by June 28, and the comment period on the reconsideration notice closed April 6. *Relevant documents are available on InsideEPA.com.*

Former Bush EPA Administrator Stephen Johnson based his waiver denial on a finding that the vehicle standards were not necessary for California "to meet compelling and extraordinary conditions" in the state. In a Dec. 19, 2007, memo to Gov. Arnold Schwarzenegger (R-CA) Johnson also said he was denying the waiver because the effects of climate change in the state were not unique compared to the effects in the rest of the country.

Internal agency documents revealed soon after Johnson's announcement showed that EPA staff and its legal counsel advised that granting the waiver is the most scientific and legally defensible decision.

The denial prevented the adoption of the standards in California and at least 13 other states. The Obama administration is now working on separate rules to address GHGs from passenger vehicles and light trucks. It is widely anticipated that EPA will grant the California waiver and adopt a modified version as the federal standard.

EPA in its Feb. 12 reconsideration notice said the denial was a "substantial departure" from past precedents on air act waiver requests. While the agency stresses in a Feb. 6 press release that its review of the waiver denial is "impartial," the language of the notice boosted activists, states and others who believe the Obama EPA is prepared to overturn the denial and approve the waiver.

But in comments on the reconsideration, industry highlights several legal hurdles if the agency intends to reverse the denial. Among the most significant hurdles would be proving that California has a "compelling and extraordinary need" for its standards. The agency is also facing challenges over proving why it is necessary to reverse a prior agency decision that Johnson said at the time was based on sound science.

The Alliance of Automobile Manufacturers says in comments that EPA carries a significant legal burden "to explain why its first decision on the waiver was no longer the correct one . . . EPA would need strong reasons to reverse its prior decision, and those reasons would need full articulation in the record to permit judicial review."

The Utility Air Regulatory Group (UARG) finds that EPA's reconsideration notice does not contain any firm legal basis for a potential reversal of the waiver denial. The group finds fault with the notice for inaccurately describing the legal basis for the waiver denial and lacking reasoned analysis of why the agency may reverse its prior decision. It is calling for EPA to resubmit its reconsideration notice to correct these errors.

UARG, a coalition of electric power producers, is citing concerns with the vehicle emissions rule because it fears granting the waiver could lead to air act requirements to reduce GHGs from stationary sources.

In the Feb. 12 reconsideration notice, EPA says only that the denial departs from precedent, without acknowledging that California's GHG standard also departs from its previous standards for non-GHG pollutants, according to UARG. The group also notes that EPA presented its legal arguments defending the waiver denial before the U.S. Court of Appeals for the District of Columbia Circuit "less than three months ago."

The fact that the state standards regulate GHGs for the first time "are the very factors on which EPA itself principally relied in its waiver denial and in its arguments to the D.C. Circuit in support of the denial. Omission of any discussion of those factors and of EPA's reasoning underlying its 2008 final action skews presentation of the facts and creates an inaccurate impression of that action as an arbitrary deviation from precedent unaccompanied by any articulated justification grounded in the statute," UARG comments say.

However, states and environmentalists say the new test EPA crafted for determining whether the state standards meet the bar for extraordinary and compelling need is illegal.

"This alternative basis is contrary to voluminous evidence in the administrative record, based on the clear demonstration otherwise in the administrative record, and it also applies a new and unsupportable standard that is divorced from the statutory text and longstanding agency practice," comments from the Environmental Defense Fund say. -- *Jenny Johnson*

EPA ASKS FOR REMAND TO RECONSIDER RULE EASING STATE OPACITY LIMITS (*Inside EPA*)

4/17/2009

The Obama EPA is asking a federal court to voluntarily remand a contentious Bush-era rule approving a first-time Alabama plan that eases smokestack opacity limits, saying the agency has determined the rule may have been in error or inadequately explained.

EPA filed an April 9 motion with the U.S. Court of Appeals for the 11th Circuit in the case *Alabama Environmental Council, et al. v. Jackson* asking the court to voluntarily remand the rule that governs Alabama's requirements for opacity, which is the visible pollution that is emitted from a smokestack. EPA also notified environmentalists that they plan to reopen the rulemaking and take a new round of comments on the rule. *Relevant documents are available on InsideEPA.com.*

EPA in its motion said the case law supports a voluntary remand "where, as here, the agency has determined that its prior action may have been in error or inadequately explained." EPA expects to complete its reconsideration of the rule within 12 months from the date of remand, the motion says.

Once the agency completes the reconsideration, the environmentalists “may reactivate this litigation or dismiss their petition” for review, EPA says.

Environmentalists are welcoming the motion, saying it hints at EPA possibly overturning the rule. “We welcome EPA’s decision not to defend this harmful rule in court and appreciate the Obama administration’s willingness to reconsider it,” said John Walke, clean air director for the Natural Resources Defense Council, one of the plaintiffs in the case.

EPA TOXICS MODEL CUTS SOME SITES FROM SCHOOL AIR MONITORING PLAN (*Inside EPA*)

4/17/2009

EPA’s use of a comprehensive air toxics model to help prioritize schools for its high-profile air monitoring program excludes some schools that were flagged on a list using a separate agency model, and local activists are raising concerns about what they see as an incomplete number of schools slated for air toxics testing.

However, EPA’s decision to use the National Air Toxics Assessment (NATA) to prioritize schools for monitoring -- rather than using its Risk-Screening Environmental Indicators (RSEI) model -- is drawing praise from industry officials. They prefer the use of NATA over RSEI because, the sources say, NATA is a more comprehensive model that more accurately represents overall pollution, not just industrial releases.

The agency announced in March a $2.5 million program to monitor air for toxics at 62 schools in 22 states. The agency first started looking at the issue following a high-profile series of articles in *USA Today*, which used EPA’s RSEI model to evaluate air quality around U.S. schools.

RSEI is seen as an easy-to-use tool that allows state and local regulators, industry, environmental groups, reporters and environmental justice groups to approximate risks from pollution reported to EPA’s Toxics Release Inventory (TRI) program, which details industrial facilities’ chemical releases. However, the data do not take into account emissions from other sources, such as cars or airports.

EPA’s final list of schools for monitoring relied on the NATA, which tracks emissions from non-facility sources likes traffic and airports. This led to several schools -- including some in California, Pennsylvania and Ohio -- that were identified on the *USA Today* RSEI-based list being excluded from EPA’s NATA-based list.

In response to Houston mayor, EPA will overhaul emissions monitoring *(Greenwire)*

Robin Bravender, E&E reporter

04/16/2009

U.S. EPA has agreed to overhaul the system used to calculate cancer-causing emissions from large chemical and refining plants in response to concerns raised by Houston Mayor Bill White.

"We share your concerns about the accuracy of emissions estimates and hope to work with you and other stakeholders to improve emission inventories at refineries and chemical plants," EPA's acting air chief, Elizabeth Craig, wrote in a **letter** to White last week.

In addition to efforts under way at EPA to improve emission sensing, Craig told White, "as a direct result of the concerns outlined in your request, we are planning to undertake a number of additional initiatives."

Those initiatives include the development of a comprehensive plan to accurately estimate all emissions sources at petroleum refineries and chemical plants.

"This is exactly the result we hoped for," White said in a statement. "Everyone, including industry, knows that the current protocols are incomplete and inaccurate."

Last July, White, who served as deputy secretary of energy under President Bill Clinton, **challenged** the validity of the emissions data sent by industrial facilities to EPA. He argued that facilities were using formulas that drastically undercounted the actual emissions, preventing regulators from accurately assessing the public health risks.

Click here to read EPA's letter.

Click here to read White's July 2008 letter.

Federal judge denies injunction for L.A. port's clean-truck program *(Greenwire)*

04/16/2009

A federal judge refused to block a clean-trucks program at the ports of Los Angeles and Long Beach, saying the regulators who sought a preliminary injunction had presented "weak" arguments that the program poses a threat to the industry or will unreasonably increase shipping costs.

The ports' clean-truck program aims to phase out 17,000 polluting big rigs that shuttle freight between rail terminals and other transport centers. It charges a $35-per-container fee to generate funds for dealing with the environmental and health consequences of the trucks' pollution, with a

sliding scale of reductions and exemptions for trucks that meet the most stringent clean-air standards.

Los Angeles and Long Beach are home to the busiest ports in the nation, handling 40 percent of the United States' import and export traffic. The trucks are blamed for spewing nearly a quarter of the diesel particulate matter found in the area's air.

The Federal Maritime Commission filed the federal suit against the program in October 2008, arguing the new rules will drive small trucking firms and independent drivers out of business. The case will go to trial later.

In a parallel challenge brought by the American Trucking Association, the U.S. 9th Circuit Court of Appeals declared key provisions of the clean-trucks program unconstitutional. A ruling is expected in that case April 25 (Carol J. Williams, *Los Angeles Times*, April 16). **-- TL**

BUDGET/STIMULUS

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Stimulus money allocated for Rimini cleanup (*KPAX-TV*)

Associated Press - April 17, 2009 6:04 AM ET

HELENA, Mont. (AP) - Between $5 million and $10 million in federal stimulus money is expected to go toward the cleanup of Rimini and the surrounding Upper Tenmile Superfund site southwest of Helena.

The money is part of a national effort by the U.S. Environmental Protection Agency. It announced this week that $528 million in stimulus funds would be used to bolster cleanup efforts at 50 sites in 28 states.

Work started in 2002 and had no end in sight before this week's stimulus announcement -- mainly due to a lack of federal funding.

Joe Vranka is the Superfund branch chief for the EPA in Montana. He expects the cleanup to resume this summer and be finished in 2010, though he is not sure which areas will be taken care of first.

Rimini was declared a Superfund site in 1999 because of the soil's high metal content from decades of mining.

Information from: Independent Record, http://www.helenair.com

U.S. aids Superfund cleanups in region (*Philadelphia Inquirer*)

By Sandy Bauers

Inquirer Staff Writer

Posted on Thu, Apr. 16, 2009

One upside of the economic downturn is that some of the our region's most contaminated sites will finally get cleaned up.

Eight Superfund sites in New Jersey and two in Pennsylvania will receive as much as $170 million in funding to advance or complete their cleanups, the Environmental Protection Agency announced yesterday.

The money is part of $600 million in federal stimulus funding going to sites in 28 states. The intent is not just to clean up the properties, but also to provide jobs.

"EPA has an answer to these challenging economic times," EPA Administrator Lisa Jackson said in a statement. "Under the Recovery Act, we're getting harmful pollutants and dangerous chemicals out of these communities and putting jobs and investment back in."

The bulk of the money for this region - as much as $160 million - is headed for New Jersey, which has more Superfund sites than any other state.

John Pendergrass, senior attorney at the nonprofit Environmental Law Institute, called the infusion of federal money "significant compared to what the business-as-usual has been."

The 2008 appropriation for Superfund was $1.253 billion; this year it is $1.285 billion.

In this region, some sites have been on the EPA's National Priorities List - those with the worst contamination - for a quarter of a century. They are contaminated with radium, arsenic, heavy metals, volatile organic compounds, and other substances.

In selecting sites, the EPA looked at those that could use the money quickly, at those that offered opportunity for immediate short- and long-term health and environmental benefits, and at other factors.

Among the eight sites being funded in New Jersey, about $25 million will go toward cleaning up radiologically contaminated soil around the former General Gas Mantle facility in Camden. The EPA said the cleanup would help serve as a catalyst for redeveloping the area.

An additional $10 million to $25 million will be used to clean up arsenic sediments at the site of the former Vineland Chemical Co. Contamination remains in Vineland's Blackwater Branch, which drains into the Maurice River.

Other sites to get money include Roebling Steel in Florence, near the Delaware River; the Price Landfill, which straddles Pleasantville and Egg Harbor Townships; and Emmell's Septic Landfill in Galloway Township.

Jeff Tittel, director of the New Jersey Sierra Club, credited New Jersey's legislators with being tenacious in getting funding. He said it was "good we're getting money to finally finish some of these projects."

But he said it was unfortunate that taxpayer money was being used. Industry once funded the program through an excise tax on hazardous chemicals and petroleum products, but the program lapsed in 1995 when Congress did not renew it.

"This shows we need to bring back the Superfund tax," Tittel said.

Adam Garber, a PennEnvironment field organizer, agreed, saying a new tax could provide $1 billion a year.

"It shouldn't be the taxpayers' onus to clean this up," he said. "It's time for Congress to follow through and reimplement the polluters-pay tax."

In Pennsylvania, $5 million will be used to excavate contaminated soil and put in additional groundwater-treatment wells at the Havertown site of the former National Wood Preservers operation. The site is contaminated with the wood preservative PCP.

With the funding, "all remedial actions will have been put in place, but it will be a long time before the site is clean," said Jill Lowe, the EPA's project manager for the site. "We will probably be pumping and treating the groundwater for a lot of years."

Another $5 million will be used to start cleaning the groundwater at the Crossley Farm in Hereford and Washington townships in Berks County. Beginning in the late 1960s, an untold number of drums full of chemicals were dumped there, and the site is contaminated with volatile organic compounds.

Garber said that with more than 90 Pennsylvania sites on the priorities list, "cleaning up two is really good, but we've got a long way to go. We just need a lot more money."

Contact staff writer Sandy Bauers at 215-854-5147 or sbauers@phillynews.com.

Roebling cleanup gets boost from feds (*Packet Online*)

Stimulus money to accelerate project

By Geoffrey Wertime, Staff Writer
Posted: Thursday, April 16, 2009 3:44 PM EDT
New Jersey

FLORENCE — The U.S. Environmental Protection Agency is set to receive over $25 million in federal stimulus money for work on the Roebling Steel Superfund site.

The money will accelerate the cleanup of the site, which is already in progress, and will create more jobs in the area, the EPA announced April 15.

The influx of cash comes under the American Recovery and Reinvestment Act of 2009, and is part of the $600 million Congress has appropriated for the Federal Superfund remedial program.

”Twenty-five million dollars is the largest allocation I can remember the federal government setting aside in one fiscal year for this,” said Florence Township Administrator Richard Brook. According to him, the project has generally received between $5 and $7 million in years past.

”Anything that can be done to expedite the remedial work and put this property back to a positive use is good news for the community,” he said.

The Roebling Steel mill, Which once made the steel cables that support the Golden Gate Bridge and Brooklyn Bridge, was closed in 1974. The U.S. Environmental Protection Agency has been overseeing the ongoing cleanup of the site, which was declared a Superfund site in 1984.

The site is the future home of the Roebling Museum, which will tell the story of the steel mill, the many workers who immigrated to the area for jobs there, and the town, Roebling, that was built for them.

The museum is currently under construction, and administrators have said they expect to receive a certificate of occupancy in the next several months.

The EPA has said it will use the money to remove about 242,000 cubic yards of contaminated sediment from the Back Channel Delaware River and Crafts Creek. The material is reportedly contaminated with varying degrees of different metals, including lead, copper and zinc, and

polycyclic aromatic hydrocarbons, which have been shown to cause reproductive and other problems in animals and are believed to be carcinogenic in humans.

The EPA said it plans to dredge contaminated sediments, place sediments in the slag area, stabilize the Back Channel shoreline, and restore the wetlands of impacted areas. The work could lead to increased reuse of the site, and further the potential for its redevelopment.

The new work is planned to begin this summer.

EPA spokesperson Beth Totman said since this is only one phase of the project, there is no way to know exactly how the funding increase will affect the overall cleanup's timetable, but that it will "definitely" speed things up.

She added likewise that while the project will create jobs, it is too early to tell how many. The EPA will put out bids for contractors, she said, with an eye toward "green" technology.

The Roebling site's stimulus money comes along with higher funding to nine other Superfund sites in the region, seven in New Jersey and two in New York, Ms. Totman said. These projects are either shovel-ready, like in Roebling, or planned to include new construction.

EPA Acting Regional Administrator George Pavlou said in a press release said, "The Superfund program lends itself perfectly to the goals of the Recovery Act.

"New jobs will be created immediately because these projects are 'shovel ready,' and the surrounding communities benefit because the funds allow us to continue the important work of cleaning up the sites."

gwertime@centraljersey.com

$25 Million In Federal Money To Clean Up Hazardous Waste (*Associated Press*) This story also appeared: *Fox 13 Now*

Associated Press

April 16, 2009

Utah

More than $25 million in federal stimulus money will go to a Superfund site in Juab County to speed up the cleanup of hazardous waste. The money is part of $582 million in recently approved stimulus funding that the Environmental Protection Agency says will be used to help deal with

polluted sites in 28 states. The EPA also says an additional $5 million will go to a Superfund site in Davis County contaminated with PCE, a dry-cleaning solvent.

Atlantic Wood Superfund site to get stimulus money (*The Virginian-Pilot*)

By Scott Harper
The Virginian-Pilot
April 16, 2009

Virginia

PORTSMOUTH

Oft-delayed plans for cleaning up the highly contaminated Atlantic Wood Industries site in Portsmouth got a boost Wednesday - $5 million in federal stimulus funds.

The Environmental Protection Agency announced the move as part of a $600 million spending package aimed at hastening the restoration of 50 "Superfund" toxic-waste sites across the country.

Atlantic Wood is the only Superfund project in Virginia that will receive stimulus dollars, according to the EPA. "The people of Portsmouth can one day look at this site as a tremendous success story," William C. Early, the EPA's acting regional administrator for the mid-Atlantic, said in a statement.

Though Atlantic Wood was declared a Superfund site in 1990, work has not begun there. Progress bogged down in studies and debate over the extent of chemical contamination, how best to contain it, and who is responsible for paying for proposed actions.

The 48-acre property sits on the Southern Branch of the Elizabeth River, next door to the Norfolk Naval Shipyard, which also is a Superfund site.

At Atlantic Wood, workers for 60 years coated pilings and telephone poles with tarlike creosote as a preservative, then often dumped the wastes into the river.

Studies have shown that affected river-bottom samples contain some of the nation's highest concentrations of polyaromatic hydrocarbons, suspected of causing cancer.

Roy Seneca, an EPA spokesman in Philadelphia, said the $5 million in stimulus money should allow the agency to hire some contractors and start preliminary site work late this summer. That's about a year ahead of schedule, he added.

"It creates some jobs and gets us one step closer to really getting going out there," Seneca said Wednesday.

The money will pay to stabilize creosote-soaked soils, build a berm to separate contaminated earth from clean earth, repair damaged wetlands and keep the shoreline from eroding into the Elizabeth River, according to an EPA fact sheet.

The EPA chose a cleanup strategy in 2007, estimated to cost $45 million. Its hallmark is the construction of at least two 8-foot-tall walls in the river itself. Workers would pluck tons of contaminated mud and muck from the river bottom and store the wastes behind the walls.

The state and local environmentalists continue to have questions and concerns about the strategy; Seneca said the EPA is continuing to negotiate with all sides and expects a consensus by this summer.

Scott Harper, (757) 446-2340, scott.harper@pilotonline.com

Federal stimulus cash to aid cleanup at Berks County Superfund site (*Reading Eagle*)

Treatment plant will remove groundwater contamination at Hereford Township site

By Darrin Youker
Reading Eagle

4/16/2009

- Cleanup at the Crossley farm Superfund site in Hereford Township will begin in earnest this fall with the help of $5 million in federal stimulus money.

Administrators at the Environmental Protection Agency learned Wednesday that the Crossley farm near Bally is one of 50 sites that will benefit from the stimulus.

The EPA plans to award a contract in September to build a treatment plant to remove groundwater contamination, said Roy Schrock, an EPA project manager in charge of the Crossley cleanup.

The facility is expected to take about two years to complete and employ 20 to 30 people during construction.

One other Pennsylvania Superfund site, in Haverford Township, Delaware County, will receive stimulus funding.

The EPA wanted to direct the $600 million it received under the stimulus bill to clean up projects that were unfunded, said Roy Seneca, an agency spokesman.

The extensive contamination at the Crossley site in eastern Berks placed it high on the priority list to get the infusion of federal money, Schrock said.

"This has moved up my schedule by six months to a year," he said.

Trichloroethylene, an industrial solvent and degreaser also known as TCE, was stored in 50-gallon drums at the former Crossley farm in the 1960s and 1970s.

TCE has since seeped into the groundwater, causing a plume that extends for three miles in an aquifer beneath Blackhead Hill and reaches depths of up to 500 feet.

EPA officials have said Bally Case & Cooler had used the 24-acre Crossley farm to store TCE.

The chemical is now coming out of natural springs in the area, Schrock said. The EPA also is monitoring homes within a two-mile radius to see if chemical vapors are seeping into homes.

"We have a tremendous amount of contamination at this site," he said.

When the treatment plant is complete, contaminated water will be pumped there for cleaning and then discharged into a tributary of the West Branch of the Perkiomen Creek, Schrock said.

The EPA expects to operate the treatment plant for 30 years to remove the extensive contamination.

Contact Darrin Youker: 610-371-5032 or dyouker@readingeagle.com.

Stimulus money headed to Superfund site (*Allentown Morning Call*)

April 16, 2009
Pennsylvania

Up to $5 million in federal stimulus money has been earmarked to help clean drinking water at the Crossley Farm Superfund site west of Route 100 near Bally in Berks County.

The Environmental Protection Agency will put the money toward installing cleanup systems, EPA said Wednesday. Groundwater will be pumped from the ground, cleaned, and put back. The plan concerns residents, who are fearful of its impact on their wells and waterways.

Since 1983, the EPA has found trichloroethylene (TCE), a degreasing solvent, in dozens of wells within three miles of the 200-plus-acre Crossley Farm, a property used as a dumping ground for hazardous waste drums in the 1960s and 1970s.

The site is along the southern side of Huffs Church Road, approximately three miles west-northwest of Route 100 and northwest of the borough of Bally.

Drinking or breathing high levels may cause damage to the nervous system, liver and lungs and can even cause death in extreme cases, according to the Agency for Toxic Substances and Disease Registry.

The EPA, beginning in 1986, installed carbon filters in 52 homes served by contaminated wells to protect water quality. Wells within four miles of the property supply drinking water to roughly 5,000 people.

Area towns to reap benefits of federal stimulus dollars (*Reporter Online*)

By William Jones and
Matthew Piechalak

April 16, 2009

With $787 billion dollars in federal stimulus money on the table, and roughly $500 billion of that slated for government spending, local municipalities are all trying to get in on the action by putting in applications for so-called “shovel-ready” projects.

Worth brought in money through the stimulus package, but not for what its outgoing mayor was hoping. The village has been allocated $449,000 for sidewalk projects, Worth Deputy Clerk Lauren Placek said. Sidewalks will be built on the east side of Harlem Avenue between 116th Street and the Calumet Sag Channel bridge, on the west side of Ridgeland Avenue between Home Avenue and the Cal-Sag bridge, and on both sides of 107th Street between Oak Park and Harlem avenues, she said. The engineering costs of the project will be paid for by the village, she added.

“It’s very upsetting, because the fact is I could use that money in much better locations,” Worth Mayor Ed Guzdziol said at the Village Board is meeting April 8.

Oak Lawn has been allocated $497,000 through the Southwest Conference of Mayors to extend its bike path near Stony Creek at 103rd Street and Columbus Manor Park, village manager Larry Deetjen said. The village also received $500,000 in a Community Development Block Grant for “energy efficiency projects,” he said.

Deetjen said the village has only been notified it has been chosen to receive the money, and that nothing is “in the bank.” Requested projects had to be $500,000 or less, he added.

Oak Lawn also submitted seven applications through the Illinois Environmental Protection Agency for water system improvement, Deetjen said. The village expects to hear back on those next month. Oak Lawn also applied for money to help pay the salaries of additional police officers, he said.

The village has been notified that the Illinois Department of Transportation will repave Pulaski Road from 103rd to 111th streets, he said. Oak Lawn is still waiting to hear back about the repaving of Cicero Avenue, he added.

The Illinois House of Representatives passed a bill earlier this month appropriating $8.39 billion for capital improvements, enabling Illinois to receive $6.75 billion in federal economic recovery funds, according to a press release from state Rep. Kevin Joyce (D-35, Chicago).

The bill is set to bring roughly $17 million to the area to help resurface more than 15 miles of roads in Joyce's district, according to the statement. Joyce's district includes all or parts of Chicago Ridge, Palos Hills, Worth and Worth Township.

Hickory Hills sought funds for 10 projects including street resurfacing and sidewalk replacements projects, the replacement of the storm sewer on 85th Avenue, and a water main extension along Kean Avenue. The total cost of all submitted projects was $8.9 million.

"We've been notified that we were awarded a half million dollars towards our 95th Street Corridor Enhancement project," said Hickory Hills Mayor Mike Howley.

Initial work for the 95th Street project is underway, city engineer Thomas Lang told officials at last Thursday's City Council meeting.

The city plans to replace light poles with decorative streetlights along 95th Street from 88th Avenue to the Tri-State Tollway, and will add illuminated street signs over intersections on 95th Street between 78th and 88th avenues. The latter will be funded by a $40,000 state grant secured with the help of state Sen. Ed Maloney (D-18, Chicago).

The $500,000 in stimulus money, once received, will fund Phase 2 of the 95th Street project, which will landscape the corridor and enhance crosswalks, Howley said. The city's other proposed projects will be undertaken in the future, but more federal funds would move up the timetables, Howley said.

"Regarding the stimulus, I do not anticipate at this point that some of the other items would receive stimulus money," he said.

Chicago Ridge will receive $500,000 in federal funds to resurface 99th Street between Ridgeland and Oak Park avenues, Chicago Ridge Mayor Eugene Siegel said.

"That's getting a lot of traffic and it's deteriorating," Siegel said of the half-mile of villageowned road. "It has to be reconstructed."

The village also requested about $2 million to go toward replacing water mains throughout town, Siegel said.

"Our water lines and water mains are getting old," he said.

Palos Hills will receive $500,000 in federal stimulus money that will be used to bring sidewalks where they meet roads up to full compliance with the Americans with Disabilities Act, sidewalk replacement, and landscaping on 111th Street, Palos Hills Mayor Gerald Bennett said.

Many municipalities in the southwest suburbs were informed they will receive roughly $500,000, Bennett explained. The list of projects backed by federal funding will vary from town to town, but most include enhancing traffic signals, replacing sidewalks and resurfacing roads, he added.

The Southwest Conference of Mayors received $6.2 million in federal stimulus money, said Bennett, president of the organization that includes mayors of 21 area municipalities.

EPA STIMULUS PLAN SETS CLEAN ENERGY CRITERIA FOR BROWNFIELD LOANS (*Inside EPA*)

4/17/2009

EPA will for the first time consider brownfield redevelopers' ability to use money from its revolving loan fund (RLF) to "promote projects incorporating sustainable reuse and renewable energy" as it decides how to divvy up approximately $40 million in economic stimulus money it is making available through the fund.

The agency is also taking steps to ensure the $40 million in loans is quickly spent, a move that comes as a just-issued EPA Inspector General (IG) report raises concerns about the program's past failure to provide "reasonable assurance that brownfields grant funds would be spent in a timely manner." *Relevant documents are available on InsideEPA.com.*

In an April 10 *Federal Register* notice, EPA lists 10 criteria for considering applications for brownfields loans, including grantees' "[d]emonstrated ability to use the RLF grant to provide funding to promote projects incorporating sustainable reuse and renewable energy."

The move could be the first of several EPA efforts to promote development of clean energy projects at brownfields sites, an issue which EPA and brownfields stakeholders have been discussing for months. Last year, for example, EPA identified more than 9,500 contaminated sites across the country that could possibly be used as renewable energy generation sites.

EPA Administrator Lisa Jackson told reporters Feb. 27 that EPA officials were considering a more complex formula for assessing sites' clean energy potential and had been discussing ideas for assessing projects on a scale of "energy positive -- meaning they generate energy -- [to] energy neutral," which she added would be a way of "magnifying" President Obama's promotion of renewable energy sources.

According to an EPA spokeswoman, the sustainability measure in the *Federal Register* notice "is a new criterion for the RLF supplemental funding." The spokeswoman adds that "[w]hile the program has always included criteria incorporating sustainability factors in our Assessment, Revolving Loan Fund, and Cleanup grant competitions, we previously did not include it as a separate criterion for the RLF supplemental funding."

The new criterion "will give eligible RLF grantees an opportunity to highlight specific projects where loans or subgrants are ready to be made that promote specific projects that promote sustainable reuse and renewable energy," the EPA spokeswoman says. "These projects may include sustainable reuse/renewable energy as a component of either the brownfields cleanup or the site reuse."

Meanwhile, EPA is also taking steps to ensure the money is quickly spent. The agency is requiring that brownfields projects qualifying for stimulus loans be directed to “high performing” RLF grantees, in order to meet stimulus requirements that the money is quickly spent. The notice defines “high performing” as “RLF grantees who have demonstrated an ability to deliver programmatic results by making at least one loan or subgrant and have effectively utilized existing available loan funds.”

The notice also lists as one of the criteria a “[d]emonstrated ability to make loans and subgrants with [stimulus] funds quickly (i.e., ‘shovel-ready’ projects) for cleanups that can be started and completed expeditiously,” according to the notice.

The notice also details several policy changes to ease program rules so that the funds can be quickly distributed and spent. EPA reiterates, for example, a congressional requirement waiving the loan program’s usual cost share requirement that grantees provide a 40-percent match.

Another policy change is that “RLF grantees may petition EPA to waive the $200,000 per site subgrant limitation, if such a waiver would promote the goals of the [stimulus] through increased job creation, retention, and economic development,” the notice says.

The notice comes as an April 9 IG report, *Open Audit Recommendations Affecting Recovery Act Activities*, raises concerns over EPA’s failure to implement a number of recommendations from an October 2008 IG report that documented long delays in the brownfields program, which the new report says could affect EPA’s handling of stimulus funds.

EPA RELEASES LIST OF 50 SUPERFUND SITES RECEIVING STIMULUS FUNDING (*Inside EPA*)

4/17/2009

EPA has released a list of 50 Superfund sites that will receive the $600 million in stimulus funding alloted for the program and, as previously reported by *Inside EPA,* the agency has shown preference to sites listed on its National Priorities List (NPL) where regional officials can quickly obligate and spend the funds.

All 50 of the sites identified for funds are listed on the NPL and are sites where EPA has already selected a remedy for contamination and in many cases where the agency has already begun cleanup work.

“In most cases, this [stimulus] funding will accelerate the hazardous waste cleanup already underway at the sites and fund new clean-up projects,” EPA says in an April 15 statement. “It will also jumpstart the local economy by creating jobs in the site areas.”

The list shows sites in a total of 28 states receiving stimulus funds, with eight sites in New Jersey winning funds while California, Florida and Massachusetts each got funding for three sites.

According to the agency’s website, “EPA made decisions about which projects to fund based on a variety of factors” including “construction readiness; [h]uman and ecological risk; and [o]pportunities

to reduce project costs and schedules." The announcement is consistent with internal documents *Inside EPA* obtained last month in which agency officials stated a "preference for quick start activities including a goal of using at least 50 [percent] of the funds for activities that can be initiated no later than 120 days within enactment" of the stimulus law.

The documents, which included a Feb. 26 slide presentation Superfund officials made to agency staff, said EPA would consider both ongoing and new cleanup projects in deciding which sites should receive stimulus funding and would consider "risk factors such as human health exposures and groundwater migration as well as other balancing factors" such as "geographic diversity" and "job leveraging." EPA officials hope Superfund stimulus money will benefit several job sectors, including cleanup contractors, construction equipment rental companies and hazardous waste disposal, the documents noted. *Relevant documents are available on InsideEPA.com.*

CLIMATE CHANGE/GLOBAL WARMING

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Global Warming Study: Nations Need to Cut Emissions by 70 Percent (*Environmental Leader*)

April 16, 2009

The threat of global warming can be significantly lessened if nations cut emissions of heat-trapping greenhouse gases by 70 percent this century, according to a new study. This would help reduce the most dangerous aspects of climate change including massive losses of Arctic sea ice and permafrost and significant sea level rise, although global temperatures will still rise.

The study, led by scientists at the National Center for Atmospheric Research (NCAR), will be published in Geophysical Research Letters. It was funded by the Department of Energy and the National Science Foundation, NCAR's sponsor.

"This research indicates that we can no longer avoid significant warming during this century," said NCAR scientist Warren Washington, the lead author for the study. However, a catastrophe can be avoided if the world implements the recommended emission cuts of 70 percent, he said.

The Obama Administration's proposed cap-and-trade program would bring U.S. emissions 20 percent below 2005 levels by 2020 and 83 percent by 2050. But the program is still under debate. The Obama Administration has sent strong signals that it would take a leading role in setting global policy.

Most recently, the White House Office of Management and Budget approved the U.S. Environmental Protection Agency's finding that greenhouse gas emissions threaten the public. This means the EPA may soon announce an "endangerment finding" that will enable the agency to write regulations under the Clean Air Act that limit emissions.

Earlier this year, scientists in the United Kingdom said that a government plan to reduce carbon emissions by one-third by 2020 is not enough to prevent changes to the climate. Scientists from the Tyndall Centre of Climate Change said in order to prevent temperatures from rising above a level that causes extreme weather events, droughts and food shortage, emissions cuts will have to run much deeper. The UK's goal is to cut carbon emissions 80 percent by 2050.

The European Union agreed in December 2008 to cut greenhouse emissions by 20 percent and to ensure that 20 percent of its energy needs come from renewable sources by 2020. They could increase cuts to 30 percent if nations such as the United States, Russia and China followed suit.

According to the NCAR study, average global temperatures have warmed by close to 1 degree Celsius (almost 1.8 degrees Fahrenheit) since the pre-industrial era, primarily due to human-produced emissions of greenhouse gases. This heat-trapping gas has increased from a pre-industrial level of about 284 parts per million (ppm) in the atmosphere to more than 380 ppm today. An additional warming of about 1 degree C may be the threshold for dangerous climate change, according to the study.

Key finding: If carbon dioxide were held to 450 ppm, global temperatures would increase by 0.6 degrees C (about 1 degree F) above current readings by the end of the century, however, if emissions continue on their present course temperatures would rise by almost four times that amount, to 2.2 degrees C (4 degrees F) above current readings.

STATES LAUNCH COORDINATED LOBBYING BLITZ TO BOOST ROLE IN CLIMATE BILL (*Inside EPA*)

4/17/2009

State organizations in a coordinated lobbying effort are urging House and Senate lawmakers to provide a broader role for states than what is allowed in pending climate change legislation, including the ability to set stricter standards and regulate sectors excluded from the final version of whatever bill Congress passes.

Officials from six major state groups held two April 15 briefings with House and Senate staff to stress their belief that "states are good innovators and have the authority to take care of issues that may not be part of the federal bill, so we don't have our rights curtailed to do certain things," one state official says.

For example, states want to ensure that legislation does not preempt states from taking their own actions to combat climate change. Present at the briefings were officials from the National Governors Association, National Association of Regulatory Utility Commissioners (NARUC), National Conference of State Legislatures, National Association of Clean Air Agencies (NACAA), National Association of State Energy Officials, and the Environmental Council of the States (ECOS).

The move comes as federal officials are ramping up their efforts to move legislation. President Obama and other White House officials are calling for legislation this year to address the issue. Meanwhile, House Energy & Commerce Committee leaders are preparing to move a broad climate-energy bill that regulates greenhouse gases (GHGs).

But state sources say a draft version of the committee's bill floated earlier this month does not go far enough in protecting states' rights. The bill appears to transition existing emissions credits under the Northeast Regional Greenhouse Gas Initiative GHG trading program into the federal plan, but would preempt any state cap-and-trade program at least from 2012 to 2017 -- a key concern for state and local air officials.

The state official says that the groups did not ask for any commitments from staff nor receive any, but said the effort was designed to highlight issues of critical importance to states that mostly deal with ensuring states have authority to pursue their own climate regulations while working in sync with a federal plan.

For example, if the science on global warming changes in the coming years it may gave some states "reason to ratchet down" on the level of emissions cuts they want to achieve. Ensuring that states have the ability to set some stricter targets than the federal plan could be a much simpler approach than Congress having to revise the entire bill a few years from now if the science changes and backs the need for stricter cuts, the source says.

And depending on what sectors the final federal bill ultimately excludes from regulation, states may want to retain authority to regulate those exempt sources at the state level, the source says.

Further, whatever compliance deadlines the final bill sets may be a problem for some states that may favor a more aggressive -- or less stringent -- timeline for mandating reductions in GHGs, the source adds. States want to ensure they have sufficient flexibility on all these issues, the source adds.

At the briefings, individual groups suggested specific policy points and circulated existing documents they have crafted on their preferred approach to climate legislation.

NACAA previously in its "Change Is In The Air" recommendations for the Obama administration has called for legislation that would create a mandatory economy-wide GHG-reduction program "that is flexible enough for a portfolio of strategies to be adopted in addition to such a program." A federal bill should also not preempt state or local governments from taking "additional and more stringent" actions to reduce GHG emissions, the proposal said. The document also stresses that states and localities "have exercised leadership in combating global warming" through a host of local, state and regional action plans.

At the House and Senate briefings, officials from ECOS circulated resolutions that the group has adopted, including a March 23 resolution urging Congress to preserve states' rights to regulate GHGs. The ECOS resolution calls for "strong and explicit" language in a climate bill that upholds existing state and regional carbon trading markets and allows states to set GHG standards more stringent than the federal plan.

NARUC officials urged staffers to ensure any climate bill allocates the bulk of its emissions credits for a cap-and-trade program in a way that “will most likely benefit ratepayers,” the state source says.

The state efforts come as federal policymakers are arguing it is imperative for Congress to quickly pass legislation. Rep. Edward Markey (D-MA), chair of the energy and environment subcommittee, told an April 13 energy conference at the Massachusetts Institute of Technology that the threat of EPA moving to regulate GHGs with its pending finding that GHGs endanger public health and welfare will drive Congress to act. “Now you have a choice if you’re in Congress: Do you want the EPA to make the decision or would you like your Congressman and Senator to be in the room in drafting legislation? So, we think that this is a very helpful development that focuses the minds of industries and Congressmen and Senators all across the country,” Markey said.

Obama’s climate czar Carol Browner at the event also called for congressional action on climate legislation, arguing that it was important for Congress to act this year before international climate talks to craft a successor to the Kyoto Protocol begin in Copenhagen. Browner said she is “very confident that Congress is going to act,” adding that it is the administration’s “strong preference” that Congress address the issue in legislation.

And in an April 14 speech meant to explain the economic impacts of his policy decisions, Obama said “the only way” to refocus the country’s energy supply on renewable sources is “through a gradual, market-based cap on carbon pollution, so that clean energy is the profitable kind of energy.”
-- *Anthony Lacey*

CEQ ARGUES NEPA GHG THRESHOLD WILL NOT CHOKE PROJECT DEVELOPMENT (*Inside EPA*)

4/17/2009

White House officials are downplaying the impact of a greenhouse gas (GHG) threshold in environmental impact reviews under the National Environmental Policy Act (NEPA), saying it will not choke off project development, as demonstrated in recent court rulings on the issue.

A pending guidance from the White House Council on Environmental Quality (CEQ) for how federal project developers should account for increases GHGs when doing impact reviews is likely to set a first-time ‘significance’ threshold for the pollutants.

CEQ is crafting the guidance in response to a February 2008 petition from environmental advocates seeking a determination that NEPA requires federal agencies to consider both the emissions results of their actions, as well as how physical changes due to climate change may affect those actions. The petition also seeks guidance from CEQ on how agencies should go about a long-term impacts analysis for GHGs and a finding of what amount of additional pollution is significant enough to warrant changes to the proposed project.

While industry is concerned that the new threshold could impede the progress of federally funded projects, CEQ officials and legal experts say there are several ways to mitigate emissions that exceed a given threshold. One legal expert argues, for example, that developers of commercial

buildings could meet green building standards that address GHGs as a way to mitigate additional emissions created by the project.

CEQ's legal counsel is also pointing to court precedent that shows a high bar for finding 'significance' in the GHG context.

Ted Boling, acting CEQ general counsel, said recently that NEPA reviews should include analyses of potential impacts from GHG emissions. "Climate change has to be considered as a matter of law but also as a matter of reason," he told a recent American Bar Association conference in Bethesda, MD.

He said the legislative history of NEPA shows lawmakers were considering such issues as climate change when they debated the law, and that projects' long life-span means potential climate change impacts should be considered.

The main issue for CEQ to resolve in crafting guidance for how to analyze GHG impacts in NEPA reviews is defining what level of GHG emissions "significantly" effect the quality of the human environment, which would then require mitigation to allow the project to move forward. The statute calls for consideration of whether "the action is related to other actions with individually insignificant but cumulatively significant impact," Boling's presentation says.

Boling pointed to a handful of recent court rulings that found in favor of including GHGs in the environmental impact assessment, but said the projects in question did not emit GHGs at level that met the significance threshold. One example is the 2006 ruling in *Border Power Plant Working Group v. Department of Energy*, a case over proposed transmission lines that would bring power to the United States from two Mexican power plants. The court ordered DOE to conduct an environmental impact review of the GHG impacts from the project, and DOE found the impacts negligible. The court later upheld the environment review as adequate.

Similarly, in *Sierra Club, Mid States Coalition for Progress v. Surface Transportation Board* , a federal appellate court required the government to consider the GHG impact of a new railroad line transporting coal to power plants but accepted an analysis that showed limited impacts.

Boling says the lesson from legal precedent on the issue is that companies do not need to fear the GHG impact analysis, because it will not necessarily doom a proposed project.

Meanwhile, legal experts are offering options for how a project could mitigate emissions, if the upcoming guidance from CEQ sets a standard for the minimum unavoidable GHG emissions for particular classes and sizes of projects.

Under such a standard an environmental assessment would have to quantify the project's GHG emissions and if the amount for a particular project added up to something larger than the threshold CEQ sets, the applicant could adopt a series of mitigation measures to get the projected levels below the threshold, Michael Gerrard of the Columbia University School of Law said March 23 at the Environmental Law Institute (ELI) NEPA at 40 conference in Washington, D.C.

"Obviously you need clear guidelines on how to do the calculations," said Gerrard, who was counsel for NRDC when they wrote the petition asking CEQ to consider climate change under NEPA.

Gerrard said one way to mitigate GHG impacts in certain classes of projects would be to set "best available technology" standards. "This could be a variation of the BACT, best available control

technology concept, which is certainly more beneficial than the standard to which the clients would aspire to." For example, he said new buildings could have a mitigation that imposed LEED certification as best practices in order to get the project to move forward.

Gerrard added that the NEPA process "could be a very effective regulatory tool for those sectors not subject to a regulatory cap," including buildings, which account for the majority of GHG emissions in many major urban areas.

Another way to deal with climate change mitigation in NEPA reviews could be to establish programmatic environmental impact statements (PEIS) for geographically defined areas, taking into account such issues as new species interactions caused by ecosystem changes under climate change, Nossman LLP Senior Partner George Mannina said at the ELI conference March 24.

"The implications of global warming are not yet fully appreciated, and I believe that it will be a driver in how many of our environmental analyses will be done. The concept of the PEIS in my view will help us deal with those issues in a more comprehensive and effective manner," Mannina said.

INDUSTRY MAY FACE HURDLES IN BID TO TARGET STAND-ALONE EPA GHG FINDING (*Inside EPA*)

4/17/2009

Despite its broad policy significance, industry groups could face an uphill legal battle challenging EPA's upcoming endangerment finding for greenhouse gases (GHGs) in the event the agency issues a final version of the document before putting out emissions regulations based upon the finding, according to legal experts.

The legal experts say courts are likely to grant EPA broad deference in developing the document -- which was required by the Supreme Court -- and it may not be considered a "final agency action" subject to review by the Administrative Procedure Act (APA).

However industry and other sources say critics would still be likely to challenge any finding given the high stakes of the climate change battle in general, and questions about how the finding, initially expected to focus on motor vehicle emissions, will impact other industries and will be used in other regulatory venues.

The legal experts say any challenge to the finding may be more legally viable if the document is challenged as part of a broader challenge to any future EPA regulation, which is subject to judicial review. "The ripe opportunity to challenge the endangerment finding would be once they finalize an actual rule that incorporates the endangerment finding," one attorney says.

EPA is expected to issue as soon as this week a proposed endangerment finding formally identifying GHGs from motor vehicles as a threat to both public health and welfare. The proposal cleared the review process at the White House Office of Management & Budget (OMB) April 13, according to the OMB Web site.

During an April 14 teleconference on the upcoming finding, National Wildlife Federation's Joe Mendelson called it "the largest step that the federal government will have taken to date on fighting climate change and it will be the first step toward what we expect to be mandatory reductions in U.S. global warming pollution." On the same call, Sierra Club's David Bookbinder predicted that an endangerment finding would trigger more aggressive actions by states to regulate emissions.

EPA, however, has not yet outlined a precise schedule for finalizing the document, which will be subjected to a comment period -- or precisely how the timing will mesh with issuance of proposed or final rules on motor vehicles or other emissions sources.

A previously leaked draft EPA briefing on the upcoming finding suggests that it could be finalized prior to final GHG regulations, though some sources tracking the issue say it appears to be equally likely the document will be finalized in tandem with regulatory proposals on vehicle emissions.

The EPA finding will also likely include a definition and scope of "air pollution" with respect to greenhouse emissions as well as criteria for determining what emissions "cause or contribute" to endangerment.

In this vein, Bookbinder noted on the teleconference that, for sources ultimately found to cause or contribute to global warming pollution, the Clean Air Act sets either mandatory or discretionary duties for EPA to impose emissions limits. He said the requirement is mandatory for stationary sources, such as power plants, as well as airplanes, while it is discretionary for fuels and mobile sources such as ships and locomotives.

But the question of whether EPA ultimately finalizes its endangerment finding as a stand-alone document in the coming months could matter to any industry challenge, especially given industry concerns.

One industry source, for example, says EPA may choose to finalize the endangerment finding simultaneously with any rules as a way to sidestep the significance of the finding, which the source says will have enormous economic consequences. But the source raises concern that OMB's review of EPA's proposed endangerment finding, using OMB's regulatory review criteria, classified the finding as having no economic significance, said it is unrelated to national security and said it imposes no unfunded mandates.

An attorney closely following the issue says the main focus of any upcoming industry legal challenges on GHGs is likely to be upcoming emissions rules, but the source says the finding itself is unlikely to escape at least some challenge from industry groups even if issued as a stand-alone document. The source says that particularly when it comes to climate change, "people will take advantage of any opportunity they have to pursue any argument they can to bring these issues to a court's attention."

The source offered the appraisal even while suggesting that such a challenge prior to specific emissions rules would be legally sketchy. Specifically, for an industry plaintiff, one major obstacle would be difficulties in demonstrating standing to sue prior to regulations that specifically affect that industry. In addition, the source doubts that a finding in the absence of regulations is "final agency" action subject to review under the APA. "It is not until EPA makes a decision that affects people's rights and obligations [that] there is final agency action," the source says.

One attorney familiar with the concerns of environmental groups agrees that a challenge to EPA's finding makes little legal sense until emissions standards are issued.

But another attorney disagrees with the notion that the finding itself is not a final agency action, while agreeing that a challenge to the finding is inevitable. The source argues that the finding will be reviewable in a federal appellate court once issued as a final document. -- *Doug Obey*

Business coalition expands, plots push for emissions bill *(Greenwire)*

Michael Burnham, E&E senior reporter

04/16/2009

Seventh Generation Inc., Clif Bar & Co. and Aspen Skiing Co. today joined BICEP, a coalition of companies lobbying Congress to pass an economywide cap-and-trade program to reduce U.S. greenhouse gas emissions to at least 25 percent below 1990 levels by 2020.

BICEP -- the Business for Innovative Climate & Energy Policy coalition -- supports increasing the cap to 80 percent below 1990 levels by 2050 -- a level generally commensurate with proposals by President Obama and powerful House lawmakers.

Draft legislation from House Energy and Commerce Chairman Henry Waxman (D-Calif.) and Rep. Edward Markey (D-Mass.) would cap U.S. emissions 20 percent below 2005 levels by 2020 and 83 percent by 2050. The 648-page bill would also create a national renewable electricity standard that reaches 25 percent by 2025, energy efficiency programs and emissions standards for heavy-duty vehicles.

"The Waxman legislation reflects the themes that the president has talked about, so it's a good place for us to start," White House Council on Environmental Quality Chairwoman Nancy Sutley told reporters last week (*Greenwire*, April 7). "We'll find ways to work with the members of Congress."

BICEP -- which was organized by the investor network Ceres and includes Levi Strauss & Co., Nike Inc., Starbucks Corp., Sun Microsystems Inc., Timberland Co., Gap Inc., eBay Inc. and Symantec Corp. -- wants a renewable portfolio standard that progresses from 20 percent in 2020 to 30 percent in 2030. In the meantime, the coalition wants the U.S. government to require all new coal-fired power plants to capture and sequester their emissions of carbon dioxide -- the main heat-trapping gas that causes global warming.

"We have to take very aggressive action on coal," said Seventh Generation President Jeffrey Hollender in an interview yesterday. "We think that radical change is essential."

BICEP companies are small carbon emitters compared with Dow Chemical Co., Duke Energy Corp. and ConocoPhillips, which are among the 30 members of the 2-year-old U.S. Climate Action Partnership.

U.S. CAP is calling for an emissions cut of 80 percent by 2050, but uses 2005 as its baseline rather than 1990 -- not an insignificant gap; U.S. greenhouse gas emissions rose nearly 17 percent during the 15-year period, according to U.S. EPA (*Greenwire*, Jan. 15).

Elysa Hammond, a staff ecologist with Clif Bar, contends BICEP's emissions-reduction targets are more consistent with what NASA climate modeler Jim Hansen and other scientists suggest is necessary to avert severe changes in the Earth's water, soil and sky.

"In the big, big picture, we're really concerned about how global warming will impact agriculture and food," said Hammond, whose company makes energy bars and drinks.

Leaders of the European Union agreed in December to cut emissions 20 percent below 1990 levels by 2020. They want wealthy nations to reduce emissions by 60-80 percent by 2050 from 1990 levels.

'Tommorrow is too late'

Chris Miller, an executive in Seventh Generation's "Corporate Consciousness" department, said BICEP will lobby U.S. policymakers to adopt the "strongest targets as possible."

"We're not going to get to where we need to without BICEP, U.S. CAP and other companies going in the same direction," added Miller, who was formerly Greenpeace's global warming campaign leader.

Neither BICEP nor U.S. CAP is publicly endorsing legislation, but both groups are urging Congress pass a cap-and-trade bill as soon as possible.

"Tomorrow is too late," said Seventh Generation's Hollender.

Tomorrow is too soon, others say.

The U.S. Chamber of Commerce, the nation's largest business group, is urging Congress and the Obama administration to wait until the economy rebounds before placing a cap on carbon.

"I get a lot of calls for comment on the Waxman-Markey bill, but it's almost impossible to do now because there are still so many blanks in it," said Matt Letourneau, a spokesman for the chamber's Institute for 21st Century Energy.

Waxman has scheduled committee hearings on his bill to begin next week, and he wants to complete a full committee markup by Memorial Day.

"We want a longer debate on it," Letourneau said.

The National Association of Manufacturers, which supports a "pro-growth" agenda, is not weighing in on any climate proposal from Obama or Congress. Like the U.S. Chamber, NAM represents several U.S. CAP companies, including Caterpillar Inc. and General Electric Co.

"We're holding our fire until we see what the real plan is," said NAM spokesman Hank Cox.

Coral clues reveal past sea level spikes -- study *(Greenwire)*

04/16/2009

Coral reef fossils in Mexico demonstrate that rapid jumps in sea level are possible and have happened before, scientists say.

About 121,000 years ago, sea levels jumped 6.5 feet to 10 feet within 50 to 100 years, according to a study to be published today in the journal *Nature*.

Melting ice caps could cause the spike to repeat, the scientists said. "The potential for sustained rapid ice loss and catastrophic sea-level rise in the near future is confirmed by our discovery of sea-level instability" in that period, the authors wrote.

The scientists say the fossil record indicates many reefs died because sea levels rose too quickly for them to build themselves toward surface sunlight. When growth did resume, it shifted inward toward areas that previously had been dry land.

Other researchers are questioning the study's assumptions and methodology, saying the study leaves open the possibility of a dramatic sea rise but does not prove the case (Andrew C. Revkin, *New York Times*, April 16). **-- PR**

Browner faces tough tests as policy debates intensify *(Greenwire)*

04/16/2009

Both President Barack Obama's federal energy and environmental policies and his environmental-policy czar, Carol Browner, will undergo rigorous tests in the coming weeks as legislators and federal agencies tackle several climate and energy issues.

While critics feared Browner would be too good a friend to environmentalists, she has proved to be less controlling or controversial than they might have imagined. Browner has chiefly been occupied with leading meetings among the many agencies involved in energy policy, reviewing scientific data on global warming and pacifying lawmakers nervous about proposals for a carbon cap-and-trade program.

Congress is expected next week to begin debates on the cap-and-trade proposals. Separately, U.S. EPA is moving toward declaring that greenhouse gas emissions from automobiles "endanger" health and welfare. The agency is then expected to try to develop new federal emissions standards that would be in sync with both California's stringent standards, which have yet to be implemented, and fuel-economy rules in development by the U.S. Transportation Department.

Browner must determine how to get all of the agencies on the same page. Administration opponents are skeptical the task can be accomplished, noting the Transportation Department is required by law to consider the economic impact of fuel-efficiency laws on automakers, whereas the California Air Resources Board has no such requirement (Stephen Power, Wall Street Journal [subscription required], April 16). **-- TL**

Scientists look to curb soot from third-world stoves *(Greenwire)*

04/16/2009

In villages in developing countries, where carbon dioxide emissions are close to zero, soot from primitive cooking stove is emerging as a major and previously unappreciated source of global climate change.

Recent studies estimate that soot -- also called black carbon -- is responsible for 18 percent of the planet's warming, second only to carbon dioxide, which is responsible for 40 percent.

Replacing primitive cooking stoves with modern versions that emit far less soot could be a cheap, short-term way to significantly rein in global warming as nations tackle the more difficult challenge of enacting programs and developing technologies to curb CO2 emissions.

Even better, reducing soot could have a rapid effect as black carbon stays in the air for only a few weeks, as opposed to CO2, which lingers in the atmosphere for years.

Scientists have only recently become aware of the role black carbon plays in carbon change. The United Nations and the federal government are now trying to determine how to include black carbon in climate change programs (Elisabeth Rosenthal, *New York Times*, April 16). **-- TL**

EARTH DAY

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Earth Day Helps Drive Green Efforts at Supermarkets (*Environmental Leader*)

April 16, 2009

Earth Day is driving green efforts at several supermarkets around the nation, ranging from recycling paper goods and promoting the use of reusable bags to designing energy-efficient stores.

Whole Foods Market claims to be the first national retailer to produce all of its national in-store Earth Month materials using "third generation" closed-loop recycled papers thanks to the help of Mohawk Fine Papers Inc. "Closed-loop" means that Whole Foods Market has recycled and reused its own paper for zero waste.

"Third-generation" refers to using the same fibers to manufacture paper three separate times. Mohawk took the recycled fiber and manufactured it as 100-percent post-consumer waste paper, which was used by Whole Foods Market, then once again recycled and re-manufactured by Mohawk into 100-percent post-consumer waste paper, which is certified by the Forest Stewardship Council (FSC).

The savings are significant according to Mohawk's Environmental Calculator:

- 192 trees preserved for future use
- 554.42 pounds of waterborne waste not created
- 81,557 gallons of wastewater flow saved
- 9,024 pounds of solid waste not generated
- 17,768 pounds of greenhouse gases prevented
- 136,000,000 BTUs energy not consumed

In addition, Mohawk manufactured the paper with wind-generated electricity for an additional savings: 9,232 pounds of air emissions were not generated.

Several supermarkets are celebrating Earth Day in other ways. For example, Texas-based H-E-B will provide customers with coupons for reusable bags in exchange for five plastic bags, reported the Community Impact Newspaper. The company plans to give away 300,000 reusable bags statewide while recycling 1.5 million plastic bags.

H-E-B customers are also encouraged to bring in other thin plastics to recycle in bins placed in front of the stores. Newspaper sleeves, dry-cleaning bags, six-pack soda-can rings and other thin plastic packaging brought in will be recycled into plastic lumber.

In California, Raley's grand opening celebration of its green grocery store in the Petaluma Plaza shopping center will take place on Earth Day, reported Petaluma360.com. The grocery store is the second in the nation to receive the U.S. Environmental Protection Agency's Gold-Level Certification through the EPA's GreenChill Partnership.

The state-of-the-art store will use 40 percent less refrigerant for its cooling systems than typical supermarkets, and also uses a high-efficiency dual-medium condenser, a device that reduces the store's water usage by 85,000 gallons per month. Other "green" features include ceiling skylights, induction lighting and LED lights in track lighting and freezer cases.

Raley's joined the EPA's GreenChill Partnership in January 2009. The number of greener stores is on the rise in part due to the EPA program.

EDITORIAL/COMMENTARY/OP ED/LETTERS

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The EPA Readies a Hammer (*Washington Post*)

Jolting Congress into action on greenhouse gases

Friday, April 17, 2009

AS SOON as next week, the Environmental Protection Agency could follow through on an order from the Supreme Court to either declare carbon dioxide a pollutant or to say why it isn't. That decision could usefully signal to the world that the United States is serious about regulating greenhouse gas emissions. But it should also send a shiver down Congress's collective spine. Because the regulation of carbon will have a profound effect on the American economy, this vital task should be the responsibility of Congress, not of unelected officials at the EPA.

The EPA does have the authority under the Clean Air Act to regulate air pollutants that have "effects on [public] welfare," "on . . . weather, . . . and climate, . . . as well as effects on . . . personal comfort and well-being." Emitted greenhouse gases, particularly carbon dioxide, will have such effects. The Supreme Court's 2007 ruling in *Massachusetts v. EPA* affirmed this when

the majority concluded that the EPA had the authority to control emissions from motor vehicle tailpipes and ordered the agency to issue an endangerment finding. Then-EPA Administrator Stephen L. Johnson was close to doing so on the basis of public welfare, but he opted for another public comment period after intense pressure from the Bush administration.

The probable and impending endangerment finding by current EPA Administrator Lisa P. Jackson would fulfill the court's mandate and then require Ms. Jackson to devise regulations for the transportation sector. But having declared greenhouse gases a pollutant, the agency would have to set about the long process of regulating such gases from all other sources as well. The U.S. Chamber of Commerce expresses concern about the impact of such regulation on the construction industry, because residential and commercial buildings are larger sources of global-warming pollution than are motor vehicles. Rep. John D. Dingell (D-Mich.), then-chairman of the House Energy and Commerce Committee, predicted last year that seeking to control climate change with such piecemeal regulation would lead to a "glorious mess."

The best way to stop this from happening is for Congress to adopt a more rational scheme, by putting a price on carbon with a tax (ideally) or a cap-and-trade market. Next week, Rep. Henry A. Waxman (D-Calif.), the current chairman of the Energy and Commerce Committee, will hold hearings on the discussion draft of comprehensive energy legislation that he and Rep. Edward J. Markey (D-Mass.), chairman of the energy and environment subcommittee, released before the Easter recess. While the proposal details many ambitious programs for renewable energy and efficiency, it is noticeably mute on the contours of a cap-and-trade system. Specifically, it doesn't say whether the pollution allowances would be auctioned or a portion given away to industry to ease the transition to a carbon-constrained economy. This is an important question, one whose answer will have a profound impact on the way Americans live -- one of many basic issues that should be settled by their representatives in Congress.

A Clear, Clean Water Act (*New York Times*)

April 17, 2009

Clean water policy is in a terrible muddle, and the country has the Supreme Court to thank for it. The 1972 Clean Water Act was written to protect all the waters and wetlands of the United States. Two unfortunate Supreme Court decisions narrowed its scope, weakened its safeguards and thoroughly confused the federal agencies responsible for enforcing it. As a result, thousands of miles of streams and millions of acres of wetlands have been exposed to development.
The remedy lies in a Senate bill called the Clean Water Restoration Act, which would reassert the broad reach of the 1972 law. Similar legislation has been languishing for years, and if this version has any hope, it will need a strong push from the White House.

The good news is that Lisa Jackson, President Obama's new head of the Environmental Protection Agency, cares about clean water issues and isn't afraid of a fight. She has already moved to restrict pollution from coal mining operations in Appalachia and is promising to crack down on polluted runoff from animal feedlots.

Without endorsing any particular bill, Ms. Jackson agreed last week that the system that has long protected America's waterways from unregulated development and pollution is paralyzed — and will remain paralyzed unless Congress fixes it. An internal E.P.A. report furnished to Congress last year revealed that the agency had dropped or delayed more than 400 cases involving suspected violations of the law — nearly half the agency's entire docket. The reason in every instance was that regulators did not know whether the streams and wetlands in question were covered by the law.

Until the two Supreme Court rulings, the Clean Water Act had been broadly interpreted by courts and by federal regulators to shield all the waters of the United States — seasonal streams and remote wetlands as well as large navigable rivers and lakes — from pollution and unregulated development. The assumption was that even the smallest waters have some hydrological connection to larger watersheds and therefore deserve protection. The Supreme Court, however, exploiting ambiguities in the law, effectively decreed that only navigable, permanent water bodies deserve protection.

As a result, at least 20 million acres of wetlands and as much as 60 percent of the nation's small streams have been left unprotected, while effectively shutting down enforcement actions against developers who have been disturbing or plan to disturb these waters without a permit.

The Clean Water Restoration Act would establish, once and for all, that federal protections apply to all waters, as Congress intended in 1972. Now a new Congress and a new White House must ensure that it becomes law.

Green day (*Politics In Color*)

A PROMISE THAT ENVIRONMENTAL ADVOCACY IS BACK AT THE EPA

By Wayne Dawkins Updated: Thu, 04/16/2009 - 16:13

Georgia

It's a new day at the federal Environmental Protection Agency. Science, not ideology will guide the agency, Obama administration appointee Lisa P. Jackson told half-dozen columnists from the Trotter Group during a Monday conference call.

"We had eight years of neglect of the role of the EPA," said Jackson of the Bush administration. "It's time to restart the engine, but it is eight years we can't get back."

The Princeton-educated, chemical engineer's words were not partisan or gratuitous. One of her predecessors was Christine Todd Whitman, a moderate Republican with a solid reputation for environmental protection as governor of New Jersey during the 1990s. I covered Whitman back then. Yet as a Bush appointee, her attempts to lead were thwarted, so she left quietly 2003 rather than soil her reputation.

So where is the neglect and unhealthiness? Take water for example. The federal Clean Water Act is supposed to protect citizens, yet enforcement of the rules has been lax, Jackson told us. "Invisible pollution," she said from fertilizer runoff and road runoff has seriously degraded rivers and bays.

For Jackson to call the runoff "invisible" was needlessly gentle. Pollution is quite evident in the Chesapeake Bay, the watershed in my home base of Hampton Roads, Va. The bay is the region's lifeline for seafood harvesting and recreational fishing and boating, yet pollution is killing off the blue crabs and threatening the livelihood of watermen.

When I asked Jackson about the Chesapeake Bay, she acknowledged that we've "loved the bay to death" by overfishing it, polluting it with runoff, then swelling the Virginia and Maryland coasts with development.

The answer, she said, is new regulations that will limit growth and the urges of farmers - be they family or factory - to treat the Bay like an outhouse.

By the way readers, may I offer a gardening tip? Hold off the lawn fertilizer in spring and wait until fall to spread it around. Why? Too much of those so-called nutrients run off into waterways during the rainy spring and pollute.

Jackson has a tough row to hoe, or, nautically speaking, murky waters to clear. A Trotter colleague with the Washington Post reminded her that she has a number of assistants and deputies to appoint and get confirmed at Senate hearings.

The EPA budget was cut 30 percent during the Bush years, said Jackson. Staffing remained stable, but programs were slashed including climate change, which the Bushies did not like to talk about, but the Obama appointee says we not only have talk about but act on.

Because, it's a new day.

Dawkins is an assistant professor at Hampton University Scripps Howard School of Journalism and Communications. He is also a member of the Trotter Group http://www.trottergroup.org

ENERGY

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ACTIVISTS URGE OBAMA TO TRANSFORM TVA WITH EFFICIENCY ADVOCATES (*Inside EPA*)

4/17/2009

Major environmental groups are urging the Obama administration to appoint environmental advocates to the board overseeing the Tennessee Valley Authority (TVA) utility to transform the electric power producer and shift its focus to renewable energy and energy efficiency, to serve as a model for the rest of the country.

Four of the nine board positions will be open by May, and the Obama administration will be able to appoint all nine board members over the course of the president's first term in office, according to one environmental advocate whose name is among those being touted for a board position.

Leading environmental groups sent a letter April 2 to the Obama administration's director of presidential personnel to urge the appointment to the board of people who will take TVA in a new direction that exemplifies the clean energy economy the president is promoting.

"As a federally owned corporation and the largest public power provider in the nation, and as one of the largest land managers in the Southeast region, TVA is in a unique position to serve as a 'living laboratory' for the United States" in the effort to "move to a clean-energy economy and address the climate crisis," says the letter, which was signed by the heads of national and regional environmental groups, including the Natural Resources Defense Council, the Sierra Club, Earthjustice, the Southern Alliance for Clean Energy and the Southern Environmental Law Center. *The letter is available on InsideEPA.com.*

TVA is an $11 billion federal agency that is a major electric power producer in the Southeast, where action to address climate change at the state and regional levels has lagged behind other parts of the country. As the third largest utility in the country, TVA provides the majority of electricity to Tennessee, in addition to some percentage of electric power to Alabama, Mississippi, Kentucky, Georgia and small parts of Virginia and North Carolina. Beyond electric power, TVA also has influence over federal land and rural systems management.

EPA EYES EXPANDING ENERGY STAR TO RATE PRODUCTS' LIFECYCLE GHG EMISSIONS (*Inside EPA*)

4/17/2009

EPA is seeking to expand its popular Energy Star certification program for energy-efficient products away from its exclusive focus on reducing energy use to a more comprehensive approach that also considers manufacturers' ability to reduce greenhouse gas (GHG) emissions over the products' lifecycle.

Energy Star has so far been “all about energy in the use phase” of equipment, EPA’s Energy Star product development head Katharine Kaplan told a conference hosted by the American National Standards Institute in Arlington, VA April 8.

But Kaplan said that ultimately the program will also need to consider lifecycle GHG emissions from electrical equipment, including those produced by the manufacture and transportation of products. “There is a need for us to use our expertise to find other opportunities to reduce our greenhouse gas emissions,” Kaplan told the conference.

In a possible first attempt at the expanded approach, Kaplan said that Energy Star officials are talking to industry about how to reduce emissions of the potent GHG nitrogen triflouride (NF3) in the manufacture of flat screen televisions and computer monitors.

The gas was exempted from regulation under the Kyoto protocol because it was considered a safer substitute for other damaging fluorinated gases and was only used in small quantities in semiconductor manufacturing.

But a 2008 study conducted by scientists at the University of California-Irvine found the gas to have significantly greater global warming potential than previously believed. In addition, the gas is being used in vastly greater quantities due to its use in the now enormous flat-screen television market.

Kaplan says other efforts at EPA to mitigate the global warming threat posed by fluorinated gases will help with Energy Star’s drive to avoid emissions of NF3 during manufacture of electronic goods. She adds that this is a one-off response to a specific threat, but that Energy Star must develop a broader approach in the future to encompass all GHGs.

To that end, EPA is considering using the World Resources Institute’s (WRI) model for calculating lifecycle GHG emissions, she said, in an attempt to arrive at a common methodology for Energy Star’s evaluation of products. Speaking to *Inside EPA*, Kaplan said that WRI’s methodology on supply chain analysis and carbon footprint of products could “produce a useful tool for EPA.”

Also, EPA is trying to produce a system to prioritize products for GHG reduction according to which ones have the greatest potential for GHG savings, Kaplan said.

EPA’s expanded approach to Energy Star would involve calculating the energy used in manufacture and transportation of products, and the consequent GHGs emitted, but would also take into account direct GHG content of appliances.

ENFORCEMENT

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EPA PROPOSES LANDMARK SETTLEMENT FOR SELF-REPORTED VIOLATIONS (*Inside EPA*)

4/17/2009

EPA's landmark settlement with manufacturing company Invista, the largest under EPA's self-audit policy, was the key driver for EPA's recently unveiled interim policy intended to encourage new owners of existing facilities to audit and disclose environmental violations.

In an April 13 press release, EPA announced a proposed settlement with Invista under which the company will pay a $1.7 million civil penalty and spend up to $500 million to correct self-reported violations discovered when the company audited facilities in seven states. The company conducted the self-audit -- disclosing more than 680 violations of water, air, waste and other regulation -- after assessing 12 facilities it acquired from DuPont in 2004. *The proposed settlement is available on InsideEPA.com.*

After a boom in mergers and acquisitions (M&A), EPA in 2007 began tailoring its long-standing audit policy to encourage new owners of existing plants to conduct audits and disclose the results. The agency then issued the interim policy last year offering tailored incentives for new owners who audit recently-acquired facilities and then promptly disclose environmental violations that they discover. Incentives include mitigating penalties for new owners who disclose beyond what the agency's existing audit policy already provided for companies that self-report violations they discover.

"EPA's experience with Invista guided the development of a national interim audit policy for new owners -- announced in August 2008 -- designed to encourage other new owners to make a 'clean start' at their recently acquired facilities," the agency's press release says. EPA's acting enforcement chief Catherine McCabe said the settlement, which is subject to a 30 day public comment period, should encourage other new owners to audit and self-disclose.

FUEL

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EPA Considers Higher Ethanol Mix (*Wall Street Journal*)

Allowing 15% Gasoline Blends Would Help Industry, but Poses Car-Warranty Issue

By SIOBHAN HUGHES and LAUREN ETTER

APRIL 17, 2009

WASHINGTON -- The U.S. Environmental Protection Agency has opened the door to allowing higher mixes of ethanol in gasoline, a potential boon to farmers and the struggling ethanol industry, but opposed by auto makers whose consumer warranties typically are tied to the current EPA standard.

The agency Thursday said it is seeking comment on whether to allow ordinary gasoline to consist of as much as 15% ethanol, an additive that has been heavily promoted by farm states. For decades, the EPA has allowed gasoline to include up to 10% ethanol.

The EPA's move came in response to a petition filed last month by the trade group Growth Energy to allow motor fuel ethanol blends of as much as 15%, citing an Energy Department study that found "no operability or driveability issues" with blends as high as 20% ethanol.

View Full Image

Bloomberg News

Corn is loaded into a truck at a farm in Valley Springs, S.D. Higher percentages of ethanol mixed into gasoline would be a boon to farmers. About one quarter of all corn produced in the U.S. is used to make the fuel additive.

Most car warranties, however, have followed the 10% standard, which means consumers who use blends with greater than 10% ethanol could get stuck paying the bills if there's damage to fuel lines or other components unless auto makers agree to shoulder the costs.

Auto makers offer so-called flex-fuel vehicles designed to accept up to 85% ethanol fuels. But many current and older model cars aren't designed for ethanol concentrations above 10%.

Alan Adler, a spokesman for General Motors Corp., said if the EPA allows higher ethanol blends "we want to be sure that we're not on the hook for vehicles" that end up having problems with higher blends.

Earlier this year Toyota Motor Sales USA Inc. recalled 214,500 Lexus vehicles sold in the U.S. that were vulnerable to corrosion problems in their fuel-delivery pipes when some ethanol fuels were used.

Pushing against the auto industry's objections are farmers, investors in ethanol-fuel start-ups, big agricultural commodities companies and some environmental groups that argue the U.S. would be better off substituting home-grown biofuels for foreign oil.

Currently nearly a quarter of all corn produced in the U.S. is used to make ethanol. That's up from about 12% in 2004. A higher blend ratio would help support corn prices.

"If we don't move that regulatory cap, without question grain supplies are going to grow and the next group looking for a bailout will be the American farmer," said Jeff Broin, chief executive officer of POET, one of the nation's largest ethanol producers, based in Sioux Falls, S.D.

An oversupply of ethanol has prompted a wave of bankruptcies and made the ethanol industry eager to expand its market. Ethanol producers are being squeezed as corn prices stay relatively high and as ethanol prices stay relatively low. Todd Alexander, a partner at Chadbourne & Parke LLP, estimates that some ethanol producers are losing up to 10 cents on every gallon of ethanol.

Another big ethanol producer, Archer Daniels Midland Co., based in Decatur, Ill., recently reported a loss in its ethanol business for its second quarter, ended Dec. 31. VeraSun Energy Corp. and Aventine Renewable Energy Holdings Inc. have both filed for bankruptcy protection. Pacific Ethanol Inc., which has counted Bill Gates as one of its star-studded investors, said recently in federal filings that it could run out of cash by the end of April if it can't restructure its debt or raise additional financing.

In response, pro-ethanol lobbyists have stepped up efforts to win more support from the government. An ethanol trade group hired retired U.S. general and former 2004 Democratic presidential candidate Wesley Clark to make its case for a higher blend. The industry also has turned to Congress, where lawmakers such as Sen. John Thune (R., S.D.) have held meetings with EPA staffers, urging them to allow blends of 12% or 13% ethanol immediately -- something he argues the EPA could do now without going through a public comment process.

By law, the EPA has until Dec. 1 to decide.

Write to Siobhan Hughes at siobhan.hughes@dowjones.com and Lauren Etter at lauren.etter@wsj.com

EPA Opens 30 Day Comment Period on E15 Waiver (*Domestic Fuel*)

Posted by Joanna Schroeder – April 16th, 2009
Missouri

The Environmental Protection Agency (EPA) announced today that it is seeking public comments on the "Green Jobs Waiver" that was submitted several weeks ago requesting the current ethanol blend be increased from 10 percent ethanol (E10) to 15 percent (E15). Since 1978, the limit has been set at E10 for conventional (non flex-fuel) vehicles. The comment period will be open for 30 days after the notice is published in the Federal Register which is expected to happen on April 22nd. Last month, the Underwriters Laboratories (UL) certified all current dispensers and components for E15.

In a company statement, Jeff Broin, CEO of POET said, “Lifting the arbitrary cap and allowing ethanol blends of up to 15 percent is our nation’s means to achieve commercial-scale cellulosic ethanol, green jobs and a better environment. It is important that Americans use this comment period to let the Environmental Protection Agency know how important homegrown ethanol is to our nation.”

Growth Energy and 54 ethanol manufacturers submitted the E15 application to EPA on March 6, 2009. Current statute calls for EPA to make a decision within 270 days of receipt, which is December 1, 2009. It is imperative for the biofuels industry that the blend wall is increased in order for the ethanol industry to achieve the biofuel levels as set out in the Renewable Fuels Standard (RFS). Increasing the blend wall will also help ensure that there is a market for cellulosic ethanol when full-scale plants come online.

To learn more about the E15 reques or to submit comments, visit http://www.epa.gov/otaq/additive.htm.

GENERAL

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EPA URGED TO DOWNGRADE POLICY OFFICE’S ROLE IN REGULATORY REVIEWS (*Inside EPA*)

4/17/2009

Environmentalists and some EPA staff are urging agency Administrator Lisa Jackson to downgrade the lead role the agency’s Office of Policy, Economics & Innovation (OPEI) plays in coordinating regulatory and other policy reviews with the White House and instead return the program offices to their lead coordinating role.

The OPEI critics, who claim the office has played a major deregulatory role during the internal review process, say Jackson should revoke an April 2001 memo from then-EPA Administrator Christine Todd Whitman that appointed OPEI as the coordinator for the internal approval process for rules ready for review by the White House Office of Management & Budget (OMB). *Whitman’s memo is available on InsideEPA.com.*

Whitman’s issuance of the memo was “like putting two foxes in the same hen house,” says one environmentalist who supports revoking the Whitman memo. Some economists within OPEI “are cut from the same cloth as OMB and are skeptical of much of EPA’s mission. . . . So these anti-regulatory economists get two whacks at the piñata,” the source adds.

But some agency officials -- including staff and managers -- are concerned about possible plans to downgrade the office's role, saying it serves an important coordinating function. One source concerned about the move adds that it appears to be under consideration without discussion.

However, if EPA seeks to makes changes to the office that result in changed job functions it will likely have to negotiate with labor unions as part of a contract, a process that could force discussion of the issue.

Both supporters and critics of the move say that Jackson's recent decision to quickly halt OPEI's Performance Track program -- which provided incentives including reduced inspection priority to facilities that committed to voluntary pollution reduction plans -- may signal a broader desire to reorganize the policy office.

The move is being considered as the Obama administration considers revisions to Executive Order (E.O.) 12866, which governs White House review of agency rules. The comment period on the revisions closed March 31.

Many EPA staff have already indicated they favor raising the economic threshold for OMB reviewing agency regulations, from $100 million to $250 million (*Inside EPA*, April 3). But it is not clear whether the agency formally recommended such a move.

It is also unknown whether Jackson has rescinded the Whitman memo to reign in the role of OPEI, which is run out of the Office of the Administrator. EPA has made no public announcements about a possible policy office reorganization, and there are no updates on the agency's Web site for OPEI, Jackson's page, or elsewhere that indicate the memo has been rescinded or is under review.

Jackson's spokeswoman declined to comment for this article but the administrator has in the past downplayed the need for a major overhaul of EPA. In a Feb. 27 interview with *Inside EPA* and other news organizations, she said that "in general" she is not a fan of reorganizations. "They take a lot of time, they're very disruptive when we have so much to do" *(Inside EPA*, March 6).

During the Bush administration, OPEI took on an elevated role in reviewing agency regulations. In addition to the Whitman memo, the office's role was further bolstered by 2007 amendments to E.O. 12866, which formalized the office's role in the regulatory review process. The amendment says unless specifically authorized by the head of an agency, "no rulemaking shall commence nor be included on the plan without the approval of the agency's regulatory policy office," which in the case of EPA is OPEI.

OPEI was also responsible for carrying out E.O. 13211 -- a 2001 executive order -- mandating that EPA and other agencies assess the energy impacts of regulatory decisions.

But the environmentalist, EPA staff and others say that the Obama EPA should swiftly restore the agency's air, waste, water and other program offices to the role of lead liaison with OMB on the rulemakings they develop. The policy office "interferes with EPA's core work," one agency source says.

The environmentalist adds, "I would very much welcome [revoking the memo] because the agency's experts that are responsible for carrying out statutes and protecting the environment reside in the program offices. OPEI has always had a different agenda that is more aligned with OMB and deregulatory forces within industry."

A second EPA source says that the policy office's role should be reduced in the new administration, adding, "Our big problem is that everything the agency is doing has to be approved by OMB and OPEI first."

In Whitman's memo, the former administrator said that elevating the policy office "will produce better informed decisions and ensure that the nation's environmental protection system produces the best outcomes at an acceptable cost. Appropriate scientific, economic and policy analyses must be planned at early stages in the regulatory development process so that senior agency decision makers understand the benefits and costs of policy options from which to choose."

But critics charge that the memo has given OPEI significant authority to override EPA program offices on rulemakings and say the office is sometimes seen as an obstacle to strict rules.

Bush OPEI officials took steps to try and further boost the office's role in rule reviews, including an effort in 2007 by former OPEI head Brian Mannix to restructure the office to create new divisions overseeing voluntary programs and performance measurement approaches, which were priorities for Bush administration officials but have prompted concerns from some Democrats and activists.

The proposal -- which was ultimately abandoned -- also raised concerns among EPA staff, who feared it would have increased their workload and management scrutiny, which could delay an agreement on a final restructuring plan, according to an agency source familiar with the proposal.

Revoking the memo would "restore the program offices and their experts on law and science to being the ones that deal directly with OMB and negotiate over rules. They are involved in the current process but [OPEI's authority] adds a layer of skeptical review and ability to influence rules," the environmentalist says.

EPA's American Federation of Government Employees union in a Nov. 7 white paper for then-President-elect Barack Obama urged the incoming administration to rescind E.O. 12866, "take OMB out of the role of 'gatekeeper' for environmental regulations, and restore EPA's lead programmatic, regulatory and scientific role in addressing global climate change." The union cited a Bush EPA advance notice on regulating greenhouse gases as a key example of OMB's influence, saying it was only finalized after extensive policy office and other agencies rasied "complaints" and insisted on cuts to the notice.

According to a document added April 13 to OMB's docket on the executive order, top EPA officials met late last month with OMB to discuss changes to E.O. 12866, including Jackson advisor and former EPA Deputy Administrator Robert Sussman as well as top OPEI officials Louise Wise, Alexander Cristofaro, Leslie Schaaf and Nicole Owens. -- *Anthony Lacey*

HAZARDOUS WASTES

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EPA confirms presence of hazardous materials at KCK site (*Kansas City Star*)

Posted on Thu, Apr. 16, 2009
Missouri

The Environmental Protection Agency confirmed this afternoon that hazardous substances were present at a site near Juniper Gardens public housing in Kansas City, Kan.

The federal agency recently collected samples at the site near North First Street and Franklin Avenue.

Scientists have since verified the presence of several substances including “pesticides, herbicides, polychlorinated biphenyls and lead. The quantities of these substances appear to be relatively small, and appear to be confined within the property boundaries,” the EPA said in a written release.

The federal agency will host a public meeting from 6 to 7:30 p.m. April 23 at the Juniper Gardens Community Center, 1980 North Second St., to answer questions and provide information.

In the meantime, the EPA has erected a security fence at the site. The agency is also working to determine if the environmental hazards extend into the adjoining neighborhood.

To learn more, call the EPA at 913-551-7463.

EPA unveils $600 million in new funding to clean up sites (*Waste News*)

April 16 -- The U.S. EPA has unveiled $600 million in new funding through the American Recovery and Reinvestment Act of 2009 for the cleanup of hazardous waste sites across the nation.

The funding will accelerate cleanup already under way at most sites and fund some new cleanup projects. It also will jumpstart local economies by creating jobs, according to the EPA.

The federal Superfund program has cleaned up hazardous waste sites since 1980, dealing with properties that pose unacceptable risks to human health and the environment.

The Superfund program is implementing new or expanded cleanup actions at 50 sites around the country with recovery act funds.

More information about the Superfund program is available at www.epa.gov/superfund.

Contact Waste & Recycling News senior reporter Bruce Geiselman at 330-865-6172 or bgeiselman@crain.com

EPA PANEL SEEKS STANDARDS FOR ACUTE EXPOSURES TO GASOLINE, CO2 (*Inside EPA*)

4/17/2009

A federal stakeholder panel is seeking to develop first-time safety standards for acute exposures to gasoline and carbon dioxide (CO2), which EPA could use to develop regulations and other protections in the event of a spill or other sudden, short-term exposure to the substances.

However, EPA staff are unsure if an agency management decision to shift funding will allow them to add new substances to the program.

EPA relies on acute exposure guideline levels (AEGLs) for setting regulatory protections for first responders and others that may face acute exposures to hazardous substance spills, while they rely on Integrated Risk Information System assessments in the event of chronic exposures. AEGL values are generally more conservative because they are developed to protect against much larger exposures than chronic exposures.

An advisory panel, the National Advisory Committee for AEGLs, sets the guidelines which are then reviewed and finalized by the National Academy of Sciences. The committee is expected to complete its assessment of the remaining chemicals on the original list EPA sought to address at its next meeting in September, the committee's designated federal officer, Paul Tobin, said during an April 14 meeting in Alexandria, VA.

But some panelists are urging the committee to consider assessing the acute exposure risks posed by gasoline and CO2. However, Tobin cautioned that it is unclear whether agency managers will provide funds for the new effort. "We've discussed with EPA management about entering new chemicals on the list," Tobin said. "Management has asked us after September to focus on finalizing and completing the list and delay entering new chemicals. It's a problem of funding, so we met quite a bit of resistance for entering new chemicals. . . . At some point we may be able to entertain new chemicals."

But members of the committee are urging EPA to add gasoline and CO2 to the list. Calvin Willhite, a California EPA toxicologist on the committee, said that gasoline AEGL values are of interest to him and John Hinz, a committee member representing the U.S. Air Force.

Gasoline is a cheap and widely available hazardous chemical, a committee member explained. “It just makes sense [to set AEGLs], there are huge quantities being shipped in barges, rail cars and tanker trucks,” the source says. “We’ve set AEGLs for all these other large commodity chemicals.”

When there are accidents with gasoline transports, usually on roads, emergency responders’ first concern is fire, the source says. But gasoline is also harmful if inhaled, and the source says responders need a guidelines for when it is safe to enter an area with gasoline fumes. The source adds there are ample data on the substance, unlike many AEGLs, unlike many AEGLs the committee and its contractors have struggled to calculate due to lack of data.

The committee chairman, George Rusch of Honeywell International, is urging that the committee consider CO2, noting that “millions and millions of people are exposed” to it. Rusch adds that it is a “vital” chemical to assess in the AEGL program. The chemical has wide industrial applications from soda pop to oil refining because the gas form liquefies under very high pressure, a committee member explains, adding it is also an asphyxiant.

EPA sources say the agency is considering adding gasoline and CO2 to the list of chemicals that the committee will address at its September meeting. But they noted that the agency’s focus is shifting from creating the initial AEGLs to finalizing them. The National Academy of Sciences reviews all of the AEGLs that are set by the committee, and EPA wants to focus more on the Academies’ reviews and publishing the finalized AEGLS, the sources say.

AEGLs are set at 10 minute, 30 minute, one hour, four hour and eight hour intervals. For each time interval, the committee attempts to assign three guideline concentrations, including an AEGL 1, where “discomfort” or “irritation “may occur, according to EPA’s Web site. Above an AEGL 2 guideline, “irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape,” may occur, while the AEGL 3 guideline is intended to set a concentration above which exposure is life-threatening.

The list of chemicals that the committee reviewed at its April meeting included several carbamate pesticides and other chemicals nominated by EPA’s homeland security research center, such as ricin, a poison developed as a chemical weapon during the First World War.

The committee had already set AEGL values for ricin, but new data led the committee to re-review the chemical, says a source involved with its assessment. This new information “confirmed we want to be concerned about variable toxicity,” of different kinds of ricin, the source says, noting that “a more toxic type of ricin” is available now than when the committee originally assessed the chemical.

EPA also removed one controversial pesticide from the list that the committee was scheduled to address during the meeting. The agency tabled consideration of carbofuran, several sources said, with one adding that EPA’s pesticides office wanted to take a closer look at it. The agency is trying to revoke both the remaining registrations for the pesticide’s use and tolerances for residue of the pesticide on domestic and imported crops, arguing that it presents unacceptably high risks to birds and farmworkers. The agency and the manufacturer, FMC Corporation, have been locked in a struggle over the registrations and tolerances for several years. -- *Maria Hegstad*

PESTICIDES

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Don't Let the Bedbugs Bite (*FitSugar.com*)

Apr 17 2009 - 3:00am

Almost wiped out after World War II, bed bugs [1] are back with a vengeance. Recent bed bug infestations have been reported in a wide variety of locales, from college dormitories to hospital wings, homeless shelters to swanky hotels in the big apple and the windy city. The resurgence of these little brown bugs has become so problematic in parts of the nation that the Environmental Protection Agency held a two-day summit [2] on the issue.

While bed bugs do not transmit diseases, their bites often cause discomfort from swelling and itching. Creepier still: bedbugs excrete a numbing agent in order to not wake their slumbering victims. The small bugs, about a quarter of an inch [3] in length, live in sheet folds, couch crevices, and mattresses.

The resurgence of these little buggers is international and the problem is worse in densely populated areas. One reason for the rise is that there are few pesticides approved for use on mattresses that kill bedbugs. Since the approval process of pesticides is lengthy, the EPA is considering approving some pesticides for emergency use. There is also a push to study the effectiveness of alternative removal solutions, like heating, freezing, or steaming to remove the bedbugs. Have you dealt with bedbugs? Are you itchy after reading this? I know I am!

EPA Moves Toward Testing of Potentially Dangerous Pesticides (*Kitsap Sun*)

By Christopher Dunagan
Thursday, April 16, 2009

Washington

Federal government will launch a long-awaited program to measure hormonal effects in humans and animals.

WASHINGTON, D.C.

The Environmental Protection Agency will soon order the manufacturers of 67 pesticides to conduct tests to determine if chemical ingredients in their products can affect the hormonal systems of humans and animals.

These upcoming orders mark the beginning of a massive chemical screening program first envisioned in 1996, when Congress passed the Food Quality Protection Act. The law called for testing potential endocrine disrupters, chemicals that interfere with body systems regulated by hormones, which travel through the blood.

Environmental and health advocates have long worried that common chemicals may be interfering with growth, reproduction and metabolism by triggering unnatural responses by endocrine glands. These glands include the pituitary, thyroid and adrenal glands, along with ovaries in females and testes in males.

"Endocrine disrupters can cause lifelong health problems — especially for children," EPA Administrator Lisa Jackson said in a statement. "Gathering this information will help us work with communities and industry to protect Americans from harmful exposure."

Studies have linked endocrine disrupters to declining human sperm counts and potential breast cancers. In addition, wildlife have been reported with malformed sexual organs, sterility and a variety of physical abnormalities — including tadpoles that grow multiple legs. Connecting abnormalities to specific chemicals has been difficult, because scientists aren't sure which ones interfere with specific hormonal functions.

The initial 67 pesticides to be tested were selected because of their high potential for human exposure — such as through food and water — not because they are known or likely to be endocrine disrupters, Jackson said. EPA's Endocrine Disrupter Screening Program will eventually be expanded to include all pesticide chemicals.

"This move by the EPA is a huge step in the right direction for protecting kids," said Ivy Sager-Rosenthal, environmental health advocate for the Seattle-based Washington Toxics Coalition. "By doing this testing, we will have a lot more information about whether these chemicals have an effect. Then we can take regulatory action down the line."

Under revised policies and procedures, the EPA will require the testing of "inert" ingredients, which environmentalists say may be contributing unknown effects. Environmental advocates often have been unable to obtain a full list of ingredients for a product, let alone how much is present.

The new procedures will allow manufacturers to work together to test chemicals, share costs and protect confidential business information.

The EPA's screening program has been delayed by discussions about setting priorities for which chemicals should be tested first, what kind of tests should be conducted and how specific tests should be designed.

About a dozen kinds of tests have been evaluated for testing certain kinds of chemicals. They include measuring hormonal activity in mice and rats, looking for physical and behavioral abnormalities in fish and frogs, examining effects in tissues taken from animals, and using computer models to estimate effects based on chemical structure.

For a discussion about water-related issues, check out the blog Watching Our Water Ways at kitsapsun.com.

Bed bugs making a comeback (*KSWO*)

April 16, 2009 07:35 PM EDT
Oklahoma

Lawton_Bed bugs are making a resurgence. It used to be that you would only find bed bugs at seedy hotels and motels. But they're now checking into the finer hotels and the buggy population is even spreading into clean homes. It's so bad, the Environmental Protection Agency held its first-ever bed bug summit.

One Texoma exterminator said he gets calls about the parasites at least once a week. "It doesn't matter whether you are dirty, clean, old house, new house...it's just a matter of fact and a matter of the times," said Joe Rendina.

The reddish-brown critters aren't just confined to beds. "Usually they hide around mattresses and seams, cracks and crevices of furniture so they don't travel too far."

Rendina said if you're bitten, you'll know it. "You will see some type of bump or something on your arm or leg or where ever." He said you can also see them with the naked eye. "The eggs of a bed bug are white in color. They are sticky. A female can lay up to five eggs a day -- 500 eggs in a lifetime."

Entomologists say bedbugs aren't known to transmit any diseases. But their bites can cause infections and allergic reactions.

Modern Day Plague of the Vampire Bedbug (*HealthNews*)

By: Drucilla Dyess
Published: Thursday, 16 April 2009

They're back and just laying in wait to feast upon your blood! The resurgence of the bedbug has brought new infestations across the world and the number of cases having been steadily increasing since the mid-1990s. Prior to this time, it was believed that bedbugs had been completely eradicated in the United States by the widespread use of a synthetic pesticide known as DDT.

Bedbugs attack in the pre-dawn hours with the peak of their feeding frenzy occurring just an hour before sunrise. The blood-sucking vermin pierce the skin with two hollow tubes. With one tube they inject saliva that contains anticoagulants to prevent your blood from clotting as well as anesthetics to mask any pain, while with the other tube they extract your blood while you sleep unaware. After gorging for about five minutes, the bugs return to their hideouts among the crevices and folds of mattresses, sofas, and sheets to gloat and await their next indulgence.

The bug bites usually can't be felt until minutes or even hours later, when they begin to cause intense itching, and may sometimes take as long as nine days to be visibly manifested as raised red bumps or flat welts. The manifestations are the result of the skin's allergic reaction to the bug-injected anesthetics. In some rare cases, allergic reactions to bites may cause nausea and illness, but in an estimated 50 percent of cases no visible sign of bites occurs at all, making it difficult to identify and eliminate infestations. The only good news is that bedbugs are not known to transmit any diseases.

Now being described as the largest bedbug outbreak since World War II, the vermin are taking up occupancy in hotels, hospitals, college dorms, and homeless shelters alike. Worst of all, because the U.S. government has banned DDT as well as other highly effective pesticides, it is facing tremendous difficulties in forming a new strategy for successful attack against the nasty critters.

To best formulate a successful plan for the elimination of the pests, the Environmental Protection Agency (EPA) held its first-ever bedbug summit that was organized by one of the agency's advisory committees. The conference took place at a bedbug-free hotel in Arlington located just across the Potomac River from Washington and lasted for two days. There were approximately 300 participants.

According to researchers and the pest control industry, there are currently few chemicals available that are approved for use on mattresses and other household items that can effectively eliminate bedbug infestations and because bedbugs are blood feeders they cannot be lured by bait. Another problem that must be addressed

is that pesticides are not effective in eliminating the bugs from every crack and crevice in which they hide.

Due to effects on public health and the environment, the EPA chose to ban DDT and other chemicals that were effective in bedbug eradication. Worse yet, the continued use of these chemicals in other countries has led to the beginning of the bedbug's development of a chemical resistance to them. With the growth of international travel, the chemically resistant bedbug has been given access back into the U.S.

Other efforts to resolve the problem include the planned re-introduction of legislation to expand grant programs for assisting public housing authorities in dealing with infestations An aide to Representative G.K. Butterfield says the congressman plans to reintroduce the bill to be called the "Don't Let the Bedbugs Bite Act" in about a week.

BED BUG 'EPIDEMIC' SPURS CALLS FOR EPA EMERGENCY PESTICIDE BAN WAIVERS (*Inside EPA*)

4/17/2009

States, the pest control industry and some federal agencies are citing a bed bug "epidemic" across the country in their calls for EPA to issue emergency permits allowing the use of long-banned pesticides, pointing to the increasing problem of bed bug victims using unregistered pesticides to combat infestations.

But Lois Rossi, director of EPA's Office of Pesticide Programs, told a National Bed Bug Summit April 14 in Arlington, VA, that those pesticides "weren't just pulled off the shelf for no reason." Rossi also downplayed lifting existing bans, saying, "We haven't entertained bringing back products. . . . I think we have to keep in mind that we have laws we use to make our decisions on and we have to make safety findings on these products."

At the event speakers said new populations of bed bugs are resistant to many currently used pesticides and can even live for days or weeks after being directly sprayed. Bed bug infestations are increasing nationally and even globally at a precipitous clip, but within the United States the problem is greatest in the Northeast.

Stakeholders urged EPA to issue "emergency permits" for pesticides to combat bed bugs that are currently subject to agency bans. The same stakeholders argued that EPA should use the misuse of off-the-shelf or unregistered pesticides by "desperate" bed bug victims in the agency's risk analysis, because the risk of emergency use of banned pesticides may be lower than the use of unregistered, off-the-shelf pesticides.

A pesticide industry source says “I have absolutely no read” on whether EPA will pursue the emergency provisions. But pesticide officials are strongly backing the effort and EPA staff have indicated their concern about the topic and willingness to pursue “extraordinary regulatory flexibility,” the source says.

“We’re already seeing massive use of off-label and non-registered products for bed bug control because people are becoming desperate,” a pest control source says. Malathion, Chlopyrifos and organophosphates generally

are the banned pesticides the source wants to see made available as treatments for exterminating bed bugs.

The source says “About ten years or so ago we lost some important chemicals and chemical classes especially the organophosphates and a number of carbamate insecticides” due to EPA bans.

The source says “old timers” who remember combating bed bugs say a single application of some of the more effective chemicals would deal with the problem. Bed bugs virtually disappeared within five years of the appearance of DDT, the source says. But now bed bug populations are resistant to DDT as well.

However, studies conducted by the University of Kentucky College of Agriculture with wild populations of the bugs show other banned pesticides would easily deal with the bugs, the source says. Advocates of emergency lifts of the pesticide bans have provided data to EPA on the efficacy of the banned pesticides, and the agency has had a dialogue with pest control trade associations on the issue, according to the source.

An environmentalist says organophosphates are dangerous because they cause cholinesterase inhibition, which has an effect on the nervous system that can lead to seizures and even death. The source says some organophosphates are carcinogenic and others have other deleterious effects.

According to conference participants, there are no currently available adequate solutions to bed bugs. Several scientists who study the blood-sucking creatures say new populations show a remarkable resiliency to permitted pesticides. Even when directly sprayed with some insecticides, bed bugs can live up to 16 days. These pesticides are normally able to kill pests who come into brief contact with the chemicals, participants said.

In calling for a lift on the bans to avoid risks of victims using unregistered pesticides or taking other, riskier approaches to combating bed bugs, one stakeholder mentioned an incident in which a woman doused her walls and mattress with alcohol, only to accidentally set her home on fire with a lit cigarette.

However, Rossi and other officials downplayed the chances of emergency permits for banned pesticides. Rossi said, “we would basically be willing to work with development of additional tools [to combat the bed bugs problem] but those products weren’t just pulled off the shelf for no reason.”

And a Washington state official told *Inside EPA* the use of older, more effective pesticides would be beneficial, but an agency official at the conference standing nearby dismissed the prospects of lifting the bans, saying, “good luck.”

Still, Rossi noted that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) includes an “emergency conditions” provision under section 18 of the law that would allow EPA to lift the bans.

The emergency provision “authorizes the administrator to exempt state and federal agencies from any provision of the Act, if he determines that emergency conditions exist which require an exemption” including “public health” exemptions. “A public health exemption may be authorized in an emergency condition to control a pest that will cause a significant risk to human health,” the law says.

Rossi said EPA would accept applications submitted for emergency use of the banned pesticides but cautioned, “if we were presented with an application we would have to go through a risk assessment of the use to see if we could meet the safety requirements. That is what we would have to do.”

The environmentalist says the emergency exemption is a “pretty high hurdle,” but says he does not know enough about bed bugs to project whether it should be applied here.

Another option suggested by a participant would be for the agency to create a separate certification process for exterminating bed bugs. EPA requires certification of pest controllers for the use of some of the more hazardous pesticides. One agency official said the separate certification track was “possible” and noted there were separate tracks for other pests such as termites. -- *Jonathan Strong*

EPA SELECTS PESTICIDES FOR TESTING IN ENDOCRINE DISRUPTOR PROGRAM (*Inside EPA*)

4/17/2009

EPA has selected a suite of pesticides that it will order manufacturers, producers and importers to test for their potential hormone-altering effects, including many pesticides that environmentalists have sued the agency over, seeking bans of their use or expedited phase-outs.

Requiring testing could help environmentalists’ efforts to remove the chemicals from commerce as industry officials have long feared that the selection of chemicals could prompt consumer deselection. But EPA says in an April 15 *Federal Register* notice that inclusion of chemicals on the list does not mean they necessarily pose risks to the endocrine system, which regulates development.

“This list should not be construed as a list of known or likely endocrine disruptors. Nothing in the approach for generating the initial list provides a basis to infer that by simply being on this list these chemicals are suspected to interfere with the endocrine systems of humans or other species, and it would be inappropriate to do so,” the agency says. *Relevant documents are available on InsideEPA.com.*

According to the notice, among the 67 pesticides and pesticide ingredients that will be the first chemicals to be screened through EPA’s long-awaited endocrine disruptor screening program (EDSP) are chlorpyrifos, diazinon, endosulfan, ethoprop, malathion, methamidophos, methidathion and phosmet -- pesticides included in a group of lawsuits brought against the agency.

EPA also intends to screen carbofuran through the program. The agency, backed by environmentalists, has been trying to revoke both the registrations and the tolerances of any residues of the pesticide on domestic and imported crops. In an unusual move, the manufacturer,

FMC Corporation, is suing the agency instead of taking the usual method of voluntarily withdrawing the product from the American market to protect its international markets.

The list also includes three phthalates, chemicals frequently used in consumer products like cosmetics, and to soften plastic products like rain jackets and shower curtains, and also used in fragrances like air fresheners. Dibutyl phthalate, diethyl phthalate and dimethyl phthalate are included on the list. The Consumer Product Safety Commission Improvement Act enacted last year bans toys and children's products that contain more than 0.1 percent of dibutyl phthalate.

The solvent methyl ethyl ketone is also included on the list; the agency in 2005 took the rare step of removing the chemical from the Clean Air Act list of air toxics, only the fourth time the agency has removed an air toxic from the list. The move sparked protest from activists and state officials, who protested there was too much uncertainty about the chemical's health effects to warrant the delisting.

EPA also explained why it removed six pesticides from the draft list of pesticides intended to be screened in the EDSP. This group includes AzinphosMethyl, a pesticide from among those in the environmentalists' suits. The agency explains that, "All uses of azinphos-methyl will cease by 2012. For this reason, azinphos-methyl will not be tested."

In addition to the list of pesticides that must be screened, EPA is also issuing a proposed information collection request and policies and procedures for the program.

POLITICAL

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OPPT NOMINEE LACKS TOXICS EXPERTISE BUT BRINGS CRUCIAL POLITICAL FOCUS (*Inside EPA*)

4/17/2009

Stephen Owens, President Barack Obama's pending nominee to head EPA's pesticides and toxics office (OPPT), does not have extensive technical expertise but instead brings wide-ranging political and management experience to the office that could be crucial as policymakers work to reform U.S. chemical management policy, EPA and other sources say.

"We're not looking for a chemist -- we have plenty of subject matter experts -- we're looking for a manager," Jim Jones, OPPT's acting chief, told the GlobalChem chemical industry conference in Baltimore, MD, April 7. "I think [Owens] has exactly the type of background you'd like especially with some of the legislative challenges we face."

Obama April 1 announced his intent to nominate Owens -- who until earlier this year served as head of the Arizona Department of Environmental Quality (DEQ) -- to replace James Gulliford as head of OPPT, a post to which he brings wide-ranging political experience at the state and federal level.

With a law degree from Vanderbilt Law School, Owens served as counsel to the oversight subcommittee of the House science and technology committee under its then-Chairman Al Gore (D-TN). When Gore won election to the Senate, Owens served as his general counsel and state director from 1985 to 1988, according to a biography recently released by the White House.

Upon leaving the Hill, he moved to Arizona and set up an environmental law practice. He was active in local politics, and twice ran unsuccessfully for Congress against then-Rep. J.D. Hayworth (R-AZ) in 1996 and 1998 before then-Gov. Janet Napolitano (D) appointed Owens director of DEQ in 2003. Owens was elected president of the Environmental Council of the States (ECOS), the national state environmental agency directors association, in September 2008.

Owens resigned from DEQ and ECOS in January, after Obama nominated Napolitano for homeland security secretary, and she was replaced by the Republican lieutenant governor.

During his tenure in Arizona, Owens has shown a willingness to use regulatory authorities to drive policy -- a strategy that may prove useful to environmentalists seeking to pressure Congress to strengthen the Toxic Substances Control Act (TSCA). At the ECOS annual meeting in Portland, OR, in 2006, he publicly urged EPA to provide guidance that would help encourage the state legislature to amend state law so DEQ could qualify for a controversial EPA water funding program. At the meeting, Owens urged former Bush EPA water office chief Benjamin Grumbles to provide guidance "on how do we persuade the legislature that this needs to be changed."

Similarly, an Arizona business source says Owens developed regulations as a way to encourage the legislature to provide the state with authority to implement its requirements under the Western Climate Initiative (WCI) -- an evolving proposal for a greenhouse gas (GHG) cap-and-trade program covering seven states and four Canadian provinces.

While Napolitano said the WCI needed legislative authority to be implemented in the state, Owens "started pushing through rules" that would lead to its enactment, and to "circumvent legislators," the business source says, adding, "the legislature went apoplectic."

In addition to his deep involvement in the WCI, Owens also played a key role developing a climate initiative with the neighboring Mexican state of Sonora that was one of several local measures intended to push climate change regulations at a time when they were opposed by the Bush administration. Officials from the two states signed a declaration of cooperation in 2006 that says "a scientific consensus has developed" that increasing emissions of GHGs are changing the climate and called on regulators to develop a regional GHG inventory and identify opportunities for reducing and sequestering the emissions.

While Owens is little known inside the Washington beltway, his leadership in Arizona has drawn strong reaction from industry and environmentalists. The business source, for example, criticized Owens for refusing to issue any uranium mining permits and argued that the comprehensive solid waste program implemented under Owens' leadership is "contrary to law."

The business source says Owens' "decisions were contrary to authority, law and science because he was using them for political purposes." The source also called Owens "vindictive," saying he increased enforcement actions against business owners who refused to go along with his positions.

Asked about Owens' experience with chemicals or risk assessment, the source said he had none. A pesticides activist also cited this concern, saying, "I cannot find anything [Owens has] ever done with toxic substances. He's done climate change, water and air. Why is he being nominated for OPPTS?"

But a source with the Sierra Club Grand Canyon Chapter disagrees, noting that under Owens' watch DEQ completed a hazardous air pollutants rule that had languished for 12 years. Owens also supported a change to Arizona pesticide spraying notification law that the Sierra Club sought, the source sys. The change, passed in 2006, required pesticides users to notify day care centers and schools when spraying took place in their vicinity, the source says.

Owens is deeply concerned about climate change and also children's health -- another priority of Jackson's -- the Sierra Club source says. He started a children's environmental health office at DEQ, which recently funded a study of the relationship between asthmatic children's emergency room visits and air quality.

"I think he has a lot of background trying to reform and change things," the Sierra Club source says. "He's certainly taken a lot of arrows and been in difficult positions. As long as he has support from his boss, I think he'll do a good job of reform for people and the environment." -- *Maria Hegstad*

SUPERFUND

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EPA LISTS ARMY BASE IN FIRST FEDERAL SITE LISTING ON NPL SINCE 2005 (*Inside EPA*)

4/17/2009

EPA recently listed the Army's Fort Detrick, MD base on the Superfund list of the country's worst hazardous waste sites -- the first federal waste site added to the list since 2005. The action came without apparent further protest from the Army, which had initially opposed the move, and as the military services in recent months have been conceding to EPA's cleanup authority at other sites.

EPA April 8 issued a final rule listing Fort Detrick Area B on the Superfund National Priorities List (NPL), in the culmination of a process that was originally contested by the Army. The site was only the second federal site proposed for listing on the NPL by the Bush administration. *Relevant documents are available on InsideEPA.com.*

Listing the site on the NPL has long been sought by Maryland officials, who have charged that the Army's resistance to the listing was part of a high-profile fight by the military to escape EPA's binding cleanup authority -- a fight the military eventually lost when the Justice Department ruled in EPA's favor in December.

For example, Sens. Ben Cardin (D-MD) and Barbara Mikulski (D-MD) urged the incoming Obama administration late last year to quickly list Fort Detrick, and also soon complete a binding cleanup

agreement at Fort Meade, MD, where Army officials in the past argued against EPA's cleanup orders and refused to sign on to a joint cleanup accord.

TOXICS

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Mercury Exposure at Fairland Middle School (*WSAZ-TV*)

Posted: 3:24 PM Apr 16, 2009
Last Updated: 8:01 PM Apr 16, 2009
Reporter: Steve Eschleman
Email Address: steve.eschleman@wsaz.com

PROCTORVILLE, Ohio (WSAZ) -- Several Fairland Middle School students were exposed to mercury at the end of the school day Wednesday.

The middle school principal tells WSAZ.com a student brought a prescription bottle of mercury pellets and showed them to some fellow students. That exposure has prompted the EPA to investigate the level of exposure at the school. Those tests will be run later today (Thursday).

Heat and air conditioning systems in the room where the mercury was kept and across the school were turned off.

According to the website elcosh.org, sudden, high exposure to mercury vapor can cause lung damage, coughing, chest pains and diarhea. Other symptoms appear at higher or prolonged exposures.

GOP SEES 'PROXY' CHEMICAL FIGHTS AS PRELUDE TO TOXICS LAW OVERHAUL (*Inside EPA*)

4/17/2009

BALTIMORE -- Legislative battles over specific chemical bans, security standards for chemical facilities, consumer electronics recycling and other “proxy fights” are previews of a broader upcoming fight over reforming chemical management law, according to a key House Republican official.

Jerry Couri, a GOP staffer for the House Energy & Commerce Committee, told the GlobalChem conference here April 8 that chemical makers cannot focus “solely on the congressional efforts as they relate” to reform of the Toxic Substances Control Act (TSCA). Narrower fights over specific chemical issues unfolding in Congress “are presaging the [fights] yet to come” as lawmakers debate a toxics law overhaul, he said.

Couri said the key issues in the TSCA debate will be chemical-testing requirements, new chemical uses, the standard used to regulate existing substances, judicial review, provisions to protect against the disclosure of confidential business information and whether the law should preempt states from more stringent rules.

Democrats are preparing to introduce legislation overhauling TSCA amid broad concerns that existing federal chemicals management is inadequate. Some proponents of toxics law reform want to see the government shift to a more precautionary approach that would require industry to prove that their chemicals are safe before use, rather than the existing regime that allows chemicals to be used unless EPA finds them unsafe.

For example, lawmakers are gearing up to debate legislation to replace interim chemical security standards set to expire in October. House Democrats’ draft bill would, industry critics say, force companies to use “inherently safer technology” including switching from using chlorine to “safer” chemicals that would pose less of a risk to human health in the event that a terrorist attack on a facility led to the chemical’s release.

Activists argue that “safer chemicals make chemical plants less attractive targets,” Couri said, but added that the provision in the draft bill -- which industry officials fear would lead to the government dictating how chemicals are used and distributed -- “sounds a lot like” a key issue in pending TSCA law reform.

Couri said that the recent Consumer Product Safety Act’s bans on the plastic softener phthalates and lead in products, and efforts by some lawmakers to ban the use of bisphenol-A (BPA) in some products, are also examples of battles that preview broader congressional arguments over TSCA reform -- which could significantly expand the debate over which chemicals are safe for use in the marketplace.

House Republicans were “concerned about fallout” from the consumer safety bill, signed into law last summer by former President George W. Bush, Couri said. The law has hurt small toy manufacturers who have been unable to comply with the retroactively applied bans on using phthalate and lead in products, he added.

Couri also pointed to efforts by activists to ban the plastic hardener BPA in baby bottles, food containers and medical supplies, which studies have linked to breast cancer, obesity, diabetes and other neurological effects. Reps. Ed Markey (D-MA) and Sen. Chuck Schumer (D-NY) have re-introduced federal bills to limit the use of BPA, while activists are currently pursuing some 47 bills regulating BPA in 21 states, according to an industry source.

And Rep. Gene Green (D-TX), a member of the House energy panel, is also pursuing efforts to regulate the disposal of electronic waste (e-waste) that could fold into the larger debate over toxics

law reform. Green said in a Feb. 24 interview that he is interested in reform of TSCA, and would like to see the energy panel “revitalize that for lots of reasons,” including possibly addressing e-waste. “We should be seeing if that should come under toxic substances” because of the chemicals e-waste contains that is exported overseas, Green said.

“None [of these issues are] related to congressional efforts to deal with TSCA,” Couri said, but they do affect the manufacture, distribution, use and disposal of chemicals. While “not suggesting TSCA is a second-tier issue,” Couri said the TSCA fight is being undertaken in these “proxy fights.”

Couri said Democratic leadership in Congress is disproportionately from California, a state that has led the way with precautionary chemicals policies -- for example California Rep. Henry Waxman (D) chairs the House energy panel and Sen. Barbara Boxer (D-CA) is the chair of the Senate Environment & Public Works Committee. “They do not wish to lose this opportunity for action,” Couri said.

Couri also said at the conference that Waxman and the House energy committee’s commerce, trade, and consumer protection panel chairman Bobby Rush (D-IL) will most likely hold additional hearings on TSCA reform this session. Rush’s panel held a panel on revisiting TSCA in February.

Couri told the audience there could be an effort to move legislation in the House this session, but cautioned that the calender is being driven by climate change and health care legislation. “Whether the Senate will reciprocate is anyone’s guess,” he said. -- *Aaron Lovell*

EDF EYES VOLUNTARY PROGRAMS TO EXCEED STRICTER TSCA CONTROLS (*Inside EPA*)

4/17/2009

BALTIMORE -- A key environmental group is supporting a continuing role for voluntary stewardship programs -- even as the group presses for a significant strengthening of the Toxic Substances Control Act (TSCA) -- on the grounds that legal reform alone may be insufficient to protect the environment and voluntary programs can go further.

“Ultimately we see these regulatory mechanisms as defining a floor, not a ceiling,” said Cal Baier-Anderson, a health scientist with the Environmental Defense Fund (EDF), during a presentation at the GlobalChem chemical industry conference here April 7. “It just defines a baseline for compliance. I think we can all expect that will only take us so far and we can go farther.”

Baier-Anderson stressed that the position does not detract from EDF’s strong calls for significant TSCA reform, and that the group wants the new legal framework, or floor, “to be level and protective.”

Still, “there are voluntary programs and there are voluntary programs,” Baier-Anderson said. One of environmentalists’ and public health activists’ chief concerns with TSCA has been that the law’s requirements make it very difficult for EPA to order chemical testing, data submission or chemical

bans, prompting the agency to substitute voluntary programs that activists often see as inadequate replacements for a more stringent regulatory system.

Baier-Anderson said that while the regulatory framework should be more protective, a more precautionary legal approach would not “reduce the need for companies to always strive to do better,” something that manufacturers and retailers can achieve through voluntary stewardship and sustainability programs. “That’s the concept of green chemistry: science is always evolving,” she said, adding that product design should reflect the evolving state of knowledge.

WATER

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Leaks, wasteful toilets cause water loss (USA Today)

BOB SWANSON
USA TODAY

04/17/09

Dennis Jobin used to cringe when he flushed the toilet in his Phoenix home.

To Jobin, it sounded like dollars going down the drain when the old toilet flushed three times with a single pull of the handle.

"I run maintenance at a school, so I'm very aware of the cost of water," Jobin says. "Around the house, I'm constantly checking for leaks. But the one thing that has baffled me has been that toilet."

The Environmental Protection Agency estimates that more than 1.25 trillion gallons of water — equivalent to the annual water use of Los Angeles, Chicago and Miami combined — leak from U.S. homes each year.

According to the EPA, toilets account for nearly 30 percent of indoor water consumption in American homes. Old, inefficient toilets are responsible for the majority of the water wasted — 200 gallons a day each in some cases.

Often such leaks can be stopped by simply replacing the flapper, the piece of rubber that seals water into the tank and allows it to leave when you flush. The flapper can deteriorate with age or develop mineral buildup, failing to provide a tight seal in the toilet tank.

Outside the home, it is important to check spigots and irrigation systems for leaks as well, and repairs can sometimes be as small as replacing a washer. Making simple fixes can save 10 percent on a residential water bill.

According to the U.S. Government Accountability Office, 36 states anticipate water shortages over the next five years.

"Like a lot of other limited resources, we expect that water bills are going to increase in the future," says Michael Shapiro, EPA's acting assistant administrator for water. Steps made now toward water efficiency will pay dividends in future water bill savings, he says.

In addition to fixing existing leaks, steps can be taken to reduce the amount of water used even before turning on the tap.

Much like the EPA's successful EnergyStar program, which labels appliances for their energy efficiency, the agency's WaterSense program makes consumers aware of water-efficient fixtures available on the market.

Bathroom sink faucets and accessories that have the WaterSense label, now numbering more than 500 on the market, can reduce a sink's water flow by 30 percent without sacrificing performance, the EPA says.

To an average family, this could conserve more than 500 gallons a year, saving not only on the water bill but also energy by reducing the demand on the water heater.

WaterSense toilets use 1.28 gallons per flush — much less water than toilets manufactured before 1993, which use 3.5 to 7 gallons per flush. Shapiro says the combination of fixing leaks and using WaterSense fixtures can save about 20 percent on the annual water bill.

Less water per flush does not mean less flushing power.

Design advances have enabled WaterSense-labeled toilets to save water with no trade-off in performance. In fact, many outperform standard toilets in consumer testing, the EPA says.

Water can be conserved outdoors as well as indoors.

In desert locations such as Phoenix, where pools and irrigation systems are plentiful, outdoor water use can make up 50-65 percent of residential consumption, says Mary Lu Nunley of the Phoenix Water Conservation Office.

Heat, hard water and damage to sprinkler heads result in leaks in irrigation systems. To lower water bills, homeowners can contact WaterSense irrigation professionals who are trained in water-efficient technologies and techniques.

Though WaterSense-labeled products may cost more than conventional fixtures, pricing may become more competitive as more high-efficiency products find their way into the market.

As it is, city and county water departments in 10 states offer rebate programs, mainly for WaterSense toilets and irrigation services. Some states, such as Georgia and Virginia, have already established special "sales-tax holidays" each year on WaterSense-labeled products.

For Jobin, his new toilet and bathroom fixtures are free, courtesy of the city of Phoenix.

Last month, Jobin and his wife, Debbie, were selected to participate in the EPA's "Fix a Leak" week. A large display that included two leaky toilets, two faucets and one showerhead was placed in front of the Jobin's home to represent the average leakage of a typical American home. Two hundred gallons of water were collected in just a week's time.

With his updated bathroom, Jobin no longer fights with the toilet flapper or hears his hard-earned dollars go down the drain.

"I'm really glad to get one of these 1.28-gallon flushes," Jobin says. His new WaterSense toilet is "quite a system and works real well."

EPA recognizes 3 in NV for environmental efforts (*Associated Press*) This story also appeared: *San Jose Mercury News*

The Associated Press
Posted: 04/16/2009 01:47:37 PM PDT
Updated: 04/16/2009 01:49:45 PM PDT
California

RENO, Nev.—A Pyramid Lake Tribe water resource expert has been recognized by the U.S. Environmental Protection Agency for his work in trying to protect the environment.

Daniel Mosley has been working to improve water quality and habitat on the Pyramid Lake Paiute Reservation for nearly 15 years. The EPA says during that time, many of the programs he has established have been adopted by other tribes, helping them sustain viable ecosystems using scientific evidence.

He was recognized Thursday at the EPA's environmental awards ceremony in San Francisco.

Two others in Nevada were among 40 to be recognized around the nation.

Lou Castro, a former waiter, in January 2008 founded the first eco-friendly transportation company in Las Vegas, Earth Buses. In November, he launched Earth Limos.

Rob Dorinson of Evergreen Recycling in Las Vegas also was honored. The company has a state-of-the art automated sorting facility to recycle debris from construction sites.

'Mockery' made of Clean Water Act, CBF says (*Annapolis Capital*)

Chesapeake Bay earns a 'D' on foundation's 10th report

By PAMELA WOOD, Staff Writer
Published 04/16/09

The Chesapeake Bay is in poor health and in dire need of more attention from the federal government, the head of the Chesapeake Bay Foundation charged Wednesday.

As he unveiled the annual State of the Bay report card, bay foundation President Will Baker called on federal officials to step up and take an active role in restoring the estuary's health.

"The federal government has made a mockery of the Clean Water Act," Baker said.

The bay foundation gave the bay a grade of D in its 10th annual report.

Foundation staffers use a 100-point scale to rate 13 health indicators, such as nutrient pollution, dissolved oxygen, wetlands, underwater grasses, rockfish, crabs and oysters.

‘Biosolids’ and Human Health (*New York Times*)

By Kevin Ferguson
April 16, 2009, *10:14 am*

On May 3, business executives, agronomists, and hydrologists are expected to gather for the Residuals and Biosolids 2009 conference at Portland’s Oregon Convention Center, where

awkward jokes about squeezing profits from human excreta-based crop fertilizer are an inevitability.

But the business is no joke. In 2009 alone, American farmers will likely fertilize their fields with 4 million dry tons of biosolids, a polite term for specially processed sludge — much of it originating in municipal sewage plants in New York, Los Angeles and other major cities, according to the National Association of Clean Water Agencies, a wastewater treatment trade group.

Farmers see it as a free source of fertilizer, while municipalities pay a tiny fraction of what they did for sludge removal — and less liquid waste ends up in waterways.

Still, not everyone likes the idea of biosolids. Legislators in rural Colbert County, Ala., for instance, are angling to amend the state constitution to curb biosolids use. Some Burlington City, N.C., residents, have attributed their illnesses to farmers' use of biosolids. And the Sierra Club and other environmental groups have recommended stricter standards for — or even prohibitions on — using biosolids as fertilizer.

What's in biosolids that makes opponents squirm? Pharmaceuticals, steroids, flame-retardants, metals, hormones, and human pathogens, among other things. Whether or not these present heath hazards when used as fertilizer, however, is a question that remains unresolved.

The Environmental Protection Agency found more than 100 toxins in its January 2009 Targeted National Sewage Sludge Survey. But the agency concluded that, "It is not appropriate to speculate on the significance of the results until a proper evaluation has been completed and reviewed."

Indeed, research on the long-term health effects of biosolids is sparse. The organizer of the Biosolids 2009 conference, the Water Environment Federation, has pointed to a 2002 statement by the National Academy of Sciences, which concluded that "there is no documented scientific evidence" that the E.P.A.'s standards for the use and disposal of sewage sludge have "failed to protect public health."

Dr. Alan B. Rubin, a principal author of key E.P.A. biosolids regulations and a staunch biosolids proponent, said that while more long-term research needed to be done, he was convinced that biosolids — including those containing the compounds recently listed by the E.P.A. — pose no serious health risk.

"That's how I sleep well at night," he said, "knowing that they're not impairing human health."

Dr. Rubin does say, though, that living in proximity to biosolids may be uncomfortable, particularly for "health sensitive" individuals.

"I'm not saying that this causes illnesses like cancer, emphysema or cirrhosis or any other horrible disease," he said. "But it is causing an impact on the quality of life."

Nonetheless, the Water Environment Research Foundation — which is partly funded by the E.P.A. — is launching new research into the health effects of biosolids. The foundation is also conducting an 18-month pilot study of residents who live near biosolids sites.

EPA SLATED TO HOLD TALKS ON REVISING CONTROVERSIAL CAFO PERMIT RULE (*Inside EPA*)

4/17/2009

EPA is poised to launch talks with stakeholders over its controversial rule governing concentrated animal feeding operations' (CAFOs) discharge permits amid warnings from states that if EPA does not "improve" the rule, states will move ahead and develop a patchwork of their own rules.

"States are considering options such as issuing state-only water pollution control permits in lieu of [federal] permits," the Association of State & Interstate Water Pollution Control Administrators (ASIWPCA) says in an April 6 letter to EPA. "Many states currently have very creative and effective voluntary and regulatory programs to control pollution from animal feeding operations and years of experience implementing these programs. EPA should recognize and support these state programs, especially where the CAFO rule does not afford the same level of environmental protection and program efficiencies that some state programs do," the letter says. *Relevant documents are available on InsideEPA.com.*

The states' call for EPA to revise the program comes as sources say agency officials were slated to meet during the week of April 13 with environmental litigants challenging the regulation, who believe the agency could easily stay the pending litigation to revise the measure. "It's no secret that we've long told EPA the rule is not properly protective," one environmentalist says, adding, "we think the new administration has an opportunity to voluntarily remand" the rule and revise it to be protective.

Environmentalists also recently reiterated their long-standing concerns with the rule during the regular monthly meeting with EPA water office staff, the environmentalist says.

Industry sources say they have not yet been contacted by EPA to meet about the rule but are requesting a meeting with Jackson to discuss the issue.

The emerging effort to revise the rule comes amid growing concerns among states and industry groups that the Bush-era rule is being inconsistently implemented across EPA regions.

Differing interpretations of the rule have already prompted at least two agriculture industry groups -- the National Chicken Council and the U.S. Poultry & Egg Association -- in an April 1 filing to ask the U.S. Court of Appeals for the 5th Circuit, which is hearing consolidated challenges to the rule, to review the issue.

Lawmakers from Delaware, home to a number of large chicken operations, also raised concerns about possible inconsistent application of the rule in letters to EPA officials late last year.

The groups are concerned that EPA regions may be providing differing interpretations over a provision in the rule that allows farms to self-certify they will not discharge, a finding that allows them to avoid having to apply for a National Pollutant Discharge Elimination System permit.

The certification process allows for a case-by-case determination of whether a CAFO proposes to discharge, based on the CAFO's design, construction, operation, maintenance and consideration of local climate and hydrology.

The provision is controversial with environmentalists, who say it does not provide proper accountability, but industry officials favor it, saying many CAFOs are designed not to discharge and the provision allows those farms to protect against liability for not having a permit in the event of an aberrant discharge.

However, some say EPA headquarters and regions are offering differing interpretations over whether states must include the self-certification provision in their rules -- which they are required to develop if they want to implement EPA's rule -- and whether regulators are required to accept a self-certification.

Such uncertainty about how the rule is implemented is a significant concern for ASIWPCA, which warns in its letter that the uncertainty will undermine states' existing CAFO programs. The rule's unclear language about who needs to apply for a permit and when "changes the entire CAFO regulatory program from a proactive program to a reactive one," ASIWPCA says.

"Contributing to the uncertainty are the conflicting interpretations States are receiving from EPA Regional and Headquarters staff," the letter adds.

States, environmentalists and EPA say states are not required to include the self-certification provision in their implementing regulations.

One state official says many states are considering not including the provision in their regulations to implement EPA's rule.

But questions remain over whether states are required to accept a self-certification from a CAFO.

For example, Region V officials are telling Illinois it may decline to accept industry self certifications, and an Illinois source confirms the state is considering not accepting the self-certifications.

And Region IV, in a March 6 letter to Perdue Farms Inc., says state permitting authorities "may" allow CAFOs to certify they do not discharge or propose to discharge. But the letter also says "the 'no discharge' certification option is not available to unpermitted CAFOs until the state permitting authority modifies its regulations and/or statute to allow for this option."

An industry source says states could legally not include the provision in their regulations but it would be illegal for them to not accept the certifications because the provision "is federal law."

Industry worries that without states setting up rules for the self-certification process, there will be chaos. "A farmer might just rip out a sheet of loose leaf paper, sign it and send that in, if they're not going to provide the rules," the source says.

But an EPA spokesman says Region V's approach is correct. "The preamble of the rule says that certification is voluntary and states may choose to employ this option in their program or not," the spokesman says.

One environmentalist agrees that states need not accept the self-certifications. "States can have more stringent requirements in their regulations, so there is nothing that should prevent states from deciding not to accept self certifications if they want to set higher standards for environmental protection than what is required by the federal rule," the source says. -- *Jonathan Strong*

EPA SHIP PERMIT DISCUSSIONS WITH CRITICS HINT AT POSSIBLE SETTLEMENT (*Inside EPA*)

4/17/2009

EPA is meeting with industry and activist critics suing over the agency's controversial Clean Water Act (CWA) permit governing commercial ships' discharges, which sources say indicates a possible willingness by the Obama administration to settle the dispute and avoid a loss in court by revising the permit.

Agency staff have met recently with industry officials and environmentalists to discuss the consolidated case, *Lake Carriers' Association v. EPA*, which is pending in the U.S. Court of Appeals for the District of Columbia Circuit. "I think they want to make it right" and resolve the various disputes over the permit through settlement discussions, one industry source says.

The source believes the permit is "extraordinarily vulnerable to challenge" even though EPA "did their best" in the face of a difficult-to-meet court deadline for issuing the permit. A likely loss for the agency in court may be spurring EPA to focus on settlement talks to end the suit, the source says.

At issue is the Bush EPA's Dec. 18 Vessel General Permit. The permit regulates 26 types of discharges from vessels including ballast water, bilge water and graywater. Industry and environmental groups sued over the permit, which was issued in response to a 9th Circuit ruling last year that upheld a district court decision setting a 2008 deadline for issuing National Pollutant Discharge Elimination System (NPDES) permits for all ships' discharges.

Environmentalists have panned the permit, saying it is too lenient in allowing ballast tanks to be flushed at sea. Industry's key concern, sources say, is a consistent national standard, which they argue is vital because ships frequently travel through multiple states' waters. The permit includes an extensive list of state-by-state regulations tacked on through states' authority under CWA section 401, which allows them to certify federal actions such as the NPDES permit by adding stipulations to protect water quality.

CORPS NARROWS CWA PERMIT AFTER COURT BACKS INDUSTRY STANDING TO SUE (*Inside EPA*)

4/17/2009

The U.S. Army Corps of Engineers is proposing to narrow the scope of a controversial Clean Water Act (CWA) permit in response to a district court ruling that found the original language provided grounds for the homebuilding industry to bring a facial challenge to the permit.

But the Corps has left intact controversial language in the permit that subjects “ditches” to regulation under the water act, the issue at the heart of industry’s pending litigation.

The regulatory change comes as the Corps and industry officials have asked the court to back a proposed briefing schedule that would allow the parties to begin briefing the case on the merits next month.

At issue is language in nationwide permit (NWP) 46 that industry charged required dischargers to seek permit coverage even if they were not discharging into regulated waters. The permit authorizes the discharge of dredged or fill material into non-tidal ditches.

In a notice scheduled to be published April 15 in the *Federal Register*, the Corps is seeking to clarify language in the permit’s preamble that details when dischargers need to seek permit coverage, stipulating such coverage is necessary only if there is a discharge into regulated waters. Industry is required to seek permit coverage -- by submitting a preconstruction notice (PCN) for coverage -- to avoid liability for unpermitted discharges, which are unlawful under the water act. *Relevant documents are available on InsideEPA.com.*

“These replacement sentences are intended to avoid any inference that NWP 46 requires any person to submit a PCN unless that person is voluntarily seeking permit authorization under NWP 46, and believes that his proposed activity would satisfy all the terms and conditions of NWP 46,” the notice says.

In 2007, the National Association of Home Builders (NAHB) sued the Corps, charging the agency lacks the authority to issue NWP 46 because ditches are point sources and not waters subject to CWA jurisdiction.

The Corps sought to dismiss the lawsuit, saying NAHB lacked standing. But the U.S. District Court for the District of Columbia last year allowed the case to go forward, finding that “the broad language of the permit does impose a regulatory burden onto [NAHB’s] members by requiring the submission of PCNs when they are not expressly necessary.”

The March 26, 2008, memorandum opinion rejected the Corps’ argument that NWP 46 “merely provides that individuals wishing to discharge into ditches that are determined to be jurisdictional may do so without obtaining an individual permit.” The court found the Corps’ “argument would be more persuasive were it not for the broad language of NWP 46 which states that ‘we are requiring pre-construction notification for all activities.’”

The interim decision, however, did not address the merits of the case, including the question of whether upland ditches, as a category, fall under the CWA's jurisdiction.

Now the Corps is proposing to modify the language, spelling out that dischargers need only seek permit coverage when they satisfy all of the permit's criteria, including that the ditch in question is constructed in uplands; receives water from an area determined to be a water of the United States prior to the construction of the ditch; diverts water to an area determined to be a water of the United states prior to the construction of the ditch; and is determined to be waters of the United States.

ACTIVISTS' LAWSUIT COULD LIMIT STATES' NONPOINT SOURCE GRANT FUNDING (*Inside EPA*)

4/17/2009

Environmentalists in a first-of-its-kind lawsuit are challenging the federal government's longtime "conditional approval" of state plans to manage nonpoint source pollution -- an effort that, if successful, could threaten at least 13 states' eligibility for hundreds of millions of dollars of Clean Water Act (CWA) and Coastal Zone Management Act (CZMA) grants.

At issue are states' management plans under the Coastal Nonpoint Pollution Control Program, administered jointly by EPA and the National Oceanic & Atmospheric Administration (NOAA). Federal approval of the plans allows states to be eligible for coastal management grants of over $68 million a year and CWA section 319 grants -- for nonpoint pollution control -- which nationally comprise over $200 million annually.

EPA and NOAA, however, have for years been issuing states "conditional approval" of their coastal nonpoint management plans, allowing states to receive grant money while they take several years to meet the conditions necessary for grant eligibility.

Environmentalists in *Northwest Environmental Advocates v. Carlos M. Gutierrez et al.* allege these conditional approvals are unlawful and argue that EPA and NOAA should instead withhold 30 percent of the applicable grant money for the relevant states until their coastal management plans are fully in place. CZMA requires EPA and NOAA to withhold 30 percent of these grant funds from states that fail to submit an approvable program, the suit says. *The lawsuit is available on InsideEPA.com.*

The lawsuit, filed Jan. 6 in the U.S. District Court for the District of Oregon, could also require states to meet a costly set of criteria before again becoming once again eligible for the grants.

The litigation follows a September 2008 Government Accountability Office report that urged NOAA to "address a number of weaknesses in its current processes for awarding grants, evaluating state performance, and assessing the effectiveness" of the coastal zone management program.

Earlier this month, however, Judge Paul Papak granted a temporary stay in the case until May 29 to allow activists and the Justice Department to continue settlement discussions. The parties' request for the stay, which Papak granted April 6, says, "All parties believe the March 10 settlement discussions were positive and desire to dedicate their short-term resources to continuing those discussions."

State officials, meanwhile, remain greatly concerned by the threat of lost grant money in a time of already-reduced revenues due to the sour state of the economy, one environmentalist says. A NOAA source says it would be difficult for the states with outstanding conditional approvals to quickly satisfy the criteria keeping them from compliance.

According to NOAA, 45 percent of coastal states still have conditional approvals of their nonpoint management plans, including Alabama, Alaska, Georgia, Hawaii, Indiana, Louisiana, Michigan, Mississippi, New Jersey, Ohio, Oregon, Texas and Washington.

NOAA awarded over $68 million in grants for states' coastal zone management programs in fiscal year 2008, while EPA awarded over $200 million in CWA section 319 grants in FY08. Of this, $22.7 million in NOAA grants went to states with conditional approval, while $55.1 million in EPA grants went to the states.

If EPA and NOAA withheld 30 percent of the funding, the states with conditionally approved programs would lose $6.8 million in NOAA grants and $16.5 million in EPA grants.

EPA and NOAA judge state nonpoint management plans under a set of criteria EPA developed in 1993. The criteria include provisions regarding agricultural, forestry, urban, marina and recreational boating, and dam sources of nonpoint pollution as well as wetlands management and monitoring criteria.

The NOAA source says states have had the most difficulty implementing the "onsite disposal systems" provisions under the urban pollution source criteria. Such disposal systems include septic systems, intermittent sand filters, cluster systems and constructed wetlands. The EPA criteria sets limits to protect waste from reaching groundwater, among other areas.

EPA NOTICE ON CO2 OCEAN ACIDIFICATION IMPACTS MAY SPUR NEW RULES (*Inside EPA*)

4/17/2009

EPA is seeking scientific and policy information on ocean acidification caused by carbon dioxide (CO2) to help it decide whether to revise its pH water criterion, which could lay the groundwork for regulating greenhouse gases through the Clean Water Act.

In an April 15 *Federal Register* notice, EPA announced the launch of a notice of data availability (NODA) to take comment on existing information about ocean acidification and to solicit new scientific data and policy suggestions for addressing acidification. *The notice is available on InsideEPA.com.*

EPA is planning on using the information to decide within the next year whether to grant a petition from the Center For Biological Diversity (CBD), which asked the agency to revise its national marine criterion for pH to protect marine life. CBD says new science shows that increasing levels of CO2 in the atmosphere are acidifying waters and impairing the ability of coral and other marine invertebrates to build and maintain exoskeletons.

As a result, EPA is taking comment and soliciting information on a range of issues, including: technological advances in rapid, continuous, or remote monitoring of pH; long term data that demonstrate acidification; and methods to evaluate pH variability.

EPA is also seeking estimates for survival rates for coral and non-coral organisms and methods for weighing the impact of acidification in comparison to other stressors, such as storm damage and overfishing. The agency also is seeking comment on states' experience implementing the current pH standard and is seeking scientifically defensible approaches to set and monitor pH criteria.

EPA's ultimate decision on the pH criteria could set an ecological goal for future CO2 limits. Although water criteria are non-binding, the criteria inform state water standards, which could in turn require emission limits to achieve the standards.

The NODA and EPA's review of the pH water criterion are part of a host of actions the Obama EPA is taking to address climate change through regulations. Among other things, the agency is also; reconsidering the Bush EPA's denial of California's request to regulate CO2 from vehicles, reconsidering a Bush EPA memo barring regulation of CO2 in power plant permits, and preparing to release a climate change endangerment finding that could lead to regulations for a host of sectors.

Farmers sue to stop North Calif. canal *(Greenwire)*

Colin Sullivan, E&E reporter

04/16/2009

SAN FRANCISCO -- Farmers have filed suit against federal and California state officials to stop construction of a massive canal around the Sacramento-San Joaquin Delta.

In federal district court, the Central Delta Water Agency and the South Delta Water Agency this week sued the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and a handful of California resource agencies to halt an aqueduct that would route water around the delta in Northern California.

Water agencies, which represent farmers in the delta region who would lose water if the canal is built, said officials were expediting the project to take what amounts to a shortcut through the standard environmental review process.

"In their haste," the suit reads, the officials "have collectively violated numerous procedural and public notice requirements under both federal and state laws."

The suit also notes that voters rejected the same peripheral canal concept in a statewide referendum in 1982.

In January, a committee established by Gov. Arnold Schwarzenegger (R) recommended building the canal to send more supplies to farms and households in the parched south and to eliminate some pumping within the fragile delta. The governor's Delta Vision Committee said a multibillion-dollar canal would help create a "dual-conveyance system" to satisfy the complicated web of environmental, farming and fishing interests caught up in the fight over Northern California's water.

The committee also urged lawmakers to pass legislation in 2009 to raise new funds for the canal through bonds and fees. Pumping has been limited this year because of a statewide drought and protections for the endangered delta smelt.

A lawyer representing the water agencies said the groups are preparing a second suit that would take up the Endangered Species Act issue.

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