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ADMINISTRATOR JACKSON

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JACKSON SEEKING RAMPED UP ChAMP PROGRAM, SIGNALING TSCA REFORM MODEL (*Inside EPA*)

4/10/2009

EPA Administrator Lisa Jackson is urging agency staff to ramp up the Bush administration's controversial chemical screening program, the Chemical Assessment and Management Program (ChAMP), in a move that could strengthen industry and staff arguments that the program should be part of any legislative reform of the Toxic Substances Control Act (TSCA).

Jim Jones, EPA's acting toxics and pesticides chief, told the GlobalChem chemical industry conference in Baltimore, MD, April 7 that at the office's first meeting with Jackson, she urged them to focus on both increasing the pace of the chemical assessments and increasing risk management options stemming from the screenings.

Jackson said that "'ChAMP is fine, but I want to see more, more quickly,'" Jones said. "She's asked us to look at how we can be more active with risk management" following the ChAMP screenings. "So we're looking at that."

He said that pesticides and toxics staff is now discussing how to expand development of risk management options stemming from the ChAMP screenings, and that Jackson has asked them to provide her with suggestions at the end of April.

Since taking office, Jackson has hinted that she favors the current chemical management system as a basis for reforming the program. For example, she told reporters recently that that agency's existing program for collecting safety information on new chemicals could provide a model for reforming the program, a suggestion that fell short of environmentalists' calls for her to endorse a pending bill that would significantly strengthen U.S. chemical management law.

The Bush administration created ChAMP, a program intended to expand chemical screening and improve chemical management. The program includes an expanded screening program for high- and medium-production volume inorganic chemicals, removing obsolete chemicals from the inventory of chemicals in commerce and completion of risk or hazard characterizations for 6,750 chemicals. President George W. Bush committed the United States to complete the characterizations by 2012 as part of a 2007 agreement with Mexican and Canadian officials.

Chemical industry officials strongly favor the approach, arguing it will quickly produce results, as long as Congress provides adequate funds. But many environmentalists and public health officials say it does not go far enough and are urging Congress to pass legislation to strengthen TSCA along the lines of the European Union's Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) laws.

Like REACH, the legislation set to be introduced by Sen. Frank Lautenberg (D-NJ), known as the Kid Safe Chemicals Act, puts the onus on industry to show products are safe before they can be registered, a change from TSCA which currently puts the onus on EPA to show chemicals are harmful.

But Jones said that he sees the ChAMP program as a model for the new chemical management framework that could emerge from TSCA reform efforts. “Any approach I’ve heard seriously talked about is mandating existing chemicals’ risk assessment and risk management. I see [ChAMP] as being part of the framework and becoming mandatory,” Jones said, adding that whatever new regulatory system is created has “got to assess, manage and be comprehensive” and ChAMP performs those functions.

However, he said he expects Jackson to wait for the new pesticides and toxics chief to take office before publicly rolling out any changes to ChAMP. Jones said he anticipates a six- to eight-week process before Stephen Owens, President Obama’s pick to head the pesticides and toxics office, can be officially nominated and confirmed.

Jones said the administration has yet to take a position on TSCA reform as some environmentalists have sought -- something he again expects to wait until Owens’ arrival -- but he says the administrator is “very interested” in the issue and has discussed the issue “with her small political team several times.” He said Jackson’s team includes Robert Sussman, Jackson’s senior counsel, who Jones noted has “done TSCA work” for industry while serving in private practice, as well as Arvin Ganesan, a former legislative aide to Lautenberg now serving in EPA’s congressional affairs office.

Jones pointed to two examples -- formaldehyde and mercury -- where EPA has risk management options underway for chemicals flagged through the ChAMP screening process. He said that EPA will be “articulating a path forward” on formaldehyde in the fall, and added that the agency will also be “moving forward with a regulatory approach” on mercury.

Jones told *Inside EPA* that the agency will use its existing TSCA authorities to regulate substances deemed of concern through the ChAMP screening process, including test rules and section 6 enforcement actions, which allow EPA to require industry to turn over toxics data. -- *Maria Hegstad*

AIR

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Richmond may be placed back on list of smoggy regions (*Richmond Times Dispatch*)

By REX SPRINGSTON

Published: April 9, 2009

Virginia

The Richmond area appears to be headed back onto the nation's list of smoggy regions.

Levels of ozone, the main pollutant in smog, over the past three summers did not meet tough new federal limits, a state Department of Environmental Quality spokesman said today.

That means the federal Environmental Protection Agency could put the region on its dirty-air list when the next list comes out in March 2010.

Regions on the dirty-air list have to take actions to clean their air. New and expanding industries in the high-smog regions face tougher pollution controls that those outside the region.

DEQ spokesman Bill Hayden said state and local officials will determine over the next few years how to make the air cleaner.

Options include requiring emissions tests for cars, which have been required for years in smoggy Northern Virginia. State and local officials have long tried to avoid the inspections in this area.

The Richmond area has been on the dirty-air list twice since the mid-1990s but managed to clean its air and get off the list each time.

The area, as defined by the federal government, encompasses the cities of Richmond, Hopewell, Petersburg and Colonial Heights and the counties of Henrico, Hanover, Chesterfield, Charles City and Prince George. Composition of the area has changed slightly over the years.

Clearing the air (*Fairfax County Times*)

Fairfax County
Source: Fairfax County Times
THURSDAY, APRIL 9 2009

The proposed elimination of the Fairfax County's air pollution control program "impacts every resident of the county," according to its listed impact in county budget documents. In essence, we all breathe the air.

A staff of four is responsible for keeping tabs on air quality here through a set of monitoring stations that check levels of a variety of pollutants. Fairfax's monitors remain a key part of a regional network that reports data to the Environmental Protection Agency.

The $231,300 program is slated for elimination in County Executive Anthony Griffin's proposed budget.

Air quality and pollution controls are tracked on the regional level, explains Barbara Hardy, air quality program manager for the Fairfax County Health Department. If any monitor in the Washington metropolitan region detects high pollutant levels, that can put the region out of compliance with the EPA.

Through the Metropolitan Washington Council of Governments, Virginia, Maryland and Washington, D.C. develop and adhere to a regional plan for improving air quality.

"[The EPA] could hold up highway funding, for example, if we're not doing what we said we would do," Hardy said, adding that that would never happen because the jurisdictions comply with their plan.

Fairfax only does monitoring and education. Any enforcement operations are left to the state and federal government.

The county organizes its own educational efforts and also supports the work of a group called Clean Air Partners, which conducts regional outreach and public service announcements to educate people about what individuals can do to improve air quality.

"The biggest thing in this region is to try and get people out of their cars," Hardy said.

The county air pollution control staff have been focusing particularly on educating children about how they can help, in hopes that they will then talk to their parents.

Air quality monitoring and education efforts won't go away if the Board of Supervisors decides to eliminate the program, but what is left won't be as good, according to Tom Crow, the county's director of environmental health.

"We in Fairfax County monitor for a lot of pollutants that others don't," he said.

For example, the county monitors air quality around the county's waste-to-energy incinerator in Lorton and checks for particulate matter in the air near stone quarries. The county also monitors levels of some heavy metals that are not required by the EPA, he said.

The EPA and the region also rely heavily on county data. One monitoring station, in Lee District Park, is state run and would not be affected by the county cuts, but could still be affected by state budget reductions, Crow said.

"The regional model would still be in place," he said. "But if our program went away, the Council of Governments would have to redo all the models."

EPA awards $1.73 million to N.J. DEP to reduce emissions (*Waste News*)

April 9 -- The EPA has awarded $1.73 million to the New Jersey Department of Environmental Protection to support projects and loan programs to reduce emissions from diesel engines.

The money is being awarded under the American Reinvestment and Recovery Act of 2009 -- also known as the stimulus act. The funds will go to the state´s Clean Construction Program to retrofit construction vehicles that are privately or publicly owned and used on projects conducted or funded under various state programs.

Neighboring New York is receiving an identical amount of money to pay for retrofitting vehicles that are owned by four eligible regional transportation authorities.

In addition to helping to create and retain jobs, the clean diesel projects would reduce premature deaths, asthma attacks and other respiratory ailments, lost work days, and many other health impacts every year.

Under ARRA's State clean diesel funding program, $88.2 million is divided equally through a noncompetitive allocation process, meaning that all 50 states and the District of Columbia will receive $1.73 million.

States, local governments, non-profits and tribal agencies can also compete for a portion of $206 million under ARRA's National clean diesel funding program.

Information on the EPA's implementation of the American Recovery and Reinvestment Act of 2009 is available at www.epa.gov/recovery.

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

EPA FACES DOUBTS ON ASBESTOS OVERSIGHT AS STATES RETURN PROGRAMS (*Inside EPA*)

EPA staff and other sources are raising questions over whether the agency has the funding, tools and staff to adequately oversee asbestos control efforts at demolition and renovation sites as a small but growing number of states return their delegated asbestos enforcement programs to EPA due to budget woes.

The sources say the agency has no consistent oversight or tracking system in place to monitor compliance with its asbestos standard in states despite decades-old calls from the Government Accountability Office (GAO) and others for EPA to improve its enforcement of the program.

In addition, EPA had not planned to set aside additional funding for enforcing the program, which sources say could exacerbate existing concerns about EPA's oversight and raise questions over whether EPA will be able to adequately enforce the asbestos requirements in certain regions if states return their delegated asbestos enforcement programs.

"We pretty much have every state operating in a vacuum" on enforcing asbestos requirements, one EPA source says.

But states, which are delegated authority to enforce EPA's asbestos national emissions standard for hazardous air pollutant (NESHAP), have already begun transferring their asbestos programs back to EPA as state budget cuts eliminate funding for the program.

For example, Michigan is weighing a plan to eliminate inspections and enforcement of EPA's asbestos NESHAP, while sources say changes to Indiana's environment department may hinder enforcement of the standard. Meanwhile, Georgia recently returned its delegated asbestos NESHAP inspection and enforcement program to EPA Region IV because of budget constraints.

EPA's asbestos NESHAP outlines requirements for minimizing exposure to the mineral fiber during renovation or demolition. "It is essential for these regulations to be enforced in every state," according to a March 30 EPA press release announcing the return of Georgia's delegated asbestos enforcement program to the agency.

Region IV says that by mutual agreement with the state, Georgia will continue to process notification for asbestos renovation and demolitions, issue asbestos contractor licenses, and approve asbestos supervisor training courses. EPA will conduct inspections and enforcement of asbestos abatement renovation, disposal and demolition projects for commercial, public, industrial and certain multi-family residential structures. The Clean Air Act allows for fines of up to $37,500 per day for each violation of the standard.

An agency spokesman says EPA is "always concerned when a state is unable to continue with any environmental program." The potential public health problems caused by asbestos are "well known" and EPA intends to monitor the situation "and provide our assistance in the interim," the spokesman says.

In addition, the EPA source acknowledges the difficulty states are facing. "Given budget problems it's becoming harder for states to administer programs like the delegated NESHAP program," the source says. "It's a big deal because EPA has been unable to identify any safe level of exposure to asbestos, so monitoring asbestos abatement is critical" to protect human health, the source says.

But the EPA source warns that the agency “has not planned for taking these [delegated] programs back and they can be resource intensive.” While President Obama has proposed funding EPA at $10.5 billion in FY10 -- a boost of roughly $3 billion over current funding levels -- it is unclear what the budget will be for EPA enforcement, and the source says that figure does not factor in the return of delegated asbestos programs.

“It’s a resource issue. Both states and EPA are pinched,” one activist says. The Obama EPA is focusing on power plant and other major enforcement cases and “it makes sense for states to do the door-to-door NESHAP enforcement,” but that situation could be hindered amid shrinking budgets, the source adds.

While Obama’s budget offers a significant boost in funding for EPA, inadequate allocation of funding for enforcement could make it difficult to acquire the tools and staff necessary to answer criticisms of EPA’s oversight of the program.

“I think you will find that EPA is no longer conducting some of the promised oversight and national support activities it had promised to do” in response to GAO and EPA Inspector General reports from the 1990s and earlier that said EPA must take steps to improve compliance with its asbestos regulations, the EPA source says.

For example, the agency source cites the termination of EPA’s National Asbestos Registry System (NARS) that tracked states’ data on contractors cited for NESHAP violations. In this system, EPA encouraged state and local agencies to use an Asbestos Contractor Tracking System (ACTS) to submit quarterly data on violations that EPA then compiled in its NARS so there would be a searchable national database of contractors. However, the agency ended funding support for ACTS, and EPA’s Web site says the registry is no longer available.

“That means that owners and operators who want to hire an asbestos abatement company cannot check out its compliance history very easily,” the source says. “EPA does have more modern databases but I do not believe they track all the asbestos contractors the way NARS did years ago.”

GAO and others have long raised concerns over EPA’s ability to ensure compliance with the asbestos NESHAP. For example, in a February 1992 report GAO found “substantial inaccuracies” with NARS, and found EPA may lack the information it needs to assess performance and develop appropriate compliance-monitoring strategies. *The report is available on InsideEPA.com.*

The GAO report also found other concerns about EPA’s enforcement of the asbestos NESHAP that echoes concerns sources are raising over whether the agency in the present day has the staff, funding or other resources to take over state asbestos NESHAP enforcement programs.

The GAO report said EPA did not always take the appropriate steps with enforcement, for example not imposing penalties high enough to deprive contractors who violated the NESHAP of the economic benefit of not complying with the regulations. However, the report did note that at the time EPA was revising its enforcement policy and delegated agencies were taking steps to strengthen their enforcement.

But the report also noted that EPA and the delegated agencies attributed difficulties in implementing the asbestos program to a lack of resources because the program must compete for funding with numerous requirements in the Clean Air Act and other environmental laws -- a concern raised over the recent developments.

The EPA source says demolition and renovation projects are often short-term and require inspectors who can get to sites quickly. But agency regions typically have just one major office overseeing several states, and federal inspectors would have to travel from that office to potentially remote locations in every state in the agency region to inspect NESHAP compliance -- a major resource-intensive task.

The source says that EPA is unprepared for such an effort both in terms of funding and staffing levels. Most states have delegated authority over the asbestos NESHAP enforcement so EPA has not retained many front-line staff trained to inspect and enforce the standard, the source adds.

“The concern is that states could see [returning the enforcement of the NESHAP] as a way to save money,” but EPA is unprepared for such a move, the source says, adding, “Due to the big workload and nature of this program we would much rather have the states doing this work.”

One informed source says returning the programs to EPA “could definitely effect the level of enforcement.” The agency “would need to increase their staff or increase their staff’s coverage area if they took over this responsibility from the local authority. It could be done, but it would require some infusion of new personnel,” the source says, but it is unclear whether EPA will hire new staff due to uncertainty about the president’s plans for funding EPA’s enforcement program. -- *Anthony Lacey*

CALIFORNIA EXPECTED TO CUT CAFE DEAL TO WIN NATIONAL GHG AUTO RULES (*Inside EPA*)

4/10/2009

California officials are expected to accept an alternative compliance option under the federal corporate average fuel economy (CAFE) standard for automakers to meet the state’s landmark greenhouse gas (GHG) rules for vehicles, according to EPA officials and environmentalists.

The move would resolve the long-running fight over the state’s request for EPA to grant a Clean Air Act waiver for the GHG standards while retaining industry’s preferred compliance mechanism under CAFE.

Several sources say EPA is likely to follow historical precedent and federalize the state rules, as part of the agency’s reconsideration of the Bush administration’s denial of the state’s waiver request, which blocked the state from implementing its GHG standards that more than a dozen other states have already adopted.

But the administration appears to be acting in line with automakers’ calls for a single national standard by coordinating overlapping EPA and Department of Transportation (DOT) regulatory processes, both of which are responses to legal pressure for stringent vehicle standards that reduce GHG emissions. The moves also appear set to be issued imminently, as EPA faces deadlines to propose new rules to meet its legal mandates.

A major issue, however, is whether California will agree to modify its rules to create a pathway for automakers to meet its standard through a federally applied attribute-based system for calculating the fuel efficiency requirements or by an EPA-backed emissions standard. California's GHG rules currently use the class-based, fleet-wide average calculation, but federal rules would likely use the attribute-based calculation to avoid the patchwork of standards that industry opposes.

Sources closely following the issue now say the state may be willing to accept such a compromise, which automakers are calling for and that would allow EPA to nationalize the state rules.

California officials would not confirm the move, but indicated a willingness to consider it as long as it resulted in emissions reductions at least as strict as their standard. "Assuming [the federal standard] achieves the same level of stringency or greater, we are happy to let EPA lead as long as we retain our legal right under the Clean Air Act to go further in the future. Until we see the details, we cannot comment on whether it meets this test," a spokesman for the California Air Resources Board (CARB) said in a statement.

But a key EPA official is indicating that DOT is furiously working to issue vehicle efficiency standards at a level that meets the California rules. DOT is working hard on a rule that would create "a single fleet of automobiles to meet all relevant requirements," Lisa Heinzerling, EPA's chief climate counsel, told an April 2 meeting of the American Law Institute-American Bar Association (ALI-ABA) in Washington, DC.

Another EPA official, Robert Sussman, senior counselor to the EPA administrator, confirmed in a recent interivew that EPA is working closely with DOT and the National Highway Traffic Safety Administration on the upcoming CAFE rulemaking, and said EPA's new GHG risk assessment is informing the analysis.

And environmentalists say they expect California to go along with the proposal. David Doniger of the Natural Resources Defense Council (NRDC) told the ALI-ABA meeting April 2 that he expects the agencies to coordinate their efforts to produce a final CAFE rule -- for model years 2012 through 2015 -- by March 31, 2010.

Doniger said DOT's CAFE rule could be set at the level of the California rules' requirements, but include the attribute-based compliance calculation that was included in the 2007 energy law's vehicle efficiency mandates. The attribute-based calculation is set according to a vehicle's footprint and size and is strongly favored by automakers as fairer to domestic manufacturers, as compared with the fleet-wide average concept the CAFE rules traditionally employed. Environmentalists say they would support the attribute-based calculation, as long as the standard is equivalent to California's.

EPA is reconsidering the California GHG waiver at the same time it is crafting a key assessment of the risks GHGs pose to human health and welfare under Clean Air Act section 202, which regulates vehicle emissions. If the agency finds that GHGs do pose a threat, it is then required to promulgate rules to reduce the emissions. The Supreme Court mandated the so-called endangerment finding in its April 2007 landmark decision in *Massachusetts v. EPA* and the agency is hoping to issue a proposed endangerment finding later this month.

A leaked copy of the draft GHG risk assessment makes a positive finding that GHGs endanger human health and welfare, which would justify stringent standards.

Meanwhile, DOT is crafting CAFE standards for model years 2012 through 2015, following a 2007 ruling in a federal appellate court that vacated the Bush administration standards for those years

because they did not take into account GHG reductions as part of the cost-benefit analysis for the rule.

DOT will need to soon issue its proposed rules for notice and comment for at least model-year 2012, because the statute requires that the model year rules be issued one-and-a-half years before they go into effect.

Another environmentalist says implementing the California standards in a coordinated way via CAFE can ensure automakers are not required to meet multiple standards. EPA and other federal officials are “looking at the possibility for how you solve that patchwork problem for model-year 2012-2016 . . . If EPA developed standards, which are bootstrapped up to the California equivalency level, California could develop an alternative compliance pathway to allow automakers to comply with the federal [standards], instead of the so-called patchwork of 14-plus state [rules],” said Roland Hwang, NRDC vehicles policy director, at an advanced diesel engine industry-hosted forum in Sacramento, CA, April 2.

This plan “makes a lot of sense” because it advances a stringent standard but provides “planning certainty” for automakers, Hwang said, adding that he believes California officials are “satisfied for the most part” with this potential plan. -- *Jenny Johnson and Curt Barry*

ACTIVISTS URGE EPA TO GRANT DECADE-OLD REQUEST TO LIST H2S AS AIR TOXIC (*Inside EPA*)

4/10/2009

More than 20 environmental groups are urging EPA Administrator Lisa Jackson to follow through on a decade-old petition asking the agency to list hydrogen sulfide (H2S) as a hazardous air pollutant (HAP), which the groups say should prompt new emissions control and toxics reporting requirements for the chemical.

Sierra Club and a host of other organizations sent a March 30 letter to Jackson saying it is “past time” for EPA to take action to formally acknowledge hydrogen sulfide’s serious acute and chronic toxicity.” The letter urges Jackson to list H2S as a HAP under Clean Air Act section 112(b), which would spur rules to limit daily exposures, and to require annual reporting of H2S under EPA’s Toxic Release Inventory (TRI). *The letter is available on InsideEPA.com.*

But the move will likely spur strong opposition from several industry groups that could face new emission requirements under a HAP listing for the chemical. Several sectors that emit H2S -- including chemical manufacturers and oil and gas production -- have previously expressed opposition to a listing. For example, the oil industry early last year said it was developing studies that would undermine calls for listing because they would show no correlation between exposure to H2S and harmful neurological health effects.

The activists’ new letter could revive a January 1999 petition for listing submitted to then-EPA Administrator Carol Browner by 145 public health, environmental and community groups. The

petition asked Browner to list H2S as a HAP based on scientific studies suggesting chronic, low-level exposure cause permanent damage to the brain and central nervous system. Browner is now Obama's top White House climate advisor.

"As EPA Administrator, you have [Clean Air Act] authority to do the right thing based on a compelling body of H2S medical evidence and air quality data indicating a need for better regulation," according to the coalition, which also includes Earthjustice, the Environmental Integrity Project and several other groups.

Describing H2S as "one of the worst regulated air toxics," the groups say that the chemical is currently regulated under the accidental release provisions of section 112(r) of the air act. A HAP listing under section 112(b) could "bridge the gap" of a lack of regulation to address daily exposures to the chemical at sublethal concentrations, in addition to preventing accidental releases, according to the letter.

In addition, the group says that requiring the reporting of H2S to TRI would help EPA compile more accurate data on the chemical. H2S is not reported to the inventory due to a 1994 administrative stay "evidential under a legal threat by the American Petroleum Institute," the letter says.

Mike Petruska, director of EPA's TRI program, told attendees March 31 at a TRI training conference in Bethesda, MD, that H2S is one chemical EPA may consider adding to the list of chemical releases that companies must report annually to TRI, but said that no decisions have been made. "Adding a chemical is not something we take lightly," he said.

Besides oil production, the environmentalists' letter says that at least 73 different industries -- including pulp and paper mills, confined animal feeding operations, Portland cement kilns, geothermal power plants, municipal waste landfills, and fertilizer production -- emit H2S in "varying rates and volumes."

EPA has initiated an informal review of H2S due to the agency's health concerns and the 1999 request for regulation, and the agency's Office of Air Quality Planning & Standards performed in 2007 a new Integrated Risk Information System assessment, according to the letter, which describes H2S as likely the most common air toxic pollutant found in both urban and rural communities.

The letter says that 34 states have adopted ambient air quality standards for H2S as low as 10 parts per billion and that California's emission management program, in particular, can serve as a model for a national air monitoring network, industry-specific rules and modeling requirements. -- *Molly Davis*

OBAMA EPA TO RECONSIDER DEFENSE OF KEY BUSH AIR TOXICS RISK POLICY (*Inside EPA*)

4/10/2009

The Obama EPA is asking a federal court to hold in abeyance a pending suit over a Bush EPA air toxics rule that could be a key test for whether the agency can use risk assessments in its review of

technology-based emission standards, a move that activists see as a signal the new administration may revise and strengthen the rule.

EPA April 3 filed an unopposed motion with the U.S. Court of Appeals for the District of Columbia Circuit in *Sierra Club, et al. v. EPA* asking for a voluntary remand of the administrative record in the suit brought by activists and industry over EPA's air toxics standards for small dry cleaners. EPA also wants pending May 14 oral arguments in the case put on hold while it "reconsiders the rule under review, in light of the change of administration." *The motion is available on InsideEPA.com.*

EPA in its motion says that the slated May 14 oral arguments would require the agency to decide whether to defend the final rule based on the arguments presented in the Bush administration's December 2008 merits briefs. However, EPA currently has vacancies in certain key personnel positions -- including its air and enforcement offices -- that make it "difficult" for the new administration to determine by the date of the scheduled oral arguments whether to defend the Bush EPA rule, the motion says.

Remand of the administrative record would give the agency the opportunity to reconsider the rule, and the lawsuit may even become moot if EPA promulgates a new or revised rule following such reconsideration, the motion says.

At issue is the agency's July 2006 emission standard to reduce perchloroethylene (perc) emissions from small dry cleaners that are co-located in residential and commercial buildings.

EPA conducted a risk assessment and used the results as a basis for setting separate standards for dry cleaners in residential and commercial buildings, with a phase-out of perc in dry cleaners co-located in residential buildings by 2020. For small dry cleaners in their own buildings or housed with other commercial tenants, EPA determined the level of risk was not high enough to bar the use of perc, but the rule instead requires enhanced monthly leak detection tests and other technological enhancements.

Sierra Club and other environmentalists are suing over the rule want EPA to completely phase-out perc from all the sources. Industry is also suing over the rule, saying EPA does not have the statutory authority to ban a substance, but only reduce it. The suit will be a key test for the Obama EPA's approach to air toxics regulations and represents a test for whether the agency has the statutory authority to use risk assessments in its review of technology-based standards for small facilities known as area sources.

The Obama EPA defended the Bush administration's rule in a March 2 brief, though one activist said at the time it is likely that the brief merely reflects the lack of a political head of the agency's air and other offices. The April 3 motion for voluntary remand of the administrative record emphasizes the need to review the regulation in light of the change in administration and possible changes the Obama EPA may make to the rule.

EPA did not respond to requests for comment by press time.

PORK INDUSTRY FIGHTS EPA TO HEAR EPCRA REPORTING SUIT IN TRIAL COURT (*Inside EPA*)

4/10/2009

Pork producers are fighting EPA efforts to have a federal appellate court review the agency's right-to-know reporting rule for animal feedlot emissions in an effort to have the suit heard in a federal district court in Wisconsin where industry hopes for a speedier resolution to the case.

The Wisconsin district is one of two "rocket dockets" in the country that can complete cases in seven to eight months, compared to other districts that can take more than two years to complete a case, one source familiar with the issue says. Industry wants a speedy resolution because there is no accepted method for quantifying emissions and farmers are uncertain whether they could be subject to penalties under EPA's rule, the source says.

The agency's Dec. 18 rule exempts all concentrated animal feeding operations (CAFOs) from reporting air emissions from animal manure under the Comprehensive Emergency Response, Compensation & Liability Act (CERCLA), also known as Superfund, and exempts all but the largest CAFOs from reporting their emissions under the Emergency Planning & Community Right to Know Act (EPCRA).

Environmentalists and industry groups, including the National Pork Producers Council (NPPC), challenged both the EPCRA and CERCLA portions of the rule in the U.S. Court of Appeals for the District of Columbia. However, NPPC later filed suit against the rule in the United States District Court for the Western District of Wisconsin and Feb. 19 withdrew its challenge in the D.C. Circuit, in its bid for a quick resolution to the case.

On March 23 NPPC filed a motion in the D.C. Circuit requesting the court stay the briefing schedule for the case until the jurisdiction issue is resolved.

NPPC argues that the EPCRA and CERCLA portions of the case should be split to allow the EPCRA portion of the case to be heard in the Wisconsin trial court. CERCLA explicitly requires rule challenges to be heard in appellate court, but EPCRA is silent on the issue, so rule challenges fall under the Administrative Procedures Act, which requires cases to be heard in district courts, NPPC says. *Relevant documents are available on InsideEPA.com.*

EPA, however, is urging the court to keep the case in the appellate court, where industry and activists have both challenged the rule. EPA is arguing that Superfund law, which is also an underlying statute for the rule, requires that the case be heard in the appellate court.

However, industry argues the D.C. Circuit does not have jurisdiction over the EPCRA claim just because there are also challenges to the Superfund portion of the rule. "Agencies cannot create appellate jurisdiction by publishing two separate rules in the same Federal Register notice," the brief says.

The source familiar with the issue says the district court may not necessarily be more favorable to farmers than the D.C. Circuit because the D.C. Circuit is more familiar with air rules and has ruled in favor of the agriculture industry in several cases in the past. However, the source notes the district

court is located in the 7th Circuit, which the source says is more familiar with agricultural issues than the D.C. Circuit.

The industry is seeking to overturn the EPCRA reporting requirements, arguing that right-to-know law has an exemption for farms that use substances only for “routine agricultural operations.”

BACKERS OF HIGHER ETHANOL BLENDS FIGHT CLAIMS OF OZONE INCREASES (*Inside EPA*)

4/10/2009

Supporters of a petition for EPA to boost the level of ethanol allowed in gasoline beyond 10 percent (E10) are rejecting claims that higher blends will spur spikes in ozone levels.

In an April 6 interview with *Inside EPA*, three experts involved in Growth Energy’s petition to immediately lift the E10 cap to allow E12 and E13 -- while studying the merits of lifting the cap to allow E15 -- also said there is no evidence to justify engine manufacturers’ and other critics’ claims that higher blends could damage engines and create liability concerns for the manufacturers under vehicle and equipment warranties.

Independent automotive consultant Doug Mancini said that data on 11 vehicles from model years 2003 and 2007 showed that when E15 and E20 were tested in the vehicles, exhaust emissions of pollutants that contribute to ozone formation were at or below applicable exhaust emissions standards.

“These test results show ground level ozone will be unaffected due to all vehicles performing within their allowable exhaust emission standards,” according to the findings, which are based on an October 2008 peer-reviewed study prepared by Oak Ridge National Laboratory for the Department of Energy (DOE). “I firmly believe this action of going to E15 will not cause a ground-level ozone increase,” Mancini said.

Jim Mennell, managing partner of the Environmental Law Group that assisted Growth Energy in its petition to EPA, said that the agency can waive its prohibition on higher blends as long as the applicant has shown that the fuel or fuel additive won’t cause a failure of an emission control device or a violation of an emission standard. A “slight increase” in emissions “is not relevant to this determination -- failure is the only factor,” Mennell said, but stressed that studies show higher blends will not boost emissions.

“If a fuel or fuel additive caused degradation, that is relevant, but EPA’s statutory charge is simply to look at the emissions impact of a fuel or a fuel additive.” Mennell also cited an October 2008 Rochester Institute of Technology study that he said found nitrogen oxide (NOx), carbon and hydrocarbon emissions decreased with the use of E20 in 10 legacy vehicles after 75,000 collective miles were driven.

The comments aim to rebut claims by environmentalists and some state officials that higher blends of ethanol will boost emissions of some smog-forming air pollutants despite modest reductions in greenhouse gases. For example, EPA in an April 10, 2007, regulatory impact analysis (RIA) for its renewable fuel standard required by the 2005 energy law found that the rule could increase volatile organic compounds between four and five percent, and NOx emissions could increase between six and seven percent (*Inside EPA*, April 19, 2007).

In addition, the American Lung Association's (ALA) Blake Early in April 1 testimony to the Senate Environment & Public Works Committee (EPW) said the Oak Ridge/DOE study is the only scientifically-based study to date on tailpipe emissions from cars operating on E15 or E20, and that it has a number of flaws and more study is needed.

The DOE study "understates the problem," Early said, adding that it fails to report that nine of 16 vehicles using E20 had increased NOx emissions, six with increases reaching 25 percent or higher. Six vehicles had increased NOx emissions using E15, four of them of 25 percent or more. DOE founds these increases "statistically insignificant" given emission decreases in other vehicles, but Early said the emission increases are significant.

However, all three Growth Energy officials in the interview said there is a wealth of data that supports granting the waiver to allow the use of E15. The data in the group's petition "should allow EPA and others to see that E15 is a safe and viable fuel," said Dr. Mark Stowers, vice president of research and development at POET, an ethanol production company.

In response to EPA's RIA, a Growth Energy spokeswoman says that EPA's own national air quality status and trends report through 2007 shows ozone concentrations were five percent lower in 2007 than in 2001, largely due to NOx reductions. "It seems that while EPA's modeling has predicted increases in the past, empirical evidence shows to the contrary," the spokeswoman says. Also, the most recent ALA "State of the Air" report found most cities made progress decreasing ozone levels from 2004-2006, compared to 2001-2003, the spokeswoman added.

As EPA reviews the Growth Energy petition, one issue the agency will take comment on is whether the agency should partially or conditionally grant the waiver, a move that would allow blends up to E15 to be used in some vehicles, according to written testimony at the April 1 EPW hearing by Margo Oge, of EPA's transportation office.

But Mennell said, "There is no evidence to support the need for a partial waiver. All the evidence we have supports the use of higher blends . . . [they] shouldn't have any negative impacts on emissions."

The officials also took issue with criticisms that the infrastructure does not exist for pumps above E10 nationwide. Some critics have also claimed that ethanol producers will focus on producing higher blends without continued production of E10 (*Inside EPA*, March 13).

But Stowers said, "The science supports using E15 blends and pumps," and noted that Underwriters Laboratories -- an independent product safety testing and certification group -- announced in February it supports authorities that have jurisdiction to permit existing pumps to use blends up to E15. -- *Kate Winston & Anthony Lacey*

ACTIVISTS URGE AGENCY TO INCLUDE ALASKA IN SHIP EMISSIONS PROPOSAL (*Inside EPA*)

4/10/2009

Environmentalists are urging EPA to include Alaska in the agency's proposal to mandate major emissions reductions along American and Canadian coastlines under international law, arguing that cutting ship pollution in Alaska will help protect the arctic state from global warming.

Nine environmental groups, including Earthjustice and Defenders of Wildlife, sent a March 27 letter to EPA Administrator Lisa Jackson and Bryon Bunker of the agency's National Vehicle & Fuel Emissions Laboratory urging Alaska's inclusion in EPA's plan to designate U.S. coastal waters as an emissions control area (ECA). The proposal would mandate reductions in ships' emissions of sulfur oxides, nitrogen oxides and particulate matter within the ECA. *The letter is available on InsideEPA.com.*

On March 30, Jackson announced that EPA had submitted a bilateral proposal to the International Maritime Organization (IMO) that seeks to establish 200-mile ECA -- a buffer zone that would be wide enough to improve air quality as far inland as Kansas -- along the the contiguous United States, Hawaii and much of Canada. The IMO must vote on the proposal to establish the ECA, which would apply to all ships in the area regardless of their country of origin.

But while the request includes routes into Anchorage, AK, it does not include the Aleutian Islands and points north in the Bering, Chukchi and Beaufort Seas. An Earthjustice attorney says it is important to expand the requirements of the ECA to include the entire state because the arctic oceans are likely to see an increase in shipping traffic as melting arctic ice opens up shipping channels and oil and gas exploration areas, and the ECA requirements could help reduce air pollution and climate change in Alaska.

The groups acknowledge that the letter, which was sent three days before EPA announced its application to IMO, does not give the agency much time to alter their application to include Alaska. However, the letter also recommends that EPA amend its request after the proposal has been submitted but before the IMO holds a vote on whether to approve the ECA request, which the Earthjustice attorney says is slated for March 2010.

Texas cement plant gets 10-year permit without public hearing *(Greenwire)*

04/09/2009

North Texas' largest industrial plant and biggest air polluter was issued a 10-year permit renewal from state regulators yesterday in a 2-1 decision that ruled out the opportunity for a public hearing.

The Texas Commission on Environmental Quality approved TXI's renewal request at its Midlothian plant, citing the plant's good compliance record and response to public complaints over smog and other concerns.

Commissioners Bryan Shaw and Buddy Garcia rebuffed calls by the dissenting commissioner, Larry Soward, for a public hearing to determine if TXI's permit complies with federal smog rules and new pollution control methods.

Yesterday's commission meeting was primarily a debate between the commissioners themselves and didn't include pubic comments, except from state Rep. Lon Burnam (D), who argued that the permit deserved a formal public hearing.

An attorney for TXI, Al Axe, said that the Midlothian plant was already one of the most closely scrutinized facilities in Texas and that the public had had many opportunities to weigh in on its environmental performance (Randy Lee Loftis, *Dallas Morning News*, April 8). **-- PT**

Traffic fumes impact birth weight -- study *(Greenwire)*

04/09/2009

A mother's exposure to traffic pollution could hinder the development of a baby in her womb, new research has found.

The study, published in the *Journal of Epidemiology and Community Health*, evaluated 336,000 babies born in New Jersey between 1999 and 2003. Researchers looked at the demographic and health information of selected New Jersey women, as well as where they lived when their babies were born.

Researchers then used daily air pollution readings from US EPA monitors around the state to determine the mothers' exposure to air pollution during each of the three trimesters of pregnancy.

Mothers who were younger, less well educated, African-American, smokers, poorer and single parents were more likely to have babies with small or very small birth weights, the study found. But even after accounting for these factors, air pollution was found to restrict fetal growth.

Tiny sooty particles and nitrogen dioxide -- both produced by cars -- were found to have a harmful impact (BBC News, April 8). **-- TL**

BROWNFIELDS

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NEW YORK BROWNFIELDS PLAN MAY PROMPT NOVEL PACT TO LIMIT EPA SUITS (*Inside EPA*)

4/10/2009

New York City officials are poised to introduce legislation to implement a state-approved brownfields program that if enacted would set the city on a path to seek a first-time agreement with EPA that the agency will not pursue parties who clean up sites under the city's program.

If EPA signs the agreement, it would be the first time officials have done so with a municipal government.

A spokeswoman for New York Mayor Michael Bloomberg says the agency has already signaled its intention to sign such an agreement once the city council approves upcoming legislation authorizing the mayor's Office of Environmental Remediation (OER), which will oversee the brownfields cleanup program.

An EPA Region II spokesperson referred questions on the issue to the mayor's office.

The mayor's spokeswoman says the mayor's office is planning to introduce legislation before the New York City Council within the next few weeks that will officially designate OER as an office of the mayor and approve its charter to address city properties with "light to moderate" contamination.

The mayor's office spokeswoman says the purpose of the office is to take over less urgent projects within city limits from the state Department of Environmental Protection, because the state was preoccupied with addressing the most contaminated sites across the state instead of the numerous, more lightly contaminated sites in the city.

She says the city is in ongoing negotiations with the state to determine the details of the city's program. EPA has told the city that it will issue a memorandum of agreement with the city promising not to pursue parties who had successfully cleaned up sites to the city's satisfaction, according to the mayor's office source.

Under brownfields provisions contained in section 128 of the Superfund law, EPA can agree to limit overfiling at brownfields sites if the sites are cleaned up in accordance with an EPA-certified voluntary cleanup program.

But an environmental attorney says there is a question whether EPA could sign such an agreement because section 128 only gives EPA authority to limit overfiling for state or tribal brownfields programs. “Technically the state response under 128 says EPA will not overfile if the indemnity is being undertaken by a state,” the source says. “But technically that wouldn’t apply to a city, because they’re not a state. I don’t know where they are with that.”

Nevertheless, the source says if EPA and the city could work out an arrangement, it could prove to be a model for other cities to follow. The attorney says if a memorandum of understanding or some other order did grant New York the authority and deference to handle its own brownfields indemnities -- and those efforts were successful -- it could spark interest in a number of other cities to mimic the program.

Since many cities already take on their own zoning responsibilities and green building initiatives, it follows that brownfields indemnities would be a logical extension of those authorities. “It makes sense,” the source says. “They make local land use decisions already, so this way they’re controlling the destinies of their own sites.”

The mayor’s office spokeswoman said OER was established in 2007 as part of Bloomberg’s 2007 PlaNYC initiative, which is intended to integrate sustainability programs into the city’s management practices. OER has since been working towards establishing itself within the city’s bureaucracy and establishing its authority to confer indemnity to developers who choose to take on contaminated or potentially contaminated land.

“It started as a strategy for land use planning,” the spokeswoman says. “At the height of the economic boom, there was development everywhere . . . and both developers and communities said we need someone to focus on brownfields in the city. It’s not duplicative, because we’re doing what the state’s not doing.”

But Bloomberg’s office acknowledged in a 2008 progress report on PlaNYC that they had not reached a formal agreement with EPA. “Our most significant brownfields proposal is to create a streamlined, City-administered program for moderately-contaminated sites that would implement State cleanup and provide liability relief upon successful remediation. . . . This program would supplement the state’s cleanup efforts as well as address the public health issue of sites that are currently being cleaned up without any government oversight,” the report says.

BUDGET/STIMULUS

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EPA in the Business of Economic Recovery (*Political Affairs Magazine*)

By PA Staff Writers

click here for related stories: environment

4-09-09, 10:57 am

The Environmental Protection Agency (EPA) allocated close to $300 million this week in funds appropriated through the economic stimulus package passed last February. Those funds have been sent to states for "shovel ready" environmental clean-up projects and the agency's "clean diesel" program.

According to an EPA statement released this week, $197 million will be used to assess and clean up underground storage tank petroleum leaks. Another, nearly $90 million has been sent to each state and the District of Columbia to retrofit an estimated 11 million public buses to use cleaner alternatives to diesel or help reduce use of fuel.

“We’re providing immediate growth opportunities for communities across the nation, as well as long-term protection from dangerous pollution in the land and water,” said EPA Administrator Lisa P. Jackson. “EPA is putting people to work by serving our core mission of protecting human health and the environment.”

The greatest potential hazard from a leaking underground petroleum storage tank is that hazardous substances seep into the soil and contaminate groundwater. About half of all Americans get drinking water from groundwater sources, the agency estimated.

The clean diesel projects could reduce premature deaths, asthma attacks and other respiratory ailments, lost work days, and many other health impacts every year. Experts believe that the health benefits from diesel emissions reductions outweigh the costs by a ratio of up to 13-to-1, according to the EPA.

About $6 million of the underground petroleum storage tank clean-up money has been set aside for Indian tribal governments. An additional $108 million for the clean diesel program will be awarded in June, the EPA stated. Tribal governments and non-profit groups will be able to compete along with state and local governments for those resources.

The EPA did not provide estimates on the number of jobs created or saved through these two efforts, but the efforts are national in scope, are labor intensive and have clear positive impacts on the environment, health and safety.

State to get stimulus dollars for diesel engines (*Associated Press*)

By The Associated Press
Thursday, Apr 09, 2009 - 12:05:27 pm CDT

Nebraska will get $1.73 million from the federal stimulus package to help reduce emissions from diesel engines.

Sen. Ben Nelson announced the award on Wednesday, calling it good for the state's economy and environment. He said in a news release it could create green-collar jobs in the state.

The dollars will come from the federal Environmental Protection Agency and will be used to switch to cleaner fuels and retrofit diesel engines with new emissions-reducing equipment, among other things.

Nebraska is a major transportation corridor traveled by diesel trucks. According to the Federal Highway Administration, 15 percent of all trucks transporting goods travel through Nebraska per year.

EPA DIVIDES $100 MILLION STIMULUS FUNDS AMONG BROWNFIELDS PROGRAMS (*Inside EPA*)

4/10/2009

EPA is divvying up the $100 million it received from the economic stimulus for its brownfields program, with $40 million being added to its brownfields revolving loan fund, $45 million being devoted to its brownfields grant program and $5 million slated for a worker training program.

The agency has also recently announced that it will be rolling its stimulus brownfields funds into its existing brownfields funding programs for fiscal year 2009 as a way to speed distribution of the money. "In order to ensure that money under the [stimulus] is distributed as quickly as possible, EPA will use the current FY09 competition for assessment, revolving loan fund, and cleanup (ARC) grants to award Recovery Act funds and Brownfields general program funds to selected applicants," the agency says.

Although EPA is dividing its stimulus funds among the brownfields programs, it is not clear what has happened to a planned guidance to rank brownfields sites based on their potential for clean energy development.

EPA Administrator Lisa Jackson said recently that the agency was discussing ideas for assessing projects on a scale of "energy positive -- meaning they generate energy -- [to] energy neutral" as a way of "magnifying" President Obama's promotion of renewable energy sources. But so far, EPA has not released any guidance (*Inside EPA*, March 6).

David Lloyd, director of EPA's Office of Brownfield Cleanup and Redevelopment, on April 7 told attendees of a conference hosted by RTM Communications Inc. in Washington, DC that the agency is planning to dedicate approximately $40 million for the revolving loan program -- which enables

local governments to provide loans to developers interested in cleaning up brownfield sites -- and will make the funds available to FY09 program participants that are “high performing.”

Lloyd did not elaborate on what criteria EPA would use to define which loan program participants are “high performing,” but one source familiar with the issue believes the agency will deem local governments and other entities with a proven track record of successfully using loan funds to cleanup and redevelop a significant number of sites in their respective areas.

Meanwhile, Charles Bartsch, vice president for ICF International, told conference attendees that EPA would allocate approximately $45 million to its existing competitive grant program, which funds proposed brownfield cleanup and redevelopment projects.

The money will effectively allow the agency to award more grants to its existing pool of applicants, Bartsch said, with an added bonus being that those projects that receive money through the stimulus package will be exempt from the usual state cost-sharing requirements that brownfield grant recipients are usually subject to.

EPA announced last month that it was allocating $5 million of the brownfields funds to job-training activities.

EPA WAIVES ‘BUY AMERICAN’ RULES FOR SOME STIMULUS WATER PROJECTS (*Inside EPA*)

4/10/2009

EPA is waiving the economic stimulus law’s “Buy American” procurement requirements to allow some already-funded water infrastructure projects to refinance loans to access the stimulus laws’ more attractive financing options.

The waiver does not apply to projects that have not yet been funded or were funded prior to the start of the current fiscal year last October, some of which are facing delays due to the law’s procurement rules. But it is the agency’s first formal step to provide flexibility to the “Buy American” requirement that states and industry say is difficult, if not impossible, to meet.

EPA is “granting a nationwide waiver of the Buy American requirements” of the stimulus bill “for eligible projects for which debt was incurred on or after October 1, 2008 and before February 17, 2009” -- the day President Obama signed the legislation, according to an April 7 *Federal Register* notice. *The notice is available on InsideEPA.com.*

SRF funding in the stimulus bill allows the $4 billion for clean water projects and $2 billion for drinking water projects to be retroactively applied to projects that received SRF loans after Oct. 1, for instance as a grant that pays back a traditional SRF loan already incurred.

But the law’s “Buy American” provision, contained in section 1605, requires all procurement to meet a 100-percent domestic content requirement, prompting concern because only a limited amount of water infrastructure equipment and materials is manufactured in the United States, sources say.

Many state officials have also been concerned because EPA has not issued guidance for how to implement the procurement requirements, including how to seek waivers -- which the law allows if there are insufficient American supplies, if the use of American supplies will increase the cost of the project by more than 25 percent or if granting the waiver is in the public interest.

The issue is particularly complicated because many state and local governments ramped up their efforts to initiate projects late last year as Congress debated stimulus legislation but were unprepared for the "Buy American" requirements, which Congress added during its consideration of the package.

EPA says in the *Federal Register* notice the procurement requirement will delay states that receive SRF money from distributing the funds to municipalities that incurred debts after the start of the fiscal year through the stimulus law's enactment Feb. 17.

The final version of the bill limited the refinancing option to debts incurred after Oct. 1, limiting SRF managers' ability to take advantage of the stimulus law's "window" to refinance existing projects. The industry source says since enactment of the law, SRF managers had been told the stimulus bill's additional requirements would not apply to projects that received SRF loans between Oct. 1 and Feb. 17 -- loans now eligible for attractive refinancing with stimulus bill dollars but begun before the stimulus bill's requirements were known.

The industry source says stakeholders see the "window" as an opportunity to refinance projects without the stimulus bill's strings and at better interest rates.

To allow SRF managers to access the stimulus funds, EPA is exercising authority in the law to waive the procurement requirement, citing authority contained in section 1605. EPA says in the *Federal Register* notice that applying the requirements to projects already started would entail "time-consuming delays and thus displace the 'shovel ready' status of these projects."

EPA provides stimulus cash for states' diesel cleanups *(Greenwire)*

Robin Bravender, E&E reporter

04/09/2009

U.S. EPA has begun awarding $88 million from the federal stimulus package to states for programs to clean up or retrofit diesel engines.

The American Reinvestment and Recovery Act funding will go to state agencies developing and implementing grant and loan programs for replacing or retrofitting older, dirtier diesel engines. States and the District of Columbia are each eligible to receive $1.73 million under the program.

"This is part of the nationwide clean energy transition that is clearing the air and creating millions of jobs across America," said EPA Administrator Lisa Jackson in a statement. "Communities using innovative measures to cut harmful diesel emissions are cutting costs, creating jobs, and keeping people healthy."

The projects are aimed at reducing premature deaths, respiratory ailments and other health problems caused by emissions of particulate matter and nitrogen oxides from the nation's fleet of more than 11 million diesel engines, EPA said.

The stimulus package provides $300 million for programs that clean up or retrofit diesel engines. In addition to the $88 million for state programs, $206 million will be distributed through competitive grants to state and local governments, nonprofit organizations and tribal agencies to implement clean diesel projects. The remaining $6 million will cover administrative costs.

CHILDREN HEALTH

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JACKSON NAMES EPA WASTE OFFICIAL AS CHILDREN'S HEALTH ADVISOR (*Inside EPA*)

4/10/2009

EPA Administrator Lisa Jackson is adding Peter Grevatt, a long-time EPA environmental justice and solid waste official, to her front-office team as senior advisor for children's environmental health.

Jackson announced the appointment during a March 30 speech at a children's environmental health conference hosted by the Columbia Center for Children's Environmental Health at Columbia University and WE ACT for Environmental Justice in New York City, according to a copy of her speech.

"Peter brings to the position a wealth of scientific, risk assessment, environmental justice and children's health experience," Jackson said. "He has worked on asbestos, PCBs, lead and arsenic cleanup and protection, and brings extensive inter-agency leadership experience."

Grevatt served as director of the Resource Conservation and Sustainability Division within EPA's Office of Resource Conservation and Recovery. He has also worked as head of the national water quality monitoring program, senior science advisor for EPA's waste cleanup programs and senior health scientist for Region II.

According to Jackson, he has also played a leading role in several significant environmental justice initiatives, including the development of EPA Region II's interim environmental justice policy, a study on the administration of the Superfund program in environmental justice areas in Region II and an inter-agency agreement establishing a scientific basis for protecting children's health at the Vasques Boulevard 1-70 arsenic-contaminated site in Denver.

Jackson has said children's health will be a priority and recently launched a study of air quality around U.S. schools. "We have important obligations to look ahead and be proactive about preventing and, where necessary, mitigating the particular effects climate change will have on children's health and welfare," she said at the event. "We need to step up our efforts to assess and manage chemical risks that are particularly harmful to children."

The conference was focused on three health concerns that affect children in cities, "air pollution from fossil fuel combustion, residential pesticides and endocrine-disrupting chemicals found in common consumer products," according to a statement.

CLIMATE CHANGE/GLOBAL WARMING

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Revived EPA Takes on Climate Change and More (*U.S. News & World Report*)

Under President Obama, the Environmental Protection Agency is starting to flex its muscles again

By Kent Garber
Posted April 9, 2009

Over the past 10 weeks, the Environmental Protection Agency has been pumping out proposals and directives on everything from climate change to pollution from ships. In one high-profile move last month, the EPA said it will launch detailed reviews of permits for mountaintop coal mining operations, which can have profound effects on nearby waterways.

By moving so quickly, President Obama's EPA has in effect reproached the Bush administration for dawdling on climate change. In calling for tougher regulations, it has

also criticized Bush officials for catering to businesses and industry. "There's a larger message that we have to give to the American people, which is that EPA is back on the job, that we are guardians protecting clean air and clean water," says EPA Administrator Lisa Jackson.

Because many of these proposals only begin to lay the groundwork for future regulations, they are, to a certain degree, still symbolic. Some Republicans say they have seen few surprises or radical moves, much to their relief. Nevertheless, the agency under the new administration has clearly enjoyed a dramatic boost in morale and stature after eight years of being stifled.

"They are very empowered, much more so now, to take action on some very controversial issues," says Christie Whitman, the former Republican governor of New Jersey who served as EPA chief in the Bush administration from 2001 to 2003, before resigning in frustration. "There is a whole different attitude." Unlike Bush, who once belittled the EPA as a "bureaucracy," Obama appears to view it as a central player in his clean-energy agenda.

This new tone is most obvious with matters of climate change. Two years ago, the Supreme Court ordered the EPA to determine whether carbon dioxide emissions are a threat to public health. Bush's EPA refused to issue a verdict, even though career agency officials concluded in a preliminary document last summer that CO2 does indeed pose a risk. Jackson's EPA ended the standoff last month by agreeing that CO2 is a dangerous pollutant and should be regulated. The decision, called an endangerment finding, was sent to the White House.

Two other climate change actions stand out. First, a proposal announced last month would require large emitters of greenhouse gases to annually track and report their outputs, starting in 2010. The rule, Jackson says, is "the Obama administration acknowledging that as we move toward a clean-energy future, we will need to know where CO2 emissions are coming from." The agency also is reconsidering a request from California and at least a dozen other states to impose stricter standards on greenhouse gas emissions from cars and trucks that was denied by Bush in 2007.

As the endangerment finding suggests, many of the agency's early moves draw heavily on existing analyses by its scientists that had been ignored by previous political appointees. But Jackson's EPA has also taken notable steps on its own. Late last month, it started to scrutinize as many as 200 permits for mountaintop coal mining operations, citing the need for further review. This week, it proposed new emissions limits for ships that will apply to much of the U.S. coastline and said it will begin monitoring air quality at dozens of schools.

The EPA also has been reviewing a spate of environmental regulations the Bush administration wrote in its final months. "EPA is a pretty big writer of regulations, so we had a quite a workload there," Jackson says. The review has flagged a number of rules that the agency might want to modify, she adds.

Among EPA watchers, the key question is how aggressively the agency will follow up on these initial moves, especially with respect to climate change. "So far, there have been very splashy announcements that obviously play well to a core Democratic constituency but don't really have an impact," says Jeff Holmstead, a former Bush EPA air quality chief. "This endangerment finding will be greeted with great excitement by the environmental community and others, but it really is more of a political statement than a regulatory change." Holmstead says that it could take more than a year to finalize the endangerment finding and an additional 18 months to write an actual regulation.

Certainly, the EPA is in line to get more money. Obama's 2010 budget proposes increasing the agency's funding by more than 33 percent, to $10.5 billion. (In addition, the EPA is helping distribute $7. 2 billion in stimulus funding, much of which is going to state and local governments.)

But there is still a large degree of uncertainty over what the EPA's role will be amid all the other players jostling for attention, particularly Carol Browner, Obama's high-powered White House climate change czar, not to mention the reigning Democratic environmental and energy leaders on Capitol Hill, Rep. Henry Waxman and Sen. Barbara Boxer.

A big debate is already kicking up over what will happen once the EPA does formally label CO2 a threat. For one thing, the Clean Air Act will most likely require the agency to regulate CO2 emissions from a whole host of sources, including power plants, factories, and farms (although there is still significant debate on this point). This week, Waxman, who chairs the House Energy Committee, released a highly anticipated draft of a cap-and-trade bill to limit emissions, suggesting that lawmakers may be getting ahead of the EPA. That may be exactly what Obama aides want. "My view is what they're really trying to do is keep the pressure up on Congress to do something more sensible on greenhouse gas emissions as opposed to letting EPA figure out something," says Holmstead. "It seems to me it is a very calculated move—and that's not meant to be criticism. They are taking slow steps." Had the EPA wanted to move more quickly to regulate CO2, for example, there were more aggressive strategies it could have pursued.

Meanwhile, Jackson will have some opportunities to prove how serious she is about restoring scientific rigor to the EPA's decision making after the Bush years. The EPA, for instance, is trying to figure out how to interpret the science on contentious ethanol-related issues, including whether to allow cars to run on higher blends of ethanol and how to measure emissions associated with biofuel production.

Weighing in are lobbying groups, businesses, manufacturers, powerful farm-state senators, and the heads of other cabinet departments. It will be an early test of Jackson's leadership and her ability to stand up to competing voices within the Obama administration. "I still believe that one of the biggest challenges is this idea of czars, of having policy people in the White House," says Whitman. "It creates confusion in the agency about who you would go to." But, Whitman adds, "I will tell you that Lisa is plenty tough. If anyone can deal with it, she can." It also doesn't hurt that she will probably have the biggest budget in the EPA's 39-year history.

Read Carol Browner on Climate Change: 'The Science Has Just Become Incredibly Clear.'
Read more energy and environment news.

KEY SENATE AIDE DOWNPLAYS ENVIRONMENT COMMITTEE ROLE ON CLIMATE (*Inside EPA*)

4/10/2009

A top aide to Senate Environment & Public Works Committee Chairwoman Barbara Boxer (D-CA) is downplaying the role the panel will play in formulating climate change policy, saying the real action on climate legislation will occur on the Senate floor, and likely only after the House has passed its own cap-and-trade bill.

The remarks, made by Senate staffer Joe Goffman at an April 8 Energy Information Administration (EIA) conference in Washington, follow a suggestion from Boxer earlier this month that the Senate may simply defer to the House on climate policy. Boxer told reporters April 1 that an energy/climate bill could be passed by the House while the Senate will likely pass a stand-alone energy bill, with the differences reconciled in committee.

Goffman told attendees of the EIA event that, “in the Senate . . . sometimes process is policy,” explaining that the body’s rules empower individual members equally, implying cap-and-trade skeptics will have a greater ability to block legislation than they would in the House. As a former legislative director for Sen. Joseph Lieberman (I-CT), Goffman was closely involved in drafting the cap-and-trade legislation the Senate took up last summer that was blocked by a Republican filibuster.

Because of the nature of the Senate, “the action on climate policy will not be so much in the Environment and Public Works Committee as it will be on the Senate floor,” said Goffman. “In that respect, interesting legislative formulation will occur not at the moment that . . . Chairman Boxer releases her first draft for climate or [her committee] reports its bill, but really in the journey from the committee to that point when 60 members of the Senate will find themselves comfortable . . . voting for a climate bill.”

Goffman added that the “next hurdle for us in the Senate” will be engaging skeptical lawmakers who do not sit on the environment panel, adding that “there’s a very good chance that the senators we are going to have to engage will need to see progress over on the House side” before agreeing to act on climate change. Furthermore, “as a matter of both basic politics and technical resources,” the Obama administration may need to take on a greater role in drafting climate legislation, informing Capitol Hill “as to its insights, its analysis, and in many cases its preferences on how some of these issues are resolved.”

As for the details of a bill, Goffman said many lawmakers appear to be most focused on “the question of redistribution of allowance value.” Particularly since the “post-enactment politics could very well be as sensitive as the pre-enactment politics” on a climate bill, he said, lawmakers are most interested in distributing allowance value in such a way that they can go home to their constituents and point to specific aspects of the bill that will benefit them. -- *Charles Davis*

EPA GHG REGISTRY CRITICS SEEK COST STUDY ON THIRD-PARTY VERIFICATION (*Inside EPA*)

4/10/2009

Critics of EPA's proposal not to include third-party verification in its pending greenhouse gas (GHG) registry are asking the agency to conduct a cost-analysis of the verification, a move that could increase pressure on EPA to include external review of industry emissions data if the analysis finds it to be cost-effective.

Auditing firms and officials from the voluntary Climate Registry (TCR) argued in favor of independent verification if it is found to be cost-effective at an April 6-7 public hearing on EPA's proposal in Arlington, VA. EPA's March 10 proposal would give agency staff authority to review and verify all reported GHG emissions, spurring fears from some that EPA may not have the resources for the undertaking.

However, industries that would be subject to first-time GHG reporting requirements under the agency's proposal generally said at the hearing that they agree with EPA that third-party verification is unnecessary.

The proposed emissions registry would require suppliers of fossil fuels and industrial chemicals, manufacturers of vehicles and engines, and other facilities that emit 25,000 metric tons or more of GHG emissions to submit annual emission reports to the agency. The sources account for up to 90 percent of U.S. GHG emissions. The registry was mandated by Congress in the 2007 energy law and is viewed as the first step in the eventual implementation of an economy-wide cap-and-trade system to reduce GHGs (*Inside EPA*, March 13).

Most existing programs to track industrial GHG releases require third-party verification to ensure the veracity of the data. California, the European Union and most voluntary U.S. registries all require external review of data submissions. At the hearing, several speakers argued for the same approach in EPA's proposal.

TCR, a major voluntary registry that includes 39 U.S. states, requires independent verification and has long urged EPA to do the same in the federal registry. "[TCR]'s primary focus is ensuring that the data collected by EPA is high-quality, accurate and reliable and that EPA's verification process is consistent with the highest standards for ensuring accuracy," TCR Eastern Director Denise Sheehan told *Inside EPA* in an interview.

Sheehan said EPA's proposal lacks a full analysis of the cost of using independent auditors, and EPA should conduct such analysis as part of its rulemaking process. TCR intends to provide EPA with information on the costs associated with its own program, Sheehan said.

EPA says in the preamble to the registry proposal that in-house verification is consistent with other regulatory programs the agency administers, and that the approach would reduce costs for both reporters and the agency, but acknowledged some disadvantages to the rule, namely "the greater potential for inconsistent and inaccurate data in the absence of independent verification and the lower level of confidence that the public, stakeholders and EPA may have in the data."

But the agency says in the proposed rule that its internal verification process would be sufficient to perform the essential task of verifying the data companies submit.

“Quality control -- in the form of both good practices (such as documentation procedures) and checks on whether good practices and procedures are being followed -- is applied at every stage of inventory development and document preparation,” the EPA proposal says. The agency outlined an in-house quality assurance/quality control process that includes both general and source-specific reviews of the emissions data submitted by industries, as recommended by Good Practice Guidance from the Intergovernmental Panel on Climate Change, as well as data quality assurance reviews by both experts and the public.

But several commenters cited flawed cost analysis in the proposal and asked EPA to reevaluate its position on external audits. “We believe that there are several flaws in EPA’s rationale as it relates to the costs and benefits of third-party verification,” said Keith Dennis of First Environment Inc., an accredited verification firm for TCR and the American National Standards Institute, among other emissions-reporting protocols.

Dennis said EPA should strive for consistency with other GHG reporting programs -- such as the California state program -- which generally require third-party verification, rather than consistency with other EPA air quality programs, which he said are fundamentally different from the proposed registry.

KEMA, a company that also verifies GHG emission reports, said that third-party reviews have proven to be effective and efficient in other programs and significantly reduce agency expenses by using auditors located near the facilities subject to reporting requirements and by shifting travel costs from the agency to the emitters. “I think the direct approach using EPA-only personnel would be very difficult to scale up and manage in the timeframe indicated, and of course very costly and burdensome to the tax payer,” said KEMA witness Henri Pierre Salle.

Industries that would be subject to the reporting requirements generally agree with EPA that third-party verification is unnecessary, according to comments from the National Petrochemical and Refiners Association and the Edison Electric Institute (EEI). “In general, EEI supports . . . EPA’s decision not to make third-party verification mandatory, particularly when utilities are already delivering ‘quality data’ in their current reporting under the acid rain program,” EEI’s Eric Holdworth said.

One utility industry source says that EPA’s long-running acid rain program -- in which EPA verifies emissions data submitted by industry -- has provided such “quality data” and the registry could do the same.

ACTIVISTS VOW TO PUSH EPA TO EXPAND GHG RULES BEYOND AUTOMOBILES (*Inside EPA*)

4/10/2009

EPA's pending finding that greenhouse gases (GHGs) endanger public health and welfare, which will spur emission rules for motor vehicles, is prompting environmentalists to call for broader regulation of other mobile sources including planes and ships, and to urge the agency to pursue separate rules to cut GHG emissions from power plants.

Activists say that swift issuance of agency regulations mandating cuts in GHG emissions from major mobile sources and power plants will address the most significant contributors to climate change while also adding to pressure on Congress to pass broad legislation creating a cap-and-trade program to cut GHGs.

However, industry sources counter that EPA's current plan to issue GHG rules only for motor vehicles hints at an optimism in the agency that Congress will take the lead on addressing all emissions sources, rather than have the agency conduct the extensive administrative process to issue a host of climate rules.

EPA is slated as early as April 16 to release a proposed endangerment finding for GHGs, which is expected to make a general finding that GHGs harm human health and the environment, and a more specific finding that motor vehicles "cause or contribute" to this pollution. The agency is not expected to issue a finding that other sources, such as ships or power plants, cause or contribute to the pollution, according to several sources.

The pending finding is a response to the Supreme Court's April 2007 ruling in *Massachusetts v. EPA*, which directed the agency to reconsider an earlier finding that GHGs from motor vehicles do not endanger human health or welfare and therefore do not need to be regulated under the Clean Air Act. A positive finding for endangerment to human health and/or welfare from GHGs under section 202 of the Clean Air Act, which sets motor vehicle emissions and fuel standards, would trigger first-time EPA GHG rules for vehicles (*Inside EPA*, March 13).

After finalizing a positive endangerment finding the agency is expected to develop such rules for motor vehicles but not immediately for other sources. Activists are now vowing to push EPA to expand the proposed endangerment finding to include other mobile sources and pursue separate rules to cut GHG emissions from power plants.

One Earthjustice attorney says that if the endangerment finding is limited to motor vehicles, activists will immediately send a letter to EPA urging an expanded determination that finds ships and airplanes also cause or contribute to climate change, in an effort to speed the agency's regulation of the sectors.

EPA should expand the finding because the agency already faces formal requests to regulate emissions from the ships and airplanes, the attorney says. Earthjustice, on behalf of Friends of the Earth, the Center for Biological Diversity and Oceana, in July filed a notice of intent to sue EPA for failing to regulate the sectors. In addition, emissions from the sectors are significant enough to be regulated, because aircraft contribute three percent of total U.S. GHGs and ships account for five percent of U.S. transportation GHGs, the attorney says.

According to a draft EPA presentation on the finding, the agency has in the past found that sources that account for as little as one percent of mobile source emissions of criteria pollutants have been found to contribute to pollution. But the document also shows that EPA may find that sources that emit a *de minimus* amount of GHGs do not cause or contribute to climate change, a move that clear the way for the agency to exempt small GHG sources from regulation. *Relevant documents are available on InsideEPA.com.*

Another key environmentalist is urging EPA to act quickly to regulate GHGs from power plants. Although the source does not suggest that the agency should broaden the upcoming endangerment finding to include the sector, the source believes that EPA should move to regulate power plants later this year.

In lieu of climate legislation, the best approach would be to issue emission standards for power plants -- most likely as a new source performance standard (NSPS) -- while not precluding the need for Congress to pass legislation creating a more comprehensive climate cap-and-trade program, the source says.

Activists see EPA's pending NSPS for coal-fired power plants -- which activists hope will be set to limit emissions at a level equivalent to a natural gas plant -- as a key tool in their efforts to regulate GHG emissions in part because it will set a standard that will be applied to both new and existing plants. The revision of the NSPS for electric generating units is currently before the agency, after a federal court remanded the 2006 standard back to EPA on the issue of whether it should include limits for carbon dioxide following the Supreme Court ruling in *Massachusetts v. EPA* that CO2 is an air pollutant (*Inside EPA*, March 20).

One state officials notes that EPA does not need to expand the endangerment finding or issue a separate "cause or contribute" finding in order to begin regulating emissions from power plants. The Bush administration when it issued an advance notice of proposed rulemaking for regulating GHGs under the Clean Air Act late last year indicated that it could move forward with requiring carbon dioxide limits in NSPSs, which apply to stationary sources, regardless of whether an endangerment finding has been issued, the source says.

However, a third environmentalist is comfortable with EPA addressing only motor vehicles for now. It makes sense for EPA to focus on that sector because it was the basis for *Massachusetts*, and EPA's finding for motor vehicles will give the agency the authority to move on to other sectors, the source says.

If EPA focuses on mobile sources and power plants after issuing the finding it could also narrow agency "interference" with climate legislation that would create an emissions credit trading program covering a broad range of industrial sectors, the key environmentalist says.

One utility industry source says EPA may be taking a sector-by-sector approach in the hope Congress will enact comprehensive climate legislation. "There is some optimism on the part of EPA that if by waiting for a while, Congress would enact something," the source says. Then EPA could concentrate on implementing climate legislation rather than pursuing rules for each sector, the source says. -- *Kate Winston & Jenny Johnson*

WAXMAN-MARKEY DRAFT CLIMATE BILL WOULD BOLSTER CITIZEN SUITS (*Inside EPA*)

4/10/2009

House energy committee Democrats' draft climate legislation includes provisions affirming individual citizens' rights to bring lawsuits to protect the environment from greenhouse gas emissions, including language enabling plaintiffs to seek financial compensation for the government's failure to act on certain climate issues.

The inclusion of the citizen suit provision is likely to generate intense interest among industry groups who in the past have often regarded such lawsuits as something to be held in check. Observers say the language would also resolve uncertainties surrounding the legal standing of individual citizens to bring climate-related claims, in cases where the actual damages from emissions may be small or the risk is spread out among many potential victims.

Questions about the standing of individuals have persisted after the 2007 Supreme Court ruling in *Massachusetts v. EPA* affirmed the rights of states to bring suits to force EPA action on global warming, but did not directly address the ability of individual citizens to do so.

At issue is language in the discussion draft -- from House Energy & Commerce Committee Chairman Henry Waxman (D-CA) and energy subcommittee Chairman Edward Markey (D-MA) -- that defines even small incremental emissions as a hazard and augments current citizen suit provisions in the Clean Air Act to specifically take into account climate change and cover implementation of the legislation's provisions.

Language in the draft revises the citizen suit and judicial review portions of the Clean Air Act with new language specifying that harm from air pollution includes any effect, including climate change, "currently occurring or at risk of occurring," including hazards associated with a "small incremental emission" of greenhouse gases. The definition holds "whether or not the effect or risk is widely shared," according to the draft.

Additional language authorizes the awarding of compensation from the U.S. Treasury in cases where a federal agency has failed to perform a "nondiscretionary act or duty" to limit greenhouse gas emissions.

Also, the draft legislation includes general legislative findings discussing the importance of even small amounts of greenhouse gas emissions and dispersed risks. The findings state in part that "controlling emissions in small and large amounts" is essential to combat climate change, and that the fact that the risks from greenhouse gas emissions can be widely shared "does not minimize the effects individual persons have suffered."

An analysis being circulated by the Center for Progressive Regulation, authored by Nina Mendelson, says the Waxman-Markey draft "reaffirms the importance of citizen enforcement of the environmental laws against both potential violators and agencies" that have the responsibility to implement them. The analysis argues that the draft bill responds to a series of court decisions, and specifically Supreme Court rulings, that have raised questions on the scope of traditional citizen enforcement under environmental laws.

EDITORIAL/COMMENTARY/OP ED/LETTERS

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'No' vote on wastewater contract is shortsighted (*Seacoastonline.com*)

April 10, 2009 6:00 AM

The town elections were a month ago, but the fallout is just beginning in some Seacoast communities.

Officials in towns where the municipal and/or school budgets were defeated are working to make ends meet with less money in the face of rising prices. In addition, towns are forgoing repairs to equipment that should have been replaced years ago so they can make it through yet another year, and union and town negotiators are back at bargaining tables trying to come up with contracts that will satisfy voters.

Thanks to a vote in Hampton, officials in the town of Rye are now faced with a decision they never thought they would have to make — how to raise the money to construct a wastewater treatment facility of their own to serve the Jenness Beach area of that community.

On March 10, Hampton voters approved a five-year extension of that town's contract with Rye to treat the wastewater from the Jenness Beach area, but also voted to tell Rye that after this latest contract period is over, there will be no further renewals.

Officials conjectured the reason voters chose to discontinue accepting Rye wastewater was because there is no sewer service available to residents who live on the west side of Hampton. The rationale is that, until Hampton can provide sewer to its residents, it shouldn't be giving away a portion of its wastewater treatment capacity to another community.

We think the voters in Hampton made a mistake and that they made it for at least two reasons other than the one stated above.

The first has to do with a lack of understanding. Hampton receives in excess of $93,000 a year from Rye in payment for use and necessary improvements to the plant.

Town officials consistently confirm that since the beach sewer program has been completed, the treatment plant has plenty of capacity available. It seems contrary to common sense for voters to turn down money from any source that helps offset the cost of operating that plant and would help cover the future expenses involved with upgrading it as the Environmental Protection Agency discharge requirements grow more and more stringent.

The second reason some voters may have turned down future contract extensions with Rye, has to do with the all too prevalent feeling that anything Hampton has or does should be solely for the benefit of its citizens. It's what we like to call the "OIMBY" (Only In My Back Yard) syndrome.

This feeling is particularly disturbing since wastewater treatment — along with solid waste disposal, growth planning and mosquito control — are really regional issues that all the coastal communities must deal with. To take a parochial attitude toward any of these issues makes the solutions both more costly and time consuming.

We also wonder how the majority of Hampton residents would feel if the town of Exeter decided it would no longer take the wastewater generated by the almost three dozen homes located in Hampton, close to the town line. We also wonder how many Hampton residents are even aware of that arrangement.

Hampton selectmen have indicated that they recognize the problem created by the vote against future Rye wastewater contract extensions and have discussed the possibility of putting an article on the 2010 warrant requesting that voters rescind the 2009 vote. We hope they follow through with that idea and support a continued relationship with Rye for the foreseeable future.

ENERGY

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Garbage collectors (*World Magazine*)

ENVIRONMENT: Where most people simply see trash, some see renewable energy—or even dinner | *Mindy Belz*

April 25, 2009, Vol. 24, No. 8

WASHINGTON, D.C.—Brent Dieleman likes to talk about a facility near Washington, D.C., that burns trash, which heats water for steam to turn turbines to make electricity. There are only 87 such facilities in the United States, and none has been built in the last 15 years. Covanta Energy's trash-to-energy plant in Fairfax, Va., outside Washington processes 3,000 tons of garbage every day, producing enough energy to power 75,000 homes.

The emissions from the process—while cleaner than fossil fuels—look toxic. "They're clean, but nobody wants them in their communities," said Dieleman, 28, who analyzes trash for a living at an environmental consulting firm, SCS Engineers, in Washington. In communities where these biomass plants are proposed, residents object because of quality of life: What will happen to their asthmatic children? they demand. The perception, Dieleman says, comes from plants that did emit harmful chemicals many years ago—practices that have changed under restrictions from the Environmental Protection Agency.

Trash-to-energy has an unlikely champion in Virginia gubernatorial candidate Terry McAuliffe, former head of the Democratic National Committee. He toured Covanta's facility in March and proclaimed his support the whole way through. But he is an exception among politicians. Trash-eating, smoke-belching energy plants aren't a politically popular idea, and they barely garner a mention on Capitol Hill.

The concept has a more persistent champion in Dieleman. In a recent trip to Texas, he puttered through landfill after landfill, scrutinizing the types of waste and the management of each site. Texas, he says, has a lot of potential for projects to recycle landfill gas, or methane, into energy. Dieleman and his team also have taken on the dumpsters at the University of Maryland, divided each scrap of trash into over 60 categories, and were able to engineer better ways for the university to manage its solid waste.

Washington may be a city where people pride themselves on the nobility of their jobs and the titles that go with them, but Dieleman sees his devotion to solid waste management as noble, too, and a calling from God: "I'm just a garbage man. . . . Everybody plays an important role in bringing about God's kingdom."

Part of promoting God's kingdom, he believes, is eliminating wastefulness. But private and public recycling programs are falling by the wayside as markets slide and the price of recyclable materials per ton plummets. "We live in such a throw-away society," said Dieleman. "The natural world, the way God created it—there is no waste."

At dawn on Saturday mornings in Pella, Iowa, when his classmates were either asleep in their beds or watching cartoons, 9-year-old Brent Dieleman would ask his father to take him out to collect trash. For the next eight years, he and his father scoured the roadsides on Saturdays for recyclable litter, and once he got his driver's license, young Dieleman went on his own. His father was relieved.

Dieleman's garbage sifting disgusts even his colleagues, but the clean-cut engineer continues his childhood hobby by going dumpster diving for recyclables on weekends. The addiction once helped solve a crime: On a Saturday morning rummage through a trash can at a truck stop in Iowa, Dieleman found a half-full Pepsi bottle. He dumped the soda out and discovered a wad of checks stuffed inside, over 60, made out to a Pizza Hut in Wisconsin. The restaurant had been robbed at gunpoint the day before. Because Dieleman was wearing gloves when he picked up the bottle, police were able to dust the bottle for fingerprints and track down the criminals.

"I thought I would get free pizza for a year," he said. "All they sent me was a pencil and a fake sheriff badge."

But paying attention to waste is paying off—not usually in solving crimes, but in finding "renewable energy" in something most people simply want to be rid of: trash.

When politicians talk about "renewable energy," they're usually referring to wind or solar energy, both expensive to generate. With credit markets floundering, policy makers assume that the government will have to provide capital for investing in renewable energy infrastructure—-especially if the United States is to meet the goal set by the Obama administration of doubling renewable energy generation in the next two years.

Hudson Clean Energy, an energy equity firm, estimates that the price tag for reaching the goal will be $134 billion, according to The New York Times. Other renewable energy ideas run the gamut, from drilling into the earth's magma to harnessing ocean waves to installing smart energy use meters in every home in America. Most of the ideas require substantial investment in infrastructure.

For Dieleman trash is also renewable energy. Landfill gas, for one, can be channeled into energy, but that is an icky, unpopular idea, especially with the climate-change lobby, with its concern for letting loose in the atmosphere methane, a potent greenhouse gas. To that Dieleman shakes his head: "There are so many good uses for garbage!"

Elsewhere in Washington, a like-minded group is going at the problem in a more grubby way, with the only investment being their own time. They are dumpster divers who haunt the backside of grocery stores, restaurants, and bakeries to get their daily bread. Ryan Beiler, one of the ringleaders and web editor for Sojourners magazine, said his family eats well as a result: On one of his first runs he boasts that he found several jars of beluga caviar. If that doesn't sound entirely appealing, he also has found prime cuts of beef, smoked salmon, and fresh vegetables.

Thirty million pounds of food are thrown out every year, according to the EPA. Often, food has to be discarded when it is past its expiration date, though it may not be spoiled. The divers say they are careful about getting food that won't make them sick—but untouched food in the trash, they say, is God's provision. Beiler said since he hasn't spent very much money on groceries, he has more money to give away. He sometimes ends up with bags of artisan breads that he brings in to share at work. Other divers will come up with "a bumper crop of organic apples, or a surplus of Belgian chocolate pudding," he says. And they always share.

Vizio's New HDTV Doesn't Sacrifice Quality for Ecology (*Invention & Technology News*)

Published: Thursday, April 09, 2009 10:03 AM EST 79 Views
Author: Brian Reinhardt

It's time to replace your current flat screen television or – dare I say – tube television with a newer model. You are aware of the Energy Star logo when appliance shopping, but did you know that you can also add Energy Star efficiency to your home electronics collection? Products that display the Energy Star logo meet rigorous energy efficiency guidelines set forth by the U.S. Environmental Protection Agency and the U.S. Department of Energy. You can now go green while watching your favorite television program with Vizio's new uber energy efficient HDTV.

The Vizio VECO320L is a 32-inch HDTV that exceeds the Energy Star's current minimum standards for active and standby power by 15 % and uses approximately 44% less electricity than a traditional 32-inch LCD HDTV. While using less electricity and saving money in the process, you are also getting a superior-quality, high def television. The Vizio VECO320L supports 720p and 1080i signals, has 2x HDMI inputs, component, composite, RF and RGB inputs, so you can incorporate the other components of your home entertainment system. As a full high-definition television displaying the highest resolution available in more than 16 million colors, the Vizio VECO320L is an environmentally friendly HDTV option that doesn't scrimp on quality. If you're

still watching Monday Night Football on a clunky 32-inch tube T.V., you might have to enlist some of your friends to help you carry the old set out – but not the new one in – because the Vizio VECO320L weighs in at a manageable 40 pounds.

There is an average of two televisions per U.S. household and approximately 275 million nationwide. As of November 2008, more stringent standards for Energy Star qualified TVs were put into place. This means that newer products are not only better for the environment – helping to minimize your carbon footprint to a greater degree – but these products will also save you more money over time. By purchasing ecologically friendly products, you are preventing global warming and promoting cleaner air while saving money on a high quality electronic device that you were going to buy regardless.

Irvine, California-based Vizio, Inc. is the #1 selling brand of flat panel HDTV's in North America and has been honored with numerous awards, including ranking first in the Inc 500 Top Companies in Computers and Electronics. As a result, Vizio is the first American brand in over ten years to top major categories for sales of televisions. Vizio offers a one-year warranty on their products, as well as free lifetime technical phone support.

The Vizio VECO320L is available for purchase for approximately $499.00. Visit Vizio.com for your nearest retailer.

ACTIVISTS OPPOSE ENERGY BANK BILLS' NEPA EXCLUSION PROVISIONS (*Inside EPA*)

4/10/2009

Activists are fighting provisions in two bills to establish a government-owned clean energy bank to fund clean energy projects that would allow the bank to adopt other agencies' existing categorical exclusions from National Environmental Policy Act (NEPA) review, claiming the provisions may expand existing exclusions.

However, one NEPA academic expert counters that the provisions are reasonable and necessary to promote clean energy projects. The Department of Energy (DOE), EPA and other agencies that have already developed regulations detailing what categories of projects are exempt from NEPA review have more expertise than the bank would to determine when the exemptions are appropriate, the source says.

The dispute highlights an ongoing rift over how to streamline the NEPA environmental review process for clean energy projects. Activists are already divided about how -- if at all -- to revise

NEPA to promote green jobs, solar power and other projects with environmental benefits (*Inside EPA*, Nov. 14).

Rep. Chris Van Hollen (D-MD) March 24 introduced his clean energy bank bill and Senate Energy & Natural Resources Committee Chairman Jeff Bingaman (D-NM) is expected to soon introduce a similar companion bill to create a government-owned bank to fund clean energy and energy efficiency projects.

The Van Hollen bill would establish an independent corporation with no ties to other agencies to administer the clean energy bank, while a draft of the Bingaman bill would establish the bank within DOE. *Relevant documents are available on InsideEPA.com.*

Both the Van Hollen bill and the draft Bingaman bill include language that allows the bank to adopt categorical exclusions developed by other agencies, if the White House Council on Environmental Quality (CEQ) approves of the action. Categorical exclusions are a regulatory determination by an agency that a certain type of activity never triggers an environmental review under NEPA. The bills would still require the bank to conduct environmental reviews for actions that are not covered by a categorical exclusion.

“In providing any financing support under this section, the bank may, with the concurrence of [CEQ], adopt by reference and rely on any applicable categorical exclusion or environmental review promulgated by any other federal agency pursuant to [NEPA,]” the Van Hollen bill says.

Similarly, the Bingaman bill would allow the bank to adopt wholesale existing agencies’ categorical exclusions. Where an exclusion does not apply the draft legislation says the bank should “in consultation with [CEQ] and any other applicable agencies, use the administrative records of similar reviews conducted throughout the executive branch to develop the most expeditious review process practicable.”

Activists oppose the bank adopting other agencies’ exclusions because it would allow the bank to bypass the normal NEPA process for establishing categorical exclusions. Environmentalists want to maintain a careful, agency-by-agency process for categorical exclusions, because they consider the exclusions to be “loopholes” and oppose any language that appears to broaden those loopholes, one environmentalist says.

It would not be appropriate for the bank to adopt another agency’s categorical exclusions because the decision must be based on the agency’s experience and practice, the source says. Individual agencies should conduct separate analyses because each agency may be dealing with the same practice in different situations, the source says.

For example, there would be different considerations for mowing grass if it is done on a playground or if it is done on a wildlife refuge, the source says. If the bank were to adopt an agencies’ existing exclusions rather than draft its own list, it could ignore such considerations and damage the environment, the source says.

The activist says that Bingaman, who has not yet formally introduced his bill, may have dropped the categorical exclusion language and only retained the provision on consultation with other agencies over expedited NEPA reviews. The source says this would be the best approach to expediting NEPA as the bank would be able to draw on other agencies’ expertise, but still be required to come to its own conclusions.

Bingaman’s office declined to comment on the bill because it has not yet been introduced.

Despite activists' concerns over the categorical exclusion provisions, the academic expert says the language is appropriate and necessary to speed clean energy development. Other agencies have already developed categorical exclusions for when a wind or solar project doesn't need a full NEPA review and many agencies have more expertise than a bank would in developing environmental criteria, the source says. "It may be punting on the issue, but punting to an agency with greater expertise," the source says.

The approach would expedite NEPA while not "cutting off its wings entirely," the source says. The bank would still need to identify and analyze substantive issues for projects that don't have categorical exclusions, and it is unlikely that a project that would have significant environmental impacts would have won a categorical exclusion from an environmental agency, the source says.

The difference in opinion on the green bank bills' NEPA language echoes an ongoing division within the environmental community about how to expedite NEPA for so-called green projects.

For example, some activists advocate streamlining NEPA for "smart growth" transportation projects, arguing that speedier NEPA reviews are justified by the broad economic and long-term environmental benefits the projects would provide. Other environmentalists -- particularly local, grassroots groups -- fear revising the law would be opening a Pandora's box and would potentially eliminate an effective tool they have used to block projects at the local level for decades.

In other examples, some groups strongly backed the Bureau of Land Management's decision to freeze solar energy projects to conduct NEPA analyses while others criticized the move because it delayed progress on solar power. And activists were divided about a Nov. 5 decision by DOE to limit its NEPA review of a rule governing $25 billion in loans subsidizing the retooling of auto factories to build low-emissions, fuel-efficient cars.

FUEL

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U.S. ethanol credit prices drop on blending delay (*Reuters*)

Thu Apr 9, 2009 3:49pm EDT

NEW YORK, April 9 (Reuters) - U.S. ethanol credit prices have dropped on diminished expectations that the government will allow increased levels of the alternative fuel to be blended into regular gasoline this year.

Prices for the credits, known as Renewable Identification Numbers, or RINs, have fallen since late March.

On Thursday, 2009 RINs, which expire in 2011, were valued at 8.5 cents, down nearly 30 percent since March 27, according to New York-based Rinxchange, the only bourse on which the credits are currently traded.

Vintage 2008 RINs, which expire in 2010, were pegged at 4 cents, down about 47 percent.

RINs prices had surged in January after ethanol prices hit a premium of more than 40 cents above gasoline as a fleet of ethanol plants shut on financing difficulties and poor margins.

Since then RINs have fallen amid weak fuel demand and after Valero Energy Corp (VLO.N: Quote, Profile, Research, Stock Buzz) bought seven ethanol plants from bankrupt ethanol producer VeraSun Energy Corp (VSUQE.OB: Quote, Profile, Research, Stock Buzz), which the oil refiner plans to run at capacity.

Prices of RINs dropped further after the Environmental Protection Agency said this month it will take another year of tests to see whether the higher blends will not harm car engines.

"It's going to take longer than most thought to even think about additional percentages of ethanol as an additive to gasoline," a RINS broker in an e-mail.

Ethanol producers have lobbied the government to increase the maximum blend of ethanol into gasoline that can be burned in normal cars to 15 percent from 10 percent.

U.S. fuel blenders and refiners are required to blend about 11.1 billion gallons of biofuels, mostly ethanol, into gasoline this year under a 2007 law known as the Renewable Fuels Standard. The mandate goes up to 36 billion gallons by 2022.

Each blender has to mix a required amount of biofuel into their gasoline or face fines. To track how they are doing, the government assigns each gallon of biofuel a RIN. Each year refiners prove they have met their obligation by turning in the RINs to the Environmental Protection Agency.

Instead of blending all the biofuels themselves, refiners also have the option to simply buy excess RINs from other refiners who have done extra blending.

(Reporting by Timothy Gardner; Editing by David Gregorio)

HAZARDOUS WASTES

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EPA to distribute $197 million to assess petroleum leaks (*Waste News*)

April 9 -- The U.S. EPA is distributing $197 million appropriated under the American Recovery and Reinvestment Act of 2009 to assess and clean up underground storage tank petroleum leaks.

The funds -- part of what is better known as the economic stimulus package -- will create or retain jobs and contribute to at least 1,600 cleanups around the country, according to the EPA.

The greatest potential hazard from a leaking underground storage tank is that the petroleum or other hazardous substances seep into the soil and contaminate groundwater, which is the source of drinking water for nearly half of all Americans, according to the EPA.

The funds will be used for overseeing the assessment and cleanup of leaks from underground storage tanks or directly paying for assessment and cleanup of leaks from federally regulated tanks where the responsible party is unknown or unwilling or unable to pay for the cleanup, or when the cleanup is an emergency response.

States and territories will get $190.7 million of the total funding in the form of cooperative agreements to address shovel-ready sites within their jurisdictions. The EPA will use $6.3 million of the total funding to assess and clean up shovel-ready sites in Indian country.

The EPA´s regional underground storage tank programs will enter into cooperative agreements with states and territories in spring 2009. These cooperative agreements will include detailed descriptions of state spending plans.

Information on the underground storage tank funding and the EPA's implementation of the American Recovery and Reinvestment Act of 2009 is available online at www.epa.gov/oust/eparecovery

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

PESTICIDES

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US wages war on bugs afflicting troops abroad (*Associated Press*)

By JANET McCONNAUGHEY

NEW ORLEANS (AP) — Fluorescent rodent feces, a promising new mosquito repellant and a better flytrap are all part of a war on bugs designed to protect U.S. troops around the world.

Researchers in the Pentagon's Deployed Warfighter Protection Research Program highlighted pest-fighting innovations this week at the American Mosquito Control Association convention attended by some 800 scientists and insect control experts. Their aim: to take no prisoners among disease-carrying flies, mosquitoes and other bugs that threaten Americans in uniform abroad.

Even the common fly is counted among the enemy.

"When you're deployed, I would say 90 percent of all soldiers, service members, are going to have issues with filth flies," said Army Lt. Col. Jason Pike, executive officer of the 65th Medical Brigade's Force Health Protection and Preventive Medicine program headquartered in South Korea.

"Filth flies carry many organisms which cause diarrhea ... It might not be fatal, but one soldier out of commission affects a lot of other people," he said.

Begun in 2004, the Deployed Warfighter Protection Research Program dispenses $5 million a year to find new ways to combat disease-carrying insects that threaten the troops — applications that ultimately could protect the public at large.

Military-driven research has produced past innovations against malaria and dengue and helped develop DEET, a key ingredient in most modern repellants. It even has led to chemical-treated fabrics that ward off ticks and mosquitoes.

Fighting bugs is a "global perpetual need," said program coordinator Graham B. White of the Armed Forces Pest Management Board. "Even if nobody went to war for a long time, these things would still need to be developed."

He said small insecticide sprayers developed through the program are now in use. The program also backed testing that secured recent Environmental Protection Agency approval of an insecticide spray that is highly toxic at low doses to adult mosquitoes but safe for mammals.

Now Navy Corpsman Joe Diclaro II is taking aim at the housefly. "I like to think of it as a death device," Diclaro said of a fold-up flytrap designed to ship flat and be rolled into bug-catching tubes in the field.

For starters, he changed the color of the trap.

"Almost everything on the market is yellow," said Diclaro, who is working on a doctorate in medical entomology at the University of Florida in conjunction with the Agriculture Department's Mosquito and Fly Research Unit.

When Diclaro released house flies in a dark tunnel between boxes lit in different colors, he found flies prefer blue or white over yellow.

So his trap is made of blue signboard. Tests show it has killed about 3,000 flies in 24 hours. Diclaro said his university's technology office has applied for a patent.

The research is among nearly three dozen studies funded by the Pentagon program since 2004.

Stephen Duke, of the National Center for Natural Products Research in Oxford, Miss., described possible bug repellents derived from American beautyberry, a shrub common to the Gulf coast. Duke said work began after a botanist remarked that relatives had rubbed farm mules with beautyberry leaves for bug protection.

Two colorless, odorless compounds in the leaves — callicarpenal and intermedeol — seem about as good as DEET against mosquitoes and repel black-leg ticks and fire ants, Duke said. He said a decision on possible commercial uses is still a few years away.

The fluorescent feces are being used at Louisiana State University to learn whether sandflies can be killed by feeding sand rats a chemical harmless to the rodents but lethal to larvae that eat their feces.

Leishmaniasis, which causes disfiguring open sores and is spread by sandfly bites, is an enormous concern in the Middle East, White said. The disease infects an estimated 2 million people a year, according to the World Health Organization.

More than 2,000 U.S. troops in Iraq and Afghanistan have suffered from the disease, said Kenneth Linthicum, director of the Agriculture Department's Center for Medical, Agricultural and Veterinary Entomology.

To show that something eaten by a rodent could affect a sandfly, LSU researchers fed hamsters a dye that glows hot pink under fluorescent light. Sandfly larvae that ate the rodents' feces glowed, too.

They then fed hamsters two different chemicals known to kill sandfly larvae. Larvae ate their feces and died.

The fluorescent bait is being tested in Kenya and more work is planned on it, said researcher Thomas Mascari, a postdoctoral student in entomology.

"In 2010, we'll be going to Egypt to work with the Navy," he said.

STUDIES MAY BOOST BID FOR EPA TO ASSESS PESTICIDES' 'SYNERGISTIC' EFFECTS (*Inside EPA*)

4/10/2009

Activists say recent National Marine Fisheries Service (NMFS) endangered species analyses that find exposure to multiple pesticides results in "synergistic" harm greater than the combined harm of the individual pesticides underscores the need for EPA to grant their request to consider such risks when assessing pesticides' impact on humans.

However, an industry source says the NMFS analyses overreach because they base their conclusions about the synergistic effects of pesticide mixtures on a single study conducted by the National Oceanic & Atmospheric Administration (NOAA) that has methodological flaws. More studies need to be conducted before EPA can make any conclusions about the effects of pesticide mixtures on humans, the source says.

Activist groups have long urged the agency to consider what they say are the real-world effects of pesticides on humans -- including the risks of exposure to multiple pesticides -- in all ongoing pesticide registration and re-registration decisions. EPA only considers cumulative risks for pesticides residues on food -- not for pesticide registrations -- and the agency evaluates these risks by aggregating pesticides' individual risks rather than calculating their total combined risk.

But activists say the NMFS findings show the flaw in such an approach, because it found a basis for so-called synergistic effects of pesticides in fish, which occur when pesticides have more adverse effects acting in combination than would be expected if the individual risks of the pesticides were added together.

At issue are recent and pending NMFS biological opinions about the risks that certain types of pesticides pose to endangered salmon. EPA is under a court order to consult with NMFS about the risks of a slew of pesticides, after a federal district court found EPA had failed to protect salmon from pesticides under the Endangered Species Act (ESA). The U.S. District Court for the Western District of Washington in the case *Washington Toxics Coalition [WTC], et al. v. EPA* imposed mandatory no-spray buffer zones preventing the use of pesticides near some waterways until EPA consults with the Fisheries Service to modify pesticide labels.

To date, NMFS has issued a Nov. 18 final biological opinion for chlorpyrifos, diazinon and malathion and is expected to finalize an opinion for carbaryl, carbofuran and methomyl in the coming weeks.

The opinions cite research about the synergistic effects of diazinon, malathion, chlorpyrifos, carbaryl, and carbofuran conducted by NOAA. The study found that many salmon died when exposed to pesticide combinations, even though no salmon died when exposed to an individual pesticide.

NMFS' findings on the combined, or synergistic, effects of the pesticides is one of several factors that spurred NMFS to suggest that EPA dramatically expand the no-spray buffer zones in order to protect salmon. The court in the *WTC* case ordered buffer zones of 60 feet for ground application and 300 feet for aerial applications, but for some pesticides NMFS recommends expanding the requirements to 600 feet for ground application and 1,000 feet aerial application. *Relevant documents are available on InsideEPA.com.*

Activists praise the opinions' consideration of synergistic effects and expect NMFS opinions for the more than 30 remaining pesticides under the court order will also consider similar effects. Research showing synergistic effects of pesticides "is a clear message to EPA that . . . you absolutely need to look at chemicals jointly," according to a source with the Northwest Coalition for Alternatives to Pesticides (NCAP).

In addition, the research and biological opinions shows that EPA can and should be looking at the risks that pesticide combinations pose to humans, the NCAP source says. As systems are developed to better evaluate risks that multiple chemicals pose to salmon, EPA will be able to use those models for people, the source says, adding, "Absolutely it's a hill that needs to be climbed."

An attorney with Earthjustice says activists expect the Obama EPA to issue guidance or regulations about how to assess the risks of pesticide mixtures.

EPA currently considers cumulative effects in setting pesticide tolerances, which is the amount of residue that is allowed on food, both imported and domestically grown. However, EPA limits its tolerance analysis to the cumulative impacts of pesticides that work through the same biological pathways, and does not consider cumulative impacts in pesticide registrations.

But the industry source says neither NMFS nor EPA should rely on the limited amount of research to draw conclusions about pesticide mixtures. NMFS' opinions appear to rely only on the NOAA study, which the source says has flaws because it used higher pesticide concentrations than would be found in real-world pesticide use.

Industry met with NMFS and EPA April 7 to express their concerns about the carbaryl, carbofuran and methomyl draft opinion, including their belief that NMFS has insufficient evidence of synergistic effects, the source says. In addition, the source says it is much too early for EPA to be drawing conclusions about the human health effects of pesticide mixtures. More research needs to be conducted before EPA applies the data to humans, the source says. -- *Kate Winston*

POLITICAL

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INHOFE OPENS DOOR TO BLOCKING VOTE ON EPA AIR OFFICE NOMINEE (*Inside EPA*)

4/10/2009

Sen. James Inhofe (R-OK) is leaving the door open to placing a hold on the nomination of Gina McCarthy, President Obama's pick to head EPA's air office, citing Democrats' past opposition to Bush administration nominees and pointing to precedent for a hold unless he receives swift, complete answers to his questions for McCarthy.

"The Senate has not confirmed a nominee for this position in eight years, not since 2001. And it's due entirely to the opposition of my colleagues on the other side of the aisle," Inhofe said in his opening statement at McCarthy's April 1 Senate Environment & Public Works Committee (EPW) confirmation hearing.

A spokesman for Inhofe -- ranking member on EPW -- says the senator currently has no plans to place a hold on McCarthy's nomination, which would block a full Senate vote to confirm the nominee. However, the spokesman says there is precedent for a hold if Inhofe fails to receive timely and full answers to his questions for McCarthy.

Opposition to President Bush's nomination of William Wehrum to head EPA's air office and other nominees "arose from allegations that nominees failed to provide timely and complete answers to questions submitted to them," Inhofe said in his opening statement. "In effect, Madam Chairman, a standard was set by you and your colleagues: in order to advance this nomination as expeditiously as possible, the minority will need timely and complete answers to our questions. Let's hope that occurs."

Jeffrey Holmstead was the last confirmed EPA Office of Air & Radiation assistant administrator, serving from the beginning of the Bush administration to 2005. After Holmstead quit the agency, Wehrum -- an EPA official and former industry lawyer alongside Holmstead at the law firm Latham & Watkins -- took over in an acting capacity, and Bush eventually nominated Wehrum to the slot in February 2006.

However, EPW Chairwoman Barbara Boxer (D-CA), at the time a member of the panel's minority when the Republicans controlled the Senate, placed a hold on Wehrum's nomination due to her concerns about his record on various clean air rulemakings. The then-GOP majority on the committee approved the nomination 10-8 in April 2006, but Boxer's hold prevented Wehrum from ever being confirmed to head up EPA's air office.

Boxer's hold was due to her concerns about Wehrum's role in Bush EPA rules that she said were too industry-friendly, including EPA's mercury emissions trading rule and changes to the new source review program. Boxer's opposition eventually led Wehrum to submit his resignation in May 2007 and deputy air chief Robert Meyers then served in an acting capacity until the end of the administration.

In 2005, Boxer also used a hold on Bush EPA Administrator Stephen Johnson's nomination to secure his commitment to cancel a controversial study evaluating the use of pesticides on children. Johnson canceled the study directly in response to Boxer's vow to hold up his nomination.

Now, Inhofe is suggesting that he could put a block on McCarthy's nomination to head the air office unless he receives what he sees as timely, complete responses to policy questions.

Inhofe said his comments had nothing to do with McCarthy personally, and pointed out that McCarthy had already provided answers to his first round of questions, which typically ask nominees to provide their career history, possible conflicts of interest and other details. However, Inhofe said he would likely have further questions, saying, “I’m sure there’s some things we may want to pursue.”

Although it is unclear what concessions Inhofe might seek to overcome his possible opposition to McCarthy, he raised concerns about climate regulations under the Clean Air Act.

Inhofe said that EPA’s pending endangerment finding will extend the reach of EPA’s regulations to all aspects of the economy, and he urged caution in EPA’s rules. “I hope that you will approach pending decisions on greenhouse gas regulations with care and to the extent that you can, ensure that the concerns of small business, families and every American that uses energy receives a proper hearing,” Inhofe said.

Sen. George Voinovich (R-OH) also expressed concern about greenhouse gas regulations under the Clean Air Act, and urged McCarthy to take a bipartisan approach. “The act’s principle regulatory programs were enacted decades ago for the purpose of controlling local and regional air pollution. It was designed not to address the global phenomenon of greenhouse gases. I think that all of these things are going to have to be taken into consideration. I am confident that you will try to throw the ball down the middle.”

Other lawmakers pressed McCarthy on a range of other issues. For example, Boxer pushed McCarthy to promise to expand EPA’s newly announced effort to monitor air toxics at schools. Boxer had urged Obama EPA Administrator Lisa Jackson during her confirmation hearing to pursue the monitoring, and EPA March 31 announced that 62 schools located near industrial facilities or in urban areas would undergo monitoring.

However, Boxer indicated that the monitoring plan does not go far enough. “If confirmed will you commit to use the full extent of EPA’s authority and to work with us to expand the monitoring plan around schools and to address the problem of toxic air pollution at schools?” Boxer asked McCarthy.

McCarthy praised the resources Jackson has already committed to the effort, but added, “I will, if confirmed, go back to the agency, get a good understanding of the schools they have identified and why, and we will make sure we work with the state and local level to do testing that’s necessary to identify the risk and to move forward as quickly as possible to reduce any risks that we find.”

McCarthy has worked on air, climate and radiation issues for the last 25 years, in environmental positions in Massachusetts and as the Commissioner of the Connecticut environment department. She was also involved in developing the Regional Greenhouse Gas Initiative, the northeast region’s carbon dioxide cap-and-trade program.

Committee Democrats Boxer, Carper and Sen. Tom Udall (D-NM) generally supported McCarthy, praising her experience and hailing her ability to build alliances. Sens. Edward Kennedy (D-MA), John Kerry (D-MA), Christopher Dodd (D-CT) and Joseph Lieberman (I-CT), who are not on the environment committee, also submitted testimony in support of her nomination. -- *Kate Winston*

OBERSTAR INQUIRY, OBAMA EARMARK SEEN PUSHING CANNON'S EXIT FROM EPA (*Inside EPA*)

4/10/2009

Jonathan Cannon's abrupt withdrawal as nominee for EPA's deputy administrator slot was due primarily to an ongoing inquiry into America's Clean Water Foundation (ACWF) -- a now-disbanded organization on whose board Cannon once served -- by House transportation committee Chairman James Oberstar (D-MN), which sources believe could have complicated Cannon's confirmation hearing.

But his withdrawal, which has left EPA without a nominee for a key slot, may also be due to several other factors, including then-Sen. Barack Obama's (D-IL) support for a $3 million earmark for the organization even after ACWF officials had briefed some lawmakers -- though not Obama -- that a former bookkeeper had embezzled hundreds of thousands of dollars from the organizations.

Cannon hinted at the Oberstar investigation in a March 25 statement withdrawing his name from consideration, saying the organization, which was established to monitor farms' environmental performance but was disbanded after a critical EPA Inspector General (IG) inquiry, "has become the subject of scrutiny."

He added that while his service on the organization's board is not the subject of scrutiny, he feared that the scrutiny could delay his confirmation and distract from the challenges facing the agency.

Sen. James Inhofe (R-OK), the ranking Republican on the Senate environment committee, acknowledged in a March 25 statement that his staff had queried Cannon about the IG report, but had not demanded his withdrawal. "I want to make clear . . . that . . . Inhofe staff expressed to Mr. Cannon that, though the organization committed serious missteps in managing federal grants, it did not warrant opposition to his nomination," he said.

But sources say another factor that may have contributed to Cannon's withdrawal is that Obama and other farm-state senators had successfully backed ACWF's efforts to win a $3 million earmark in EPA's fiscal year 2006 appropriation bill, because the revelation could have proved embarrassing for the president given political criticism of his support for earmarks.

The other supporters of the earmark request were Sens. Kit Bond (R-MO), Ben Nelson (D-NE), Charles Grassley (R-IA), Richard Durbin (D-IL), Norm Coleman (R-MN), Richard Burr (D-NC), Mary Dayton (D-MN), Tom Harkin (D-IA), James Talent (R-MO) and Elizabeth Dole (R-NC). *The earmark request is available on InsideEPA.com.*

Obama and the other lawmakers had sought the earmark even after ACWF officials had briefed some lawmakers -- though not Obama -- that a former bookkeeper had embezzled thousands of dollars from ACWF and other water organizations, according to a source familiar with the issue. The bookkeeper's embezzlement eventually prompted the IG's inquiry.

A spokeswoman for Oberstar says the 2007 IG report is the reason the chairman began investigating ACWF. Several sources said the lawmaker's investigation and the prospect of future revelations was a key cause for concern.

Cannon abruptly withdrew his name from consideration as deputy administrator March 25, the day before a scheduled confirmation hearing in the Senate environment committee. His withdrawal has left EPA without a nominee for a slot that sources say is critically important for overseeing scores of day-to-day issues that require a lot of "heavy lifting."

Cannon had sat on the board of ACWF from 2002 until the organization was forced to dissolve because it ran out of funds.

The organization primarily provided farmers confidential environmental assessments of their farms under the On Farm Assessment and Environmental Review (OFAER) program. Sources familiar with the program say it was highly successful and popular with farmers. Some states even required farmers to participate in the OFAER program which made the organization's services more important there. Some critics charged that the program's environmental assessments should not be confidential, but ACWF thought confidentiality was "critical" to ensure participation, sources say.

One farm source who was not involved with the organization gives it "a lot of credit" and says the OFAER program and ACWF's involvement is a reason the pork industry -- which participated thoroughly and early on -- has generally fared better on environmental issues in recent years than other livestock sectors.

The earmark request from Obama and the other senators also backed the program, saying "it provides livestock producers an objective, thorough and fully confidential assessment of environmental strengths, risks and challenges at their operations at no charge. These assessments are conducted by teams of well trained and experienced professionals certified in the use of a tested and proven assessment tool."

Although highly regarded by many, the organization's problems began in April 2005 when officials discovered its bookkeeper had embezzled over $300,000 from ACWF, as well as the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), which had shared offices.

In the wake of the embezzlement discovery the IG began investigating ACWF, eventually concluding that EPA should try to reclaim the more than $25 million in federal grants that had gone to the organization. The IG's February 2007 report found ACWF "did not comply with the financial and program management standards and the procurement standards," and demonstrated a range of accounting shortcomings.

One source familiar with the matter says the organization wasn't "perfect" but that ACWF consistently provided contracts and other documentation to EPA for comment and review before making final decisions, and that EPA staff overseeing the program had often praised the organization.

The source also says that a two-year audit from the EPA's IG from 2001-2003, during which the funds were being embezzled, did not find improprieties. The 2007 IG report does not mention the embezzlement, but another source says the bookkeeper did not steal federal grant dollars because "she was too smart for that."

Discovery of the embezzlement came after the bookkeeper's alleged death when ACWF switched auditing firms, a common business practice because auditors analyze records in different ways.

ACWF officials immediately brought news of the embezzlement to the FBI, D.C. Police, EPA and relevant lawmakers, sources say.

But that did not stop Obama and others from seeking the earmark. -- *Jonathan Strong*

SOLID WASTES

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EPA CONSIDERS NOVEL 'PRODUCT' DETERMINATION FOR STORED MERCURY (*Inside EPA*)

4/10/2009

EPA is weighing how to classify elemental mercury that will be stored at a Department of Energy (DOE) facility under the Resource Conservation & Recovery Act (RCRA), a decision that could lead to a novel situation in which the agency chooses to regulate the substance under RCRA as a "product" and not a discarded waste.

At issue is how to implement the requirements of the Mercury Export Ban Act, a law Congress approved late last year that requires DOE to store mercury banned from export at a facility permitted under RCRA Subtitle C but does not specify whether the mercury should actually be considered a solid waste, according to Matt Hale, director of EPA's Office of Resource Conservation & Recovery. Typically, RCRA requirements only apply to materials that have been discarded and are therefore considered a solid waste.

Elemental mercury has traditionally been considered a product and not a waste because it could be traded on the market, Hale told *Inside EPA* in an interview, but under the new law it is unclear whether the mercury banned from export is discarded and thus becomes a waste when it is sent to the DOE storage facility.

Hale said it is unlikely that EPA's decision on whether to consider the elemental mercury a solid waste or a product will have an impact on how it will regulate the DOE storage facility because the export ban law specifies that the facility will be subject to RCRA Subtitle C regulations regardless.

But the decision could have other implications, Hale said. For example, if EPA decides to consider the mercury a product, companies that ship mercury to the DOE facility would not be required to maintain a hazardous waste manifest for the mercury, as is typically required for waste shipments under RCRA, Hale said. The decision could also have implications for land disposal restrictions.

One source that follows waste issues has preliminary concerns with the prospect of EPA considering the elemental mercury stored at the DOE storage facility a product, explaining that a hazardous

substance that is stored in such a long-term fashion would under any other circumstance be considered discarded and thus a solid waste subject to all pertinent RCRA regulations. Creating an exception to that rule could create a negative precedent for other materials in similar situations, the source says.

Hale acknowledged that considering the stored mercury a product even though it is stored at a RCRA Subtitle C facility “would be unique,” but said EPA has not yet studied all the legal ramifications of the possible decision. Hale brought the issue to the attention of state regulators -- some of which may be involved in the permitting of the DOE facility -- during a public meeting of the Environmental Council of States late last month, and asked them to consider the issue and provide EPA with feedback.

EPA will likely study the issue further as it oversees DOE’s preparation of an environmental impact statement for the facility in the coming months, Hale said.

EPA READIES FINAL PLAN FOR WASTE MANAGEMENT LIFECYCLE APPROACH (*Inside EPA*)

4/10/2009

EPA is preparing to release in May the final version of its long-pending plan to comprehensively overhaul waste management and will recommend a number of key steps including focusing existing agency programs on a new “lifecycle” approach that will address each step in the product development process.

At a March 25 National Advisory Council on Environmental Policy & Technology (NACEPT) briefing, Derry Allen of the agency’s Office of Policy, Economics & Innovation previewed the final plan that he said will mark the first steps in a “generation-long shift” in the management of materials. The plan includes a potential advisory role for NACEPT on issues including developing lifecycle strategies for materials management.

The report will encompass final recommendations outlined by a draft document that EPA released last April outlining plans for implementing a 2002 agency document, *Beyond RCRA: Prospects for Waste and Materials Management In The Year 2020*. Provisions in the 2002 document sought to clean up all RCRA sites and develop by 2020 a plan to reduce risks from waste products during their entire lifecycle.

Allen said the final report, *Sustainable Materials Management: The Road Ahead*, has undergone peer review and final changes are being made to the reflect the peer review recommendations. The report will be presented to EPA senior staff in May, and discussions are underway on how to implement the plan.

The report will make three broad recommendations: that EPA begin managing materials and products on a lifecycle basis, that the government should integrate materials management approaches in existing programs, and that EPA accelerate the “broad, ongoing public dialogue” on lifecycle materials management.

The materials management approach emphasizes regulating not only the disposal of materials but every aspect of the lifecycle of materials -- from their extraction to their processing, design, manufacture, use, collection and disposal. As a means to that end, the agency has been analyzing existing data and developing implementation strategies for materials management that would effectively eliminate the need for waste management.

The report analyzes the lifecycles of a number of materials and judged them based on their environmental impacts, energy use, water use, material use and material waste, ranking each relative to one another for their adverse or positive impacts in each category. Allen said food, textiles, fossil fuels, metals and forest products “generally ranked high,” which is consistent with other similar studies.

The report also focuses on reducing the amounts of materials used overall, thus diminishing the environmental impacts on a larger scale. “If you think this way, this goes far beyond what our current programs do right now,” Allen said. “And that’s where this begins to get interesting and innovative.”

The report recommends that EPA begin the materials management transformation process with pilot programs for a handful of materials, though Allen did not say which materials would be recommended. In the meantime, Allen said the report recommends refocusing existing programs more directly on lifecycle management rather than on waste alone. “These are recommendations, they are not policy yet,” Allen said. “But the feedback we’ve been getting from people is very much confirming that these are directions we ought to be heading in.”

Allen’s presentation to the meeting also says that NACEPT will be invited to read the final report and have a role advising EPA and commenting on the plan. NACEPT could be asked to advise on the general approach and implementation of the plan, and/or specific issues including data priorities or lifecycle materials management strategies.

NACEPT member Bob Gruening said the approach Allen laid out, if adopted, would represent a fundamental shift in society’s attitude towards waste, rendering it less a fact of life than a failure in the supply chain. “I think this is fundamental rethinking going on in the agency,” Gruening said. “To move to a future where there is no waste management, because waste is just a design failure -- it’s a very profound approach.” -- *John Heltman*

EPA READIES FINAL PLAN FOR WASTE MANAGEMENT LIFECYCLE APPROACH (*Inside EPA*)

4/10/2009

EPA is preparing to release in May the final version of its long-pending plan to comprehensively overhaul waste management and will recommend a number of key steps including focusing existing agency programs on a new “lifecycle” approach that will address each step in the product development process.

At a March 25 National Advisory Council on Environmental Policy & Technology (NACEPT) briefing, Derry Allen of the agency’s Office of Policy, Economics & Innovation previewed the final plan that he said will mark the first steps in a “generation-long shift” in the management of materials. The plan

includes a potential advisory role for NACEPT on issues including developing lifecycle strategies for materials management.

The report will encompass final recommendations outlined by a draft document that EPA released last April outlining plans for implementing a 2002 agency document, *Beyond RCRA: Prospects for Waste and Materials Management In The Year 2020*. Provisions in the 2002 document sought to clean up all RCRA sites and develop by 2020 a plan to reduce risks from waste products during their entire lifecycle.

Allen said the final report, *Sustainable Materials Management: The Road Ahead*, has undergone peer review and final changes are being made to the reflect the peer review recommendations. The report will be presented to EPA senior staff in May, and discussions are underway on how to implement the plan.

The report will make three broad recommendations: that EPA begin managing materials and products on a lifecycle basis, that the government should integrate materials management approaches in existing programs, and that EPA accelerate the “broad, ongoing public dialogue” on lifecycle materials management.

The materials management approach emphasizes regulating not only the disposal of materials but every aspect of the lifecycle of materials -- from their extraction to their processing, design, manufacture, use, collection and disposal. As a means to that end, the agency has been analyzing existing data and developing implementation strategies for materials management that would effectively eliminate the need for waste management.

The report analyzes the lifecycles of a number of materials and judged them based on their environmental impacts, energy use, water use, material use and material waste, ranking each relative to one another for their adverse or positive impacts in each category. Allen said food, textiles, fossil fuels, metals and forest products “generally ranked high,” which is consistent with other similar studies.

The report also focuses on reducing the amounts of materials used overall, thus diminishing the environmental impacts on a larger scale. “If you think this way, this goes far beyond what our current programs do right now,” Allen said. “And that’s where this begins to get interesting and innovative.”

The report recommends that EPA begin the materials management transformation process with pilot programs for a handful of materials, though Allen did not say which materials would be recommended. In the meantime, Allen said the report recommends refocusing existing programs more directly on lifecycle management rather than on waste alone. “These are recommendations, they are not policy yet,” Allen said. “But the feedback we’ve been getting from people is very much confirming that these are directions we ought to be heading in.”

Allen’s presentation to the meeting also says that NACEPT will be invited to read the final report and have a role advising EPA and commenting on the plan. NACEPT could be asked to advise on the general approach and implementation of the plan, and/or specific issues including data priorities or lifecycle materials management strategies.

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SUPERFUND

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Gowanus Canal, Polluted for Many Decades, May Become Superfund Site (*New York Times*)

By MIREYA NAVARRO
April 10, 2009

The Environmental Protection Agency has proposed to add the Gowanus Canal, in Brooklyn, to its list of Superfund sites, a step that advocates hope will revitalize a waterfront hobbled by environmental problems from its industrial past.

"The Superfund nomination is an important step toward reclaiming the canal for valuable community development and restoring contaminated waters to health," Nydia M. Velázquez, who represents the area in Congress and helped obtain federal financing for a study to assess the extent of the contamination, said in a statement Wednesday.
The canal, extending about a mile and a half north from Gowanus Bay near the neighborhoods of Red Hook, Carroll Gardens and Park Slope, is one of 67 sites proposed for the Superfund National Priorities List, which steers federal money to contaminated areas for cleanups.
Elizabeth Totman, a spokeswoman for the agency, said that most sites proposed eventually got listed, depending on the volume and nature of the comments received during a 60-day public comment period, which began Thursday.
"E.P.A. has done preliminary assessments of the sites we propose, and we propose them because we feel that the listing is warranted based on what we've found," she said.
Sampling at the Gowanus Canal has found a variety of pollutants, the agency said, including pesticides, metals and the cancer-causing chemicals P.C.B.'s. The contamination, agency officials said, stems from the canal's history since its completion in the 1860s as a busy industrial waterway for the oil refineries, coal yards, concrete-mixing facilities and tanneries along its banks, and from being "a repository" of untreated industrial wastes and raw sewage and runoff.

Most of the industrial activity has stopped, and some community advocates say they are concerned that a Superfund designation could interfere with efforts already under way to build new housing and commercial developments in the area.

Salvatore Scotto, a founder of the Gowanus Canal Community Development Corporation, a neighborhood preservation group, said that some private developers had agreed to conduct their own cleanups in order to build, and the city had been working on a rezoning plan to allow them to do it.

"We want to make sure they're not precluded from building," Mr. Scotto said. "Can the government work with the private sector? This has to be worked out."

A spokesman for Robert C. Lieber, deputy mayor for economic development, said the city was reviewing the Environmental Protection Agency proposal to make sure a Superfund designation would not slow existing cleanup plans or impede public and private investment.

But Marlene Donnelly, a member of another neighborhood group, Friends and Residents of Greater Gowanus, said a Superfund designation would address the environmental plight of the canal in a more coordinated way.

"It's an area-wide problem, and a piecemeal approach is not going to get to the problem," she said.

Representatives Velazquez and Yvette D. Clarke, both Democrats from Brooklyn, will hold an informational forum on the Superfund nomination on Tuesday at 7 p.m. at the auditorium of Public School 32, 317 Hoyt Street.

Brooklyn's Gowanus Canal may get Superfund cleanup (*The Star-Ledger*)

by The Star-Ledger Continuous News Desk

Friday April 10, 2009, 5:23 AM
New Jersey

The Gowanus Canal in Brooklyn has been proposed to be added to the Environmental Protection Agency's list of Superfund sites, which could make it eligible for federal cleanup funds, according to a report in The New York Times.

Elizabeth Totman, an EPA spokeswoman, told the newspaper most sites proposed eventually join the list after 60 days of public comment. The canal runs about a mile and a half north from Gowanus Bay close to Brooklyn sections Red Hook, Carroll Gardens and Park Slope. It is among 67 sites offered for the Superfund National Priorities List.

See more in Environment, New York City

EPA may add Puerto Rico plant to Superfund list (*Associated Press*) This story also appeared: *Washington Post*

April 9, 2009; 4:44 PM

SAN JUAN, Puerto Rico (AP) — The U.S. Environmental Protection Agency may add a paper and plastic bag factory in central Puerto Rico to its list of hazardous waste sites, a spokeswoman said Thursday.

Scientists say contamination from the Papelera Puertorriquena Inc. plant in the mountainous town of Utuado may have polluted soil and a river with industrial chemicals including ethyl acetate and isopropanol. Businesses and homes surround the plant, and several public schools are within a half-mile (half-kilometer).

EPA spokeswoman Beth Totman said the federal agency has proposed putting the facility on its Superfund National Priorities List, a program for investigating and cleaning up the most severe hazardous waste sites.

Papelera Puertorriquena has manufactured bags at the Utuado plant for more than 40 years. Phone calls to the company went unanswered Thursday.

In a statement announcing the proposal on Wednesday, EPA acting regional administrator George Pavlou said that by adding the site to the Superfund list, the EPA "can better ensure that students, workers and residents in the area are safeguarded against the contaminants coming from the site."

A public comment period will be held for the next two months.

Montco site added to Superfund list (*Philadelphia Inquirer*)

By Tom Avril

Inquirer Staff Writer

Posted on Thu, Apr. 9, 2009

Pennsylvania

A 35-acre Montgomery County site, long contaminated with residue from the nearby manufacture of asbestos, is being added to the national Superfund cleanup list, federal officials announced yesterday.

The parcel, in Ambler, Whitpain, and Upper Dublin, was used for the disposal of asbestos-containing material from the early 1900s until the late 1980s, according to the Environmental Protection Agency.

The Superfund designation, which was proposed in September and formally takes place today, makes the site eligible for a special pool of federal cleanup dollars. No estimate of cleanup costs has been made yet for the tract, named the BoRit site because part of it was apparently once owned by a member of the Rittenhouse family, according to residents and the EPA.

Superfund cleanups typically run into the many millions of dollars. Asbestos, when inhaled, can cause a rare form of lung cancer, and the EPA said the site posed a potential risk. But it has said airborne levels of the contaminant are well within acceptable limits.

Sharon McCormick, cofounder of the BoRit Community Advisory Group, which had been pushing for the Superfund listing, said she was pleased by the move.

"We need a bigger pot of money," she said. "That's why we wanted to get it there."

McCormick said she spoke on her own behalf and not for the group.

The site includes a waste pile, a pond, and a park.

The portion that contains the waste pile is owned by a development company called Kane Core, according to Ambler officials. The park portion is owned by Whitpain Township and the pond by the Wissahickon Waterfowl Preserve.

The telephone number at Kane Core has been disconnected, as has the home telephone for David F. Kane, a company official. Mark Marino, who joined Kane in proposing to build a

condominium building on the site five years ago before withdrawing the plan, said he was no longer involved with the company and had no comment.

Contact staff writer Tom Avril

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Superfund designation considered (*Wilkes-Barre Citizens Voice*)

WRIGHT TWP. — The U.S. Environmental Protection Agency has proposed adding a Mountain Top chemical spill to the Superfund National Priorities List.

BY ELIZABETH SKRAPITS
STAFF WRITER

Published: Thursday, April 9, 2009 4:06 AM EDT

WRIGHT TWP. — The U.S. Environmental Protection Agency has proposed adding a Mountain Top chemical spill to the Superfund National Priorities List.

However, if the company that caused the spill continues to cooperate with the federal agency to clean up the site, an official Superfund designation might not be necessary.

“I’m glad to see they’re finally moving. It’s about time,” said Sally Martin, one of the Church Road residents affected by trichloroethene contamination.

Superfund sites contain hazardous substances that pose a threat to human health and the environment. There are 60 days for public comment to EPA after a site is proposed for Superfund designation. EPA makes a decision after evaluating and responding to the comments.

“We hope and think it’s not necessary to finalize it,” Foster-Wheeler Vice President and Associate General Counsel Thomas Kowalczyk said.

He was representing the company at a meeting at St. Jude’s School on Wednesday for residents to check out resumes and select a neutral mediator to help form a community advisory group.

The group, to be comprised of residents, elected officials and other representatives, would provide a tool for more open communication between the community and the federal agency,

EPA Community Involvement Coordinator Larry Johnson said.

The group would eventually perform independently as a means for residents to have more say as things progress.

“At the EPA we like to have a strong and well-balanced (community advisory group) because, quite frankly, we’re going into these people’s homes and yards,” he said. “It’s only fair they have input.”

The Foster Wheeler Energy Corporation operated at 348 Crestwood Drive in the Crestwood Industrial Park from 1953 to 1984, manufacturing pressure boilers. The plant used trichloroethene, or TCE, as an industrial de-greaser. The chemical contaminated the groundwater and subsequently affected about 36 residences on nearby Church Road.

A settlement made a few days ago requires Foster Wheeler to conduct a remedial investigation to determine the extent of the contamination and a feasibility study to evaluate cleanup options, at the company’s expense, according to EPA spokesman Roy Seneca.

“Normally it’s at least a six-month process before it (Superfund process) becomes final. This allows it to get started right away,” he said, adding, “They’ve been very willing to cooperate and get the site cleaned up.”

If Foster Wheeler complies with all the requirements for a Superfund site, there may be no need for it to receive the actual designation, Seneca said. Instead, the company could enter a Superfund Alternate Agreement, Johnson said.

“Foster Wheeler has been exemplary. They’ve been a very good corporate citizen,” he noted.

But the process of performing the remedial investigation and then the feasibility study will take time, Johnson said.

“There’s going to be a lot more unfolding over the next two or three years, so I would just counsel people to have patience,” he said. “We have a lot of work ahead of us.”

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EPA adds 9 new hazardous waste sites to Superfund list (*Waste News*)

April 9 -- The EPA is adding nine new hazardous waste sites to the National Priorities List of Superfund sites and is proposing to add another 13 sites to the list.

Superfund is the federal program that investigates and cleans up the most complex, uncontrolled or abandoned hazardous waste sites in the country.

The EPA to date has placed 1,596 sites on the NPL. Of those, 332 sites have been deleted, resulting in 1,264 final sites currently on the NPL.

With the proposal of the 13 new sites, there are 67 proposed sites awaiting final agency action.

The nine sites added to the list are the Raleigh Street dump in Tampa, Fla.; the Arkla Terra property in Thonotosassa, Fla.; U.S. Smelter and Lead Refinery Inc. in East Chicago, Ind.; Fort Detrick Area B Ground Water in Frederick, Md.; Behr Dayton Thermal System VOC plume in Dayton, Ohio; the New Carlisle Landfill in New Carlisle, Ohio; BoRit Asbestos in Ambler, Pa.; Barite Hill/Nevada Goldfields in McCormick, S.C., and the Attebury Grain Storage Facility in Happy, Texas.

TOXICS

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EPA POISED TO REQUIRE RESUBMISSION OF 2008 TRI DATA UNDER STRICTER RULES (*Inside EPA*)

4/10/2009

EPA is poised to issue a rule reversing Bush administration regulations relaxing Toxic Release Inventory (TRI) reporting requirements that would require companies that have submitted data for 2008 under the Bush rules to resubmit the data under the older, stricter requirements.

Mike Petruska, director of EPA's TRI program, told attendees March 31 at a TRI training conference in Bethesda, MD, that agency Administrator Lisa Jackson could sign the rule in a matter of days. The rule will scrap the Bush reporting requirement changes -- which raised the threshold for reporting chemical releases from 500 pounds to 2,000 pounds and set a first-time threshold of 500 pounds for reporting persistent bioaccumulative toxins -- and reinstate the previous requirements that supporters say are more stringent and require greater reporting of toxic releases.

The 2009 omnibus spending law included language requiring the agency to return to the TRI reporting requirements in place prior to the Bush administration changes. One EPA source says that the rule Jackson is preparing to sign will be "very straightforward," but will require facilities that have already submitted TRI reports for the 2008 data set under the Bush requirements to resubmit their reports under the old requirements.

Prior to the spending law's passage some sources had raised concerns that switching back to the old reporting requirements mid-year could create uncertainty for business, but the EPA source says relatively few facilities have already submitted their reports.

In addition to the pending rule, Mike Flynn, acting deputy administrator of EPA's Office of Environmental Information, repeated past comments that the agency is weighing "enhancements" to TRI, including adding new chemicals to the list of those companies must report.

Prior to the training conference, Flynn said in a March 19 interview with *Inside EPA* that Jackson is "very supportive of this program; she thinks it's a key to information and transparency." Agency officials are now looking at ways to "enhance" the TRI program through potential regulatory changes, he said.

Potential options for regulatory changes to TRI -- which requires companies to annually report data on releases of certain toxic chemicals from their facilities -- could include "bringing in potentially other chemicals," Flynn said in the interview, though the agency has yet to decide on any changes to the program.

Petruska said at the conference that hydrogen sulfide is one chemical EPA may consider adding, but he said no decisions have been made. "Adding a chemical is not something we take lightly," he said. EPA is currently weighing whether to regulate hydrogen sulfide as a hazardous air pollutant, which industry fears would force increased reporting and emissions control requirements on a range of sectors. The oil industry is developing a series of studies on the human health risks posed by hydrogen sulfide -- a by-product of the petroleum refining process -- to inform the agency's decision.

Meanwhile, EPA officials said the agency is also looking to release its annual TRI data as soon as it is available rather than waiting for EPA staff to complete their detailed analysis of the data -- something that state officials have previously encouraged, but some in industry oppose due to fears the raw data could be misinterpreted.

Flynn also said the agency is open to suggestions for reducing TRI reporting burdens but said the agency will not revisit the Bush rule changes. Flynn said EPA has not yet decided whether to seek industry input on potential TRI burden reduction as an informal process or through a formal *Federal Register* notice seeking comment on possible changes.

ACTIVISTS EYE ADDING GREENHOUSE GASES TO TOXICS RELEASE INVENTORY (*Inside EPA*)

4/10/2009

Environmentalists are urging EPA to consider adding greenhouse gases to the list of substances that industry must report annually to the agency's Toxics Release Inventory (TRI) program as the agency explores how to expand the program under the Obama administration.

But a key EPA official is already suggesting that requiring industry to report greenhouse gases as part of their TRI reports may be difficult. "A number of greenhouse gases are not toxic under" the

Emergency Planning & Right-to-Know Act, TRI program director Mike Petruska told attendees of the 2009 TRI National Training Conference in Bethesda, MD, March 31, referring to the law that authorized the TRI program. “There may be exemptions,” however, Petruska added.

Sean Moulton, a policy analyst with the activist group OMB Watch, made the suggestion that EPA consider adding greenhouse gases to TRI during a keynote address to conference attendees. Moulton acknowledged, however, that there may be hurdles to including greenhouse gases in TRI, and said activists were not certain whether they should be reported as part of the existing program or whether EPA should create a new program in order to track them.

Still, Moulton said EPA should “break free of the idea that everything must be toxic to be in the program” and should consider other, non-toxic impacts that various substances can have on human health and the environment.

ECOS TO MOVE FORWARD WITH NANO INFORMATION EXCHANGE WITH EPA, DOD (*Inside EPA*)

4/10/2009

State environmental commissioners are backing a plan to share information with EPA and the Defense Department (DOD) on the safety and toxicity of nanomaterials as a first step toward a more robust relationship between federal and state governments on managing the hazards associated with nanotechnology.

The Environmental Council of the States (ECOS) approved the information exchange March 23 at the group’s spring meeting in Alexandria, VA, following a briefing from the organization’s emerging contaminants work group on efforts to integrate state, EPA and DOD efforts.

Laurie Burt, commissioner of the Massachusetts Department of Environmental Protection and chair of the ECOS emerging contaminants subgroup, described the effort as primarily a means to coordinate already ongoing efforts by the respective agencies, particularly in the areas of impact assessment and pollution prevention, and to ultimately establish best management practices.

“We think it makes a lot of sense to the work group to build upon the relationship [ECOS] already has with EPA and DOD by expanding coverage in . . . assessing impacts of nanotechnology, and also multimedia pollution prevention,” Burt said. “The DOD is working on a host of nanomaterials in their defense systems, yet we know the environmental implications of nanomaterials at the sites of manufacturing and disposal are still poorly understood.”

The effort’s ultimate goal is to avoid duplication of state and federal efforts, given budget constraints, a state source familiar with the issue says. “There could well be a resolution that comes out of this, but it’s very much in the formative stages,” the source says. “The issue is on people’s radar, and the states are interested in what we are going to do together to advance” the effort.

The coordination effort could lead to a best management practices guidance or other coordinated state/federal approach towards nanomaterials, the state source says. “At this point, we’re exploring what kind of research we’re doing, [and] what information we have on best management practices are being considered,” the source says.

DOD briefed ECOS on nanotechnology issues last year during the state environmental commissioners’ annual meeting in Branson, MO. DOD has a coordinated policy for dealing with the emerging risks associated with nanomaterials, which it shared with ECOS. “My understanding is, the idea they’re floating comes from our success in moving forward” with guidance on nanomaterials risks, a DOD source says.

ECOS and DOD met April 2 to discuss nanomaterials, according to the DOD source. ECOS is also planning to meet with officials in EPA’s Office of Solid Waste & Emergency Response (OSWER), but the state source says no meetings between ECOS and OSWER have yet been scheduled.

Last year the Massachusetts Interagency Nanotechnology Committee, believed to be the first state group focused on the safe use of nanotechnology, began compiling a set of best management practices for laboratories and companies working with nanomaterials to protect workers, the environment and public health from the possible risks of the emerging technology. The work group also planned to work to promote risk characterization of nanomaterials, as well as increase the risk information available to the public.

SMALL CHEMICAL PRODUCERS SUPPORT ‘UNREASONABLE RISK’ STANDARD (*Inside EPA*)

4/10/2009

Small chemical producers are strongly backing the current legal standard EPA must meet before banning toxic substances, which could signal a rift in the industry as other sources have said they would consider easing the standard.

The Toxic Substances Control Act (TSCA) requires EPA to prove that a chemical poses an “unreasonable risk of injury to health or the environment” before it can be banned. The standard has long been criticized by environmentalists as setting an overly high bar for agency action, noting that federal courts cited the standard to block EPA efforts to ban asbestos.

To address this, activists and others are backing the soon-to-be-introduced Kid-Safe Chemicals Act (KSCA), which requires industry to prove with “reasonable certainty that the chemical substances pose no harm” before they can be approved.

In a policy statement released April 1, the Society of Chemical Manufacturers and Affiliates (SOCMA) says the “unreasonable risk” standard has “stood the test of time.” The group says the current standard “serves its purpose by giving EPA scientists and policymakers the authority to reach sound conclusions.” The “reasonable certainty” standard in KSCA is “[b]y contrast . . . really no less vague, but arguably is impossible to meet.” *The statement is available on InsideEPA.com.*

Their strong support for the current standard appears to be at odds with efforts by other industry officials, who in an attempt to head off criticisms from activists have said they are “willing to discuss a standard other than unreasonable risk,” an industry source told *Inside EPA* in February.

WATER

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Water monitor eyes farm runoff in Gulf of Mexico (*Associated Press*) This story also appeared: *Washington Post*

By GARRY MITCHELL
The Associated Press
Friday, April 10, 2009; 3:55 AM

MOBILE, Ala. -- A clean water expert at Auburn University hopes a new project that enlists middle and high school students will help reduce farm runoff that is a growing pollution threat to the Gulf of Mexico.

Bill Deutsch said colleagues in Veracruz, Mexico, are partners in the three-year effort to monitor water flowing into the Gulf.

Deutsch said his federally funded, $300,000 project will also help livestock producers in Alabama and in Veracruz develop management practices that can limit Gulf pollution, such as buffer zones and other methods of keeping livestock contaminants away from streams.

"You have got to start with some level of awareness," said Deutsch, a researcher in Auburn's Department of Fisheries and Allied Aquacultures.

Deutsch co-founded and manages the Alabama Water Watch program and is director of Auburn-based Global Water Watch, which coordinates a worldwide network of community-based water monitoring groups.

Deutsch said at least 20 middle and high school students and community groups in both Alabama and Veracruz will become certified in water monitoring to participate in the project. He said they will take water samples on a regular basis from streams feeding the Gulf, using portable test kits.

Deutsch said researchers will look at bacteria counts and other elements to determine whether a stream is getting better or worse. If a stream is polluted, they will attempt to trace that pollution back to its source.

He said the project, funded by the U.S. Environmental Protection Agency, is also "trying to get 'uplanders,' including livestock farmers, teachers and citizen water monitors, more aware of how nutrients come to the Gulf from great distances, and that land-use management makes a big difference."

Their target is agricultural runoff that drains from Gulf states and as far away as the U.S. Midwest, where the vast Mississippi River Basin is home to about half the nation's farms. Nitrogen and phosphorus pollutants from the farms end up on a huge scale in the Gulf, where one result is an 8,000-square-mile aquatic "dead zone" that forms annually off the Louisiana and Texas coasts.

U.S. Geological Survey research hydrologist Dale M. Robertson of Middleton, Wis., said agriculture isn't the only cause. Flooding and sewage treatment plants in urban areas also contribute to the dead zone.

"You can't just go after agriculture. It's a full suite of things," he said.

But there's mounting evidence that the mandated push to increase corn production _ one of the most fertilizer-intensive crops for making ethanol _ worsens water-quality problems within the states and in the Gulf, according to environmentalists.

Matt Rota, water resources director for the New Orleans-based Gulf Restoration Network, describes the dead zone as a "major national environmental problem" that will require more federal dollars for conservation programs.

Livestock farms already use federally approved techniques to prevent runoff because when manure is applied to farm fields as fertilizer, there is a potential for the waste to contaminate nearby waters.

Deutsch recommends a well-maintained streamside buffer zone of vegetation in pastures and near other livestock-holding facilities as a primary way to catch nutrients, sediment and pathogens before they get to the stream.

Other recommendations include use of alternative watering sites, fencing in key areas, and choosing the right kinds and mixes of pasture grass and other vegetation to reduce fertilizer use and guard against erosion.

Among Gulf states, Alabama alone has about 1 million head of cattle and produces more than a billion broiler chickens _ all generating waste. Veracruz has an estimated 5 million head of cattle, 1.2 million hogs and 600,000 goats as well as a large number of trout farms using fertilizer.

Workshops and site visits will be held in both Alabama and Veracruz to emphasize the use of best management practices for water quality and on-farm water monitoring.

Deutsch's pollution project is part of the Gulf of Mexico Alliance of all five U.S. gulf states. Each of the five has a priority area: Alabama is focused on education and outreach; Florida on water quality for beaches and shellfish beds; Louisiana on wetland and coastal conservation and restoration, Texas on identifying and characterizing Gulf habitats; and Mississippi on reductions in nutrient inputs to coastal ecosystems. Mississippi and Louisiana also share the assignment of coastal community resilience.

Deutsch said Auburn has worked with colleagues in Veracruz for four years. His colleagues are primarily biologists and community educators from various governmental and non-governmental organizations.

"We share the same goals of protecting water quality and will be fostering exchanges of information and people to get the word out about protecting the Gulf," he said.

EPA objects to 3 more surface coal mining permits (*Associated Press*) This story also appeared: *Washington Post*

By TIM HUBER
The Associated Press
Thursday, April 9, 2009; 5:08 PM

CHARLESTON, W.Va. -- The U.S. Environmental Protection Agency is objecting to three more Appalachian surface mining permits, saying the operations would cause unacceptable damage.

The agency recently asked the Army Corps of Engineers to revoke a permit for a Virginia mine that was issued under a streamlined process and require the operator to obtain an individual permit, which would include stricter environmental standards. The EPA also wants more environmental safeguards before the corps issues permits for two West Virginia surface mines, including one owned by Richmond, Va.-based Massey Energy Co., the nation's fourth-largest coal company.

In letters released Thursday, the EPA told the corps that the projects likely violate the Clean Water Act.

Under President Barack Obama, the EPA has begun subjecting surface coal mining permits to tougher scrutiny than the Bush Administration did _ particularly operations that blast away mountaintops. Administrator Lisa Jackson last month directed EPA staff to review 150 to 200 pending applications for new or expanded surface coal mines. The agency has since objected to several permits.

The EPA's renewed interest has buoyed environmentalists and other opponents of so-called mountaintop removal mining. The highly efficient and destructive practice involves blasting away ridgelines to expose multiple coal seams and dumping debris atop stream beds in valleys.

National Mining Association spokesman Luke Popovich said the latest letters underscore fears of a de facto moratorium on surface mine permits from Virginia to Illinois. The Washington, D.C.-based trade group estimates coal mines in the region employ 77,000 people.

"The reason this permit review is potentially so disruptive over such a widespread area is that _ as the EPA well knows _ existing operations need new permits to dispose of fill as they exhaust the use of areas available to them now under existing permits," Popovich said in an e-mail. "It's coming in late in the process to recommend against these permits, so a comprehensive delay seems likely."

That's good news, said Janet Keating, executive director of the Ohio Valley Environmental Coalition. The group recently persuaded a federal judge to bar mine operators from using southern West Virginia valley fills authorized by the corps under the same nationwide permit used to authorize the Virginia mine targeted by the EPA.

"It makes sense to me, in light of the recent ruling," Keating said. "We're extremely pleased."

Ginger Mullins, regulatory branch chief for the corps' Huntington District, which covers portions of Kentucky, Ohio, West Virginia, Virginia and North Carolina, said it's good that EPA is commenting on the two West Virginia permits before they're issued. "We are reviewing their letters," she said.

The corps Norfolk District, meanwhile, is evaluating the EPA's request to revoke the Virginia permit, spokesman Mark Haviland said. "A decision has not been made yet by our district commander."

EPA Asks Corps to Revoke Ison Rock Ridge Permit (*TriCities.com*)

By DEBRA MCCOWN
Reporter / Bristol Herald Courier
Published: April 10, 2009

Tennessee

In a move environmental groups say is setting the stage for future action, the Environmental Protection Agency has asked the U.S. Army Corps of Engineers to revoke a permit needed for surface mining on Ison Rock Ridge in Wise County.

The nearly 1,300-acre site just outside the town of Appalachia is proposed for mining by A&G Coal Corp. The permit – one part of a permitting process still pending for the site – would allow the deposit of mining waste into valleys, which the company says is necessary for such operations to be cost-effective.

In an April 3 letter, EPA Environmental Assessment and Innovation Division Director John Pomponio wrote to Corps of Engineers Norfolk District Commander Col. Dionysios Anninos asking that a more stringent permit process be applied, citing potential environmental impacts of the project.

"EPA Region III has extensively investigated the downstream effects of surface mining and associated valley fills. These published findings indicate the type of activities proposed by the applicant are strongly related to downstream biological impairment," Pomponio wrote. "EPA's findings also indicate that there may be significant degradation of the waters of the United States and a violation of … water quality standards."

The letter echoes concerns raised in recent months by environmental groups that also obtained a temporary injunction last year to have logging stopped on the proposed surface mine site.

"Thank you, Lord, you've answered our prayers," said Gary Bowman, whose home sits just below the site at the foot of a steep slope. "I think more good news is coming."

Bowman was involved in the lawsuit last year, initiated when large rocks began tumbling into his garden. He said the rocks are still falling and he has recently filed suit against the landowner and two timber companies to have them removed.

A&G had no comment Thursday, nor did timber company Mountain Forest Products. An official at landowner Penn Virginia referred questions to the company's corporate office in Pennsylvania, where no one could be reached Thursday afternoon.

At the Corps of Engineers' Norfolk district office, spokesman Gerald Rogers said the Corps' response to the EPA's letter is still being deliberated by the district commander.

But Oliver Bernstein, spokesman for the Sierra Club, said Thursday that EPA letters written on this and other proposed mining sites bode well for efforts to stop mountaintop mining throughout the region.

"I think that the Obama administration and the Environmental Protection Agency have definitely taken some really good first steps on mountaintop removal coal mining," Bernstein said. "Going forward, the administration will eventually need to fix the regulatory loopholes … to end this most destructive form of coal mining for good."

While Virginia surface mines are not officially classified by regulators as mountaintop removal, environmentalists use the term broadly to refer to any surface mining operation that involves blasting on the top of a mountain.

Bill Bledsoe, executive director of the Virginia Mining Association, said such a ban would be "devastating" for Southwest Virginia in the loss of jobs, tax revenue and spin-off business.

"Nationwide, the biggest impact's going to be to a shifting of energy demand and shifting of higher-cost energy into the place of the cheaper energy that coal provides, and along with that is, it's going to derail or has the potential of derailing the economic recovery plan that the nation's invested billions in," Bledsoe said.

Bledsoe said he has been around long enough to remember a similar wave of opposition to coal in the mid-1970s – a movement that ended with a set of federal surface mining regulations enacted as a compromise in 1977.

He also said the EPA letters indicate something more is coming.

When asked about the issue, EPA officials said the Ison Rock Ridge letter speaks for itself.

Bledsoe said the "EPA is adamant that they haven't changed their position on anything, that they're just taking a look at these permits … [but] what the EPA's doing is stalling, asking for delay, whether that be to give them time to put more laws and regulations in place, to cause some court action, I don't know their motivation other than they want to delay these type permits during the early days of the Obama administration."

"They don't want the permit to be issued at all," Bledsoe said. "So at least, in my opinion, this is just a move to basically stall and eventually kill the mining operations."

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Farm runoff 'inevitable,' EPA warns (*Columbus Dispatch*)

Friday, April 10, 2009 3:08 AM

By Spencer Hunt
THE COLUMBUS DISPATCH

A 6-million-chicken farm proposed for Union County might have to get the Ohio Environmental Protection Agency's approval and take extra steps to protect a nearby stream from pollution before its first egg is laid.

Ohio EPA officials said the farm, to be built by Hi-Q Egg Products, based in Johnston, Iowa, will pollute Bokes Creek, a stream already contaminated by other nearby chicken farms. They say they don't believe Hi-Q's claims that its farm won't harm the stream.

A letter the EPA sent Hi-Q on April 1 says pollution from manure-contaminated storm and egg-wash water "is not only likely but inevitable." The agency wants Hi-Q to apply for a permit that would set water-pollution limits.

Hi-Q officials did not return calls yesterday. Thomas Menke, a Greenville-based consultant working for Hi-Q, said the EPA shouldn't place demands on a farm that isn't even operating.

"I thought it was somewhat irresponsible and pretty inaccurate when they said it was inevitable that there would be pollution," Menke said. "That's almost like saying that, because I drive a car, it's inevitable that I'll have an accident."

The EPA has not made demands on a proposed megafarm since 2002, after state lawmakers transferred much of the agency's oversight of such businesses to the Ohio Department of Agriculture.

Though agriculture officials now have the authority to approve and oversee the size, design and operations of the farms, the power to regulate water pollution remains with the Ohio EPA.

Hi-Q and other companies have submitted plans to the Agriculture Department that say their farms will not pollute streams. That includes a proposed dairy farm that would house 5,400 cows along a tributary to Big Darby Creek in Madison County.

The Ohio EPA hasn't ordered the dairy farm company, Orleton Farms, to apply for a water-pollution permit. Cathy Alexander, a manager in the agency's surface-water division, said it's not clear that manure from that farm would contaminate streams.

Bill Schwaderer, an Agriculture Department spokesman, said his agency still is reviewing both Hi-Q's and Orleton's applications.

The Hi-Q farm would produce egg whites and yolks for the food-service industry. It also would produce at least 74,157 tons of chicken manure a year, the company told agriculture officials.

The Ohio EPA is concerned about a plan to spread 23.5 million gallons of manure-contaminated water used to wash eggs on 160 acres of farmland that Hi-Q owns near the barns. EPA officials said pipes under the field that drain storm water would send pollutants to streams that drain to Bokes Creek.

The agency also says that ventilators in the buildings would eject particles of dried manure that would settle on storm-water retention ponds that overflow to streams.

"They (are) setting themselves up for a discharge," said Rick Wilson of the Ohio EPA's surface-water division. "There's a near certainty that it will occur."

Wilson said other nearby farms that house up to 3 million chickens already pollute Bokes Creek. A September 2002 Ohio EPA report said the creek is tainted with excessive concentrations of pollutants, including manure from livestock farms.

Menke said the farm is designed to keep pollutants away from streams. He said agriculture officials have as much expertise as the Ohio EPA to make sure the farm won't pollute streams.

Hi-Q has until the first week of May to respond to the Ohio EPA.

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Marysville wins water-sewer tug of war (*Columbus Dispatch*)

Friday, April 10, 2009 3:10 AM
By Elizabeth Gibson
THE COLUMBUS DISPATCH

MARYSVILLE, Ohio -- Providing sewer and water services to a 100-acre plot of land might not be the most glamorous opportunity, but Dublin officials were not pleased yesterday when Union County commissioners chose Marysville over their city to provide service to the southern part of the county.

"The alternative Union County has chosen is far inferior," Dublin City Manager Terry Foegler said. "But we are absolutely not surprised, given past conversations."

Dublin officials had hoped to thwart a developer's plans to build a shopping center on a 200-year-old farm called Hall's Corner in Jerome Township, just west of several Dublin subdivisions. Had Dublin received the rights to extend its water and sewer lines, it could have tried to annex the land and rezone it for office buildings.

Foegler said extending Dublin's sewer and water lines would cost $1 million. Marysville Mayor Christiane Schmenk said extending Marysville's system will cost at least $3.5 million but also provide service to a wider area.

Marysville will receive the sewer and water fees, and Jerome Township would collect higher property taxes once the land was developed.

County commissioners said they chose Marysville because the state Environmental Protection Agency already had issued the city a permit to install the services. The commissioners said they took that as an indication that the EPA thought Marysville was the better choice.

Dublin's interest in annexation also was counter to what the owner of the land and neighboring businesses in the township wanted, said Commissioner Charles Hall.

Foegler said Dublin is weighing its options, including possibly slowing down $50 million worth of key road improvements in the area -- among them the Rt. 33/Post Road interchange -- to stall "inappropriate" development.

Union County officials said the type of development was settled nearly two years ago when Jerome Township zoned half the property for mixed-use development and left half for agriculture.

Duke Realty, which has since been replaced by Hunter-Castro, submitted plans in 2006 for a shopping center with at least one store as big as 80,000 square feet.

"They were trying to block the zoning, but the zoning is not up for discussion," said township zoning administrator Kathleen Crowley, who added that some Dublin residents spoke against the project at the time of the rezoning.

Dublin residents say they feel they were never given a fair chance to fight the development. About 100 people turned out for a public hearing on the project last week, but only one Dublin resident attended yesterday afternoon's commissioners meeting. The county also got about 100 letters by the end of the comment period Monday.

"It all seems very back-door," said Soli Ogra, a resident of Dublin's Park Place subdivision. "All of the meetings were held during work hours," referring to meetings at which votes were taken. "Who can go to that?"

Ogra, 37, said he bought his home five years ago because he liked Dublin's strict city planning, and now he and his neighbors feel betrayed.

"We don't want stuff like a Walmart to be there because that would drive traffic and pollution," Ogra said. "Marysville residents are not going to bear the negative impacts, but they're going to get the revenue."

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Water monitor eyes farm runoff in Gulf of Mexico (*Associated Press*)

By GARRY MITCHELL

MOBILE, Ala. (AP) — A clean water expert at Auburn University hopes a new project that enlists middle and high school students will help reduce farm runoff that is a growing pollution threat to the Gulf of Mexico.

Bill Deutsch said colleagues in Veracruz, Mexico, are partners in the three-year effort to monitor water flowing into the Gulf.

Deutsch said his federally funded, $300,000 project will also help livestock producers in Alabama and in Veracruz develop management practices that can limit Gulf pollution, such as buffer zones and other methods of keeping livestock contaminants away from streams.

"You have got to start with some level of awareness," said Deutsch, a researcher in Auburn's Department of Fisheries and Allied Aquacultures.

Deutsch co-founded and manages the Alabama Water Watch program and is director of Auburn-based Global Water Watch, which coordinates a worldwide network of community-based water monitoring groups.

Deutsch said at least 20 middle and high school students and community groups in both Alabama and Veracruz will become certified in water monitoring to participate in the project. He said they will take water samples on a regular basis from streams feeding the Gulf, using portable test kits.

Deutsch said researchers will look at bacteria counts and other elements to determine whether a stream is getting better or worse. If a stream is polluted, they will attempt to trace that pollution back to its source.

He said the project, funded by the U.S. Environmental Protection Agency, is also "trying to get 'uplanders,' including livestock farmers, teachers and citizen water monitors, more aware of how nutrients come to the Gulf from great distances, and that land-use management makes a big difference."

Their target is agricultural runoff that drains from Gulf states and as far away as the U.S. Midwest, where the vast Mississippi River Basin is home to about half the nation's farms. Nitrogen and phosphorus pollutants from the farms end up on a huge scale in the Gulf, where one result is an 8,000-square-mile aquatic "dead zone" that forms annually off the Louisiana and Texas coasts.

U.S. Geological Survey research hydrologist Dale M. Robertson of Middleton, Wis., said agriculture isn't the only cause. Flooding and sewage treatment plants in urban areas also contribute to the dead zone.

"You can't just go after agriculture. It's a full suite of things," he said.

But there's mounting evidence that the mandated push to increase corn production — one of the most fertilizer-intensive crops for making ethanol — worsens water-quality problems within the states and in the Gulf, according to environmentalists.

Matt Rota, water resources director for the New Orleans-based Gulf Restoration Network, describes the dead zone as a "major national environmental problem" that will require more federal dollars for conservation programs.

Livestock farms already use federally approved techniques to prevent runoff because when manure is applied to farm fields as fertilizer, there is a potential for the waste to contaminate nearby waters.

Deutsch recommends a well-maintained streamside buffer zone of vegetation in pastures and near other livestock-holding facilities as a primary way to catch nutrients, sediment and pathogens before they get to the stream.

Other recommendations include use of alternative watering sites, fencing in key areas, and choosing the right kinds and mixes of pasture grass and other vegetation to reduce fertilizer use and guard against erosion.

Among Gulf states, Alabama alone has about 1 million head of cattle and produces more than a billion broiler chickens — all generating waste. Veracruz has an estimated 5 million head of cattle, 1.2 million hogs and 600,000 goats as well as a large number of trout farms using fertilizer.

Workshops and site visits will be held in both Alabama and Veracruz to emphasize the use of best management practices for water quality and on-farm water monitoring.

Deutsch's pollution project is part of the Gulf of Mexico Alliance of all five U.S. gulf states. Each of the five has a priority area: Alabama is focused on education and outreach; Florida on water quality for beaches and shellfish beds; Louisiana on wetland and coastal conservation and restoration, Texas on identifying and characterizing Gulf habitats; and Mississippi on reductions in nutrient inputs to coastal ecosystems. Mississippi and Louisiana also share the assignment of coastal community resilience.

Deutsch said Auburn has worked with colleagues in Veracruz for four years. His colleagues are primarily biologists and community educators from various governmental and non-governmental organizations.

"We share the same goals of protecting water quality and will be fostering exchanges of information and people to get the word out about protecting the Gulf," he said.

Ky. gets $20 million EPA grant for drinking water (*Louisville Courier-Journal*)

April 10, 2009

Kentucky

The U.S. Environmental Protection Agency yesterday announced a $20 million grant to the Kentucky Infrastructure Authority to help state and local governments finance improvements to drinking-water systems.

Stan Meiburg, acting regional administrator for the EPA's office in Atlanta, said the money "will provide a boost to Kentucky's efforts to address its aging water infrastructure, while providing much needed green-collar jobs."

The EPA money came from the federal economic stimulus package.

The Kentucky Infrastructure Authority was created in 1988 to provide the mechanism for funding construction of local public works projects. It is attached to the Kentucky Department for Local Government.

State house spending panel cuts wetland enforcement funding (*Petoskey News-Review*)

by Marci Singer
Thursday, April 9, 2009 10:29 AM EDT
Michigan

The state's wetlands program would be transferred to the U.S. Environmental Protection Agency, as proposed by Gov. Jennifer Granholm, under the budget unanimously reported out of the House Appropriations Environmental Quality Subcommittee on March 31.

The budget is predicated on savings of $2.1 million for the general fund, $4 million gross. However, the subcommittee recommendation also includes a boilerplate provision that says the legislature will address the funding needs for the wetlands program if lawmakers don't approve the program transfer to the Environmental Protection Agency by Oct. 1.

Michigan Department of Environmental Quality director Steven Chester said he’s encouraged that there is this interest by both the House and the Senate to look into the program and to take the time to review options for funding.

“The bottom line is that you now have both House and Senate workgroups that are looking at state wetlands program,” Chester said. “We’ve tried a number of times to seek funding for the program. It’s a vitally important program but it’s just not financially sustainable. I’ve personally testified in front of the subcommittee and I am encouraged that both legislative arms are taking time to give this program serious consideration.”

Although representative Doug Bennett passed the Department of Environmental Quality budget out of his subcommittee with no funding for the program, as requested by the governor, Tip of the Mitt Watershed Council policy specialist, Jennifer McKay, said other representatives including Rep. Kevin Elsenheimer (R-105th House District), are working very hard to prevent losing the wetland program.

"Michigan has lost approximately one-half of its wetland resources since European settlement. As a result, the remaining wetlands are ecologically indispensable," she said. "Thirty years ago, members of Michigan's legislature recognized the value of our wetland resources and enacted a wetland program that made Michigan a national leader in wetland protection and management. Today, we should be building upon that legacy and making sure we maintain the state's role in protecting our vital wetlands."

McKay said once the legislative spring break is over, it will be time to concentrate on the Senate Subcommittee for Department of Environmental Quality appropriations. Sen. Valde Garcia (R-22nd Senate District), the chair of this committee, has scheduled committee hearings for May 6, 13 and 20.

The policy specialist said as a side note, there has been some good wetland news on the federal level, including the introduction of the Clean Water Restoration Act in the U.S. Senate.

"The bill would reaffirm the historical jurisdiction of the 1972 Clean Water Act and ensure all 'waters of the United States' that have been covered by federal safeguards against pollution for more than 34 years retain Clean Water Act protection."

Towns compete for $260 million in federal funds for $4 billion on water quality plans (*Medill Reports*)

by Juliana Hertel
April 09, 2009

Illinois

Wilmette wants water treatment plant repairs. Chicago wants a green roof for its water purification plant. Morton Grove wants to replace an aging water main.

The costs for these and hundreds of other water quality projects, all eligible for federal stimulus grants, greatly exceed funds available, according to Illinois Environmental Protection Agency. The EPA released the list of eligible proposed projects on Tuesday.

"Of course we would like to fund each and every project submitted," said Maggie Carson,

communications manager for the Illinois EPA. The projects made the state list based on their "readiness to proceed" and as a stimulus for creating jobs, and be an economic boost, Carson said.

The state list includes 1,641 separate projects addressing drinking and wastewater issues in Illinois communities. The Illinois EPA will collect $260 million for water projects while the estimated costs for the submitted projects surpass $4 billion.

The projects, recently submitted by the state to the U.S Environmental Protection Agency for final approval, will receive money in a first-come-first-served order as the applications are finished and submitted. Approved projects can expect to receive funds as early as the end of April, although no specific date has been set.

Wilmette has two drinking water treatment projects on the approved list but has submitted several other wastewater improvement plans in attempt to qualify for additional funding, said Bridget Mayerhofer, village director of engineering.

“Anything we felt was eligible for stimulus money, we submitted,” said Mayerhofer. “Whatever help we can get to fund these projects means less burden on the Village of Wilmette.”

Morton Grove doesn't know how the village would fund the two water treatment projects on the lists if they are not approved at the national level, said Joe Dahm, superintendant of the water department.

“It’s great,” said Dahm. “The projects we’ve been working on are a replacement of a water main and the maintenance of a 750 gallon water tank."

Fixing the aged water main, said Dahm, would improve the fire flow, or availability of water in the community in case of a fire. The water tanks, which are 14 years old, contain the village's reserve drinking water and require routine maintenance.

The building of a green roof for the James W. Jardine Water Purification Plant in Chicago is another project awaiting approval. The roof project proposes to use vegetation to absorb and help reduce rain water that overwhelms Chicago’s combined storm and sanitary sewer system.

“The plant needed a roof. And as long as a roof was being put down, the mayor encouraged it to be a green roof,” said Owen Keenan, engineer for HDR, the international firm that designed the roof.

“Some of the sewers here are 100 years old,” Keenan said. “When you reduce the peak load, you get a longer more useful life out of a sewer system and better water quality.”

The U.S. EPA will apply for funding for the projects under the American Recovery and Reinvestment Act and seeks to fund all eligible programs.

Enhanced Oil Recovery: How to Make Money from Carbon Capture and Storage Today (*Scientific American*)

The U.S. oil business has been using carbon dioxide to pump extra oil out of reservoirs for 36 years--and permanently storing some CO2 in the process

By David Biello

April 9, 2009

Editor's Note: This is the fourth in a series of five features on carbon capture and storage, running daily from April 6 to April 10, 2009.

The Scurry Area Canyon Reef Operators Committee oil field, better known as SACROC, near Snyder, Tex., has slurped 140 million metric tons of liquid carbon dioxide (CO_2) since 1972—80 million metric tons of which has stayed trapped in the reservoir. Pumping all that CO_2 down has meant pumping more oil out.

For 36 years, oil services companies like Denbury Resources and Kinder Morgan have piped carbon dioxide from naturally occurring reservoirs in Colorado to the declining oil fields of the Permian Basin in West Texas.

The U.S. has at least 100 such projects like SACROC and 3,100 miles (5,000 kilometers) of CO_2 pipelines. All told, companies have injected some 10.8 trillion cubic feet of the greenhouse gas since the 1970s, according to petroleum engineer R. Tim Bradley, Kinder Morgan's president of CO_2, to raise the yield from oil fields by some 650,000 extra barrels a day—more than 10 percent of daily U.S. total production.

Most important with respect to carbon capture and storage (CCS), the Great Plains Synfuels Plant in North Dakota has pumped as much as two million metric tons of carbon dioxide a year to the Weyburn oil field in Saskatchewan since 2000.

"The Dakota gasification project is creating synthetic gas and taking the CO_2 from that process," then pipelining it to the Weyburn oil field, observes carbon storage development coordinator Kurt Waltzer of the Boston–based environmental group the Clean Air Task Force. "In effect, you have demonstrated all the components of doing a CCS project."

In all of these projects, the CO_2 basically scours more hydrocarbons out of the oil field. When injected into the oil reservoir, it mixes with the oil and mobilizes more of it—like turpentine cleaning paint—and then allows it to be pumped to the surface.

Using carbon dioxide to churn out more fossil fuels—and permanently storing some of the CO_2 in the process—might sound counterproductive to limiting climate change because those fuels, when burned, put more CO_2 into the atmosphere. But it does reduce overall emissions by at least 24 percent, calculates petroleum engineer Ronald Evans, Denbury's senior vice president of reservoir engineering: every recovered barrel of oil eventually puts 0.42 metric ton of CO2 into the atmosphere, but 0.52 to 0.64 metric ton are injected underground recovering it. In fact, Kinder Morgan's Bradley estimates that enhanced oil recovery in the U.S. could reduce CO_2 emissions by 4 percent, if done correctly.

The great fear commonly associated with carbon sequestration is that trapped CO_2 might suddenly escape to the surface with deadly consequences, as happened in 1986 at Lake Nyos in Cameroon. That volcanic lake had naturally accumulated two million metric tons of carbon dioxide in its cold depths; one night it spontaneously vented, displacing the oxygenated air, and suffocated more than 1,000 nearby villagers.

Yet in all three decades of commercial use of CO_2 for EOR, there have been no dangerous leaks. CO_2 from leaks and ruptured injection wells has always dispersed too quickly to pose a threat.

For example, prospectors in Utah drilling for natural gas in 1936 accidentally created a CO_2 geyser. It still erupts a few times a day as pressure builds but is "so unhazardous that it's a tourist attraction, not a risk," says hydrologist Sally Benson, director of the global climate and energy project at Stanford University. In fact, air concentrations of carbon dioxide have to build up to more than 10 percent to be hazardous, which is difficult to achieve, according to modeling from Lawrence Livermore National Laboratory (LLNL).

The reason is that CO_2 belching from a volcanic lake creates conditions very different from those of the gas escaping from a wellhead or seeping into a basement, explains Julio Friedmann, leader of the carbon management program at LLNL. At Lake Nyos, an abrupt release of the CO_2 allowed dangerous concentrations to pool in low-lying surrounding areas. Pressurized gas escaping from a wellhead or crack simply mixes rapidly with the atmosphere, presenting no danger, much as the use of a fire extinguisher is not hazardous. In situations where atmospheric mixing is minimal, such as for a slow leak into a basement, the problem can be eliminated by simply installing a sensor and a fan, as in apartment buildings today near natural CO_2 seepages in Italy and Hungary.

The greatest risk is from the wellheads themselves leaking: one in 12,000 injection wells leak, according to LLNL. And, not unlike a vase that is glued back together, a wellhead provides the crack where a new break will most likely form, particularly if CO_2 is injected too fast and too much pressure builds up deep underground.

Most wellheads, though, seem to hold up. For example, oil wells drilled in 1944 near Cranfield, Miss., are not reacting to extra pressure from injected CO_2, according to geologist Susan Hovorka of the University of Texas at Austin, who is running the test. "I'd like to congratulate the roughnecks that drilled those wells," she says, "because they seem to be holding pressure just fine."

At a demonstration project in Japan, even a magnitude 6.8 earthquake didn't shake injected CO_2 loose from a deep saline aquifer; the wellheads did not so much as leak. Big earthquakes might cause leakage, but in many cases, they will not, Friedmann says.

The U.S. Environmental Protection Agency (EPA), under the terms of the Safe Drinking Water Act of 1974, is currently crafting new measures to regulate wells for CO_2 injection—final rules are set to be adopted by 2011 to protect groundwater sources from CO_2 in the subsurface, according to Stephen Heare, director of the EPA's drinking water protection division. "There are 800,000 wells out there injecting almost everything imaginable," Heare says. "We think the technology is there and we can move ahead safely."

Nevertheless, "the first CCS project that is done badly is the last CCS project that will be done," warns Mark Brownstein, New York-based managing director of business partnerships in the climate and air program at the Environmental Defense Fund. "In this respect, it is very similar to nuclear power."

YAY! EPA to Start Cracking Down on Mountaintop Removal (*EcoGeek*)

Written by Greg Peters

Thursday, 09 April 2009
Montana

In a move to potentially regulate one of the most polluting industries left in America, the Environmental Protection Agency (EPA) has begun maneuvering to position itself to review of the impacts that mountaintop removal (MTR) mining for coal has on water. The practice, which quite literally removes the tops of mountains to expose buried coal seams and then dumps the waste into streams and rivers, has long been recognized as polluting by environmentalists and scientists, but has to date escaped scrutiny by the EPA.

The Bush Administration did it's best to streamline the process for companies to receive permits which have traditionally been reviewed by the Army Corps of Engineers. Essentially, Bush helped, for eight years, the coal industry keep it's stranglehold on power generation, despite rising costs. However, two events that occurred in late March have placed greater scrutiny on the practice.

On March 31, U.S. District Judge, Joseph R. Goodwin, issued a ruling preventing the Army Corps of Engineers from permitting companies for nationwide mining operations, instead requiring the companies to get specific plans for each “mine” approved before they receive a permit. Imagine that, these poor coal companies have to actually get a location specific approval to blast the top off a mountain and fill creeks and valleys with the toxic waste. Oh the humanity.

Also in the last week of March, the Environmental Protection Agency issued a letter concerning the permitting of two mines in Kentucky and West Virginia. The letter raised serious questions about the impacts the operations would have on the water quality of the region. Many communities have suffered ruined groundwater and polluted wells as a result of MTR, and apparently the EPA thinks that they have some role to play in whether and how this type of mining should continue.

President Obama has called the practice “horrendous” and has promised that his administration will examine the practice to see just how horrendous it truly is. Jon Lovett, director of the Appalachian Center for the Environment and Economy puts it bluntly, “There is no practice in this country as environmentally destructive as large scale surface mining.” It seems that through these and other measures, the nearly 200 year reign of King Coal may slowly waning as we move into the second decade of the 21st century.

Comments being taken for Puget Sound recovery plan (*Associated Press*)

THE ASSOCIATED PRESS

Last updated April 9, 2009 3:00 p.m. PT

SEATTLE -- The public has another chance to weigh in on the state's recovery plan for Puget Sound.

The Puget Sound Partnership has released more information on its blueprint to clean up the estuary, after the U.S. Environmental Protection Agency requested more details.

EPA ecologist John Gabrielson says it wants more specifics on how the state agency plans to carry out its plan.

He says the partnership didn't give the public enough time to comment on the plan when it was released last fall after an 18-month process. The current 30-day comment period ends April 20.

The partnership needs EPA approval to get federal money through the National Estuary Program.

Environmentalists win battle over pesticide spraying near water (*The Oregonian*)

by Abby Haight, The Oregonian

Thursday April 09, 2009, 8:30 AM

Conservationists applauded the Environmental Protection Agency's decision to move ahead with implementing the Clean Water Act after a court battle over a Bush Administration rule that exempted pesticide spraying around waterways.

In January, the 6th Circuit Court of Appeals reversed an EPA decision that spraying pesticides near waterways shouldn't be regulated by the Clean Water Act.

The court ruled that pesticides constituted pollutants under federal law and had to be regulated to protect human health and the environment.

Agriculture Secretary Tom Vilsack had sought a reversal of the decision, but the Justice Department announced Wednesday it would not seek a rehearing. The EPA said it would continue the Bush rule for two more years, but activists said they were prepared to challenge the delay.

"It will not be the great hardship that the pesticide industry has concocted," said Charlie Tebbutt, of the Eugene office of the Western Environmental Law Center, who argued the case for the environmental groups. "It is time to reinstate the full protections to our nation's rivers, lakes and streams envisioned by the Clean Water Act when it was passed in 1972."

-- *Abby Haight;* abbyhaight@news.oregonian.com

JACKSON CALLS FOR LEGISLATIVE FIX TO EXPAND WATER ACT JURISDICTION (*Inside EPA*)

4/10/2009

EPA Administrator Lisa Jackson is for the first time calling for a legislative clarification of Clean Water Act (CWA) jurisdiction -- including the possibility of supporting legislation that would expand EPA's permitting authority -- to aid the agency's efforts to ensure protection of a wide range of waterbodies.

"We do need a legislative fix to clarify" CWA jurisdiction, Jackson said April 8 at a panel discussion in Washington, DC, on challenges of obtaining and maintaining clean water more than 36 years after the enactment of the water law. "There is a murkiness about jurisdiction," she said, noting that EPA water staff spend 40 to 60 percent of their time dealing with jurisdiction questions and helping states determine when CWA permits are needed.

When asked how far the legislative fix should go, Jackson repeated her call for clarification of existing authority and said "maybe" legislation should expand EPA's authority. "The country benefits from something broader rather than narrower," she said.

Jackson, however, did not go so far as to specifically endorse recently introduced Senate legislation that generally allows EPA and the Army Corps of Engineers to oversee most waterbodies, not just those currently considered "navigable."

Environmentalists have called for the EPA administrator to endorse the legislation, but Jackson has so far declined to take a position on the bill. She also told senators in written comments that clarifying the scope of the law is a "complicated issue."

Sen. Russell Feingold (D-WI) April 2 reintroduced his bill to protect a wide range of waters in the wake of two Supreme Court decisions that effectively narrowed the CWA's scope, but the legislation faces an uncertain future.

Sen. Ben Cardin (D-MD), chairman of the Senate Environment & Public Works Committee's water panel and a cosponsor on Feingold's bill, told *Inside EPA* in a recent interview he believes the bill will pass in committee but downplayed its "uncertain" chances on the Senate floor.

The Feingold bill, which is strongly supported by environmentalists, is the latest of several pending proposals to clarify the law's scope, although so far all have drawn strong criticism from opponents. Environmentalists, for example, are opposed to a proposal from the Environmental Council of the States to codify EPA's existing regulatory definition, saying it would mandate exemptions never before endorsed by Congress (*Inside EPA*, Dec. 12).

Similarly, staff for House transportation committee Chairman James Oberstar (D-MN) recently rejected a hybrid plan from Western states, who sought to retain language limiting the law's scope to "navigable" waters while providing a broad definition of what the term means (*Inside EPA*, March 20).

Given the uncertain prospects for the legislation, agency officials are also planning to revise controversial Bush administration guidance for EPA and the Corps to determine jurisdiction, a move that could address some jurisdictional concerns prior to Congress passing the legislation. Robert Sussman, Jackson's senior counsel, told EPA's National Advisory Council on Environmental Policy & Technology (NACEPT) March 25 that the agency is "committed to taking another look at existing guidance to see if we can do a better job establishing solid jurisdictional boundaries."

Feingold's bill, called the Clean Water Restoration Act, seeks to clarify the scope of the water act in the wake of several Supreme Court rulings that critics say have narrowed the law's jurisdiction over isolated wetlands, intermittent streams and other marginal waters. In *Solid Waste Agency of Northern Cook County (SWANCC) v. Army Corps of Engineers*, the court limited the basis for asserting jurisdiction over solely intrastate waters, while in *Rapanos, et ux., et al. v. United States*, the court provided two competing tests for determining jurisdiction.

Feingold and Oberstar introduced versions of the bill in the last Congress but faced stiff opposition from industry and Republicans, as well as Democrats from rural districts. As introduced, S. 787 largely retains language allowing EPA and the Corps to regulate waters "to the maximum extent" they are subject to Congress' legislative authorities under the Constitution, while eliminating the law's current application to "navigable" waters.

Environmentalists have said that precluding the word from the bill's mandatory language is essential to prevent courts from using the word to limit the scope of the bill. But industry and some state officials are seeking to retain language limiting jurisdiction to navigable waters as a way to preserve states' oversight of local waters.

The measure includes for the first time a more substantial section of non-binding "findings" clarifying to courts that Congress does not intend the law to apply to groundwater, prior-converted croplands and waste-treatment systems, language that could influence courts by providing evidence of congressional intent. EPA has exempted the latter two categories from regulation and industry is seeking to codify or preserve the exemptions.

Environmentalists welcomed the bill's introduction. Clean Water Action argued in an April 2 statement that the bill would speed the lengthy permitting process currently required by EPA. "The

Clean Water Restoration Act cuts the red tape and eliminates this onerous process, which has been criticized by public officials for adding cost and delay," the group's statement said.

But the new findings have failed to win over industry officials, who say the bill's scope is too broad and the new findings do not do enough to codify EPA's regulatory exemptions. One industry source was disappointed that the bill's supporters believe the findings satisfy industry concerns that the bill would broaden the scope of the law.

The industry source was also surprised by the bill's 23 co-sponsors, saying it appears that environmentalists have been lobbying the Senate more strenuously than they believed. The bill's cosponsors include several key Democratic leaders, including Whip Richard Durbin (D-IL), Campaign Committee Chairman Charles Schumer (D-NY), environment committee Chairwoman Barbara Boxer (D-CA) and Judiciary Committee Chairman Patrick Leahy (D-VT).

SENATE URGED TO DROP 'BUY AMERICAN' RULES FROM WATER SRF FUNDING BILL (*Inside EPA*)

4/10/2009

Industry and state officials are pushing to keep "Buy American" procurement provisions out of the Senate's pending bill to reauthorize EPA's clean water and drinking water state revolving funds (SRFs), fearing the broad scope of the requirements could frustrate future water infrastructure projects.

But congressional staff are telling stakeholders to prepare for "Buy American" language in any future authorization and appropriations bill, sources say. The $18.7 billion House version of the SRF reauthorization bill, approved last month, includes such a provision that mirrors the stimulus laws' strict requirements that projects funded through the law use iron, steel and manufactured goods produced in the United States.

While "Buy American" provisions have been included in various bills over the years, sources say the stimulus law language -- which the House-passed SRF reauthorization bill mirrors -- is written so broadly as to jeopardize potential future water infrastructure projects.

"In the worst case scenario, this would be a death knell" to the water treatment industry, an industry source says, because many components of water treatment systems are not available domestically.

State, industry and EPA sources say if "Buy American" provisions are applied in the broadest possible way, it would prohibit the use of a product containing any components made by a foreign manufacturer. The industry source says that only five percent of water treatment equipment would be considered a manufactured good produced in the United States under that broad definition, which would inhibit a slew of projects.

The push comes as the stimulus law's "Buy American" provisions are already causing delays to proposed water infrastructure stimulus projects amidst uncertainty over how far the provisions will reach.

The White House Office of Management & Budget (OMB) April 3 released additional guidance that offers some flexibility from the requirements, for instance permitting foreign components to be used in American-made “manufactured goods,” and EPA is slated to soon issue a definitive guidance for the SRF program.

At a recent water treatment industry conference, participants said the “best case” scenario would be for stimulus projects to begin in the third quarter of fiscal year 2009. But as the season turns from fall to winter, construction will become more difficult, leading to fear over the consequences of the issue not being quickly resolved.

Delays and problems to the stimulus SRF funding could pose difficulties for stakeholders, states, EPA and lawmakers who have all stated their desire to use the results of the funding as evidence for future baseline increases. Some projects that have not yet been funded, or were funded prior to the start of the current fiscal year last October, are facing delays due to the law’s procurement rules.

EPA recently waived the “Buy American” requirements to allow some already-funded water infrastructure projects to refinance loans to access the more attractive financing options the stimulus law provides, though it only applies to eligible projects for which debt was incurred on or after October 1, 2008 and before February 17, 2009, the day President Barack Obama signed the stimulus law (*see related story*).

Another obstacle in terms of the stimulus law’s “Buy American” provision is its relatively high threshold for waiving it for increased costs. A Democratic aide says that similar provisions in the past generally set the “cost premium” that allows “Buy American” to be waived at six percent. The six percent difference is usually compared for each domestic product against other foreign products but in some cases an aggregate cost increase among products is considered, according to a Congressional Research Service report. *Relevant documents are available on InsideEPA.com.*

But in the stimulus law, any “manufactured good” must, by itself, drive the total project cost up by 25 percent to be eligible for a waiver to use a foreign alternative good.

OMB in its interim guidance April 3 defined when “manufactured goods” meet the law’s requirement that projects must utilize American-made “iron, steel and manufactured goods.” EPA, states and industry officials have worried that OMB could define “manufactured goods” too broadly, making it more difficult for SRF projects to procure enough domestic-manufactured goods to meet the law’s requirements.

OMB defines the term broadly to include any goods “[p]rocessed into a specific form and shape” or “[c]ombined with other raw material to create a material that has different properties than the properties of the individual raw materials.” However, the guidance also states that “components or subcomponents” produced abroad may be included in American-made goods whose final manufacturing takes place domestically.

The industry source says the OMB definition is a mixed bag because the OMB definition is “about as broad as it could be,” but it is also “very welcome news” that OMB’s guidance allowed foreign “components and subcomponents” in American-made “manufactured goods.”

The stimulus law also includes a clause exempting some purchases from having to comply with the “Buy American” provisions if compliance with the requirements would conflict with “obligations under international agreements.” However, that waiver does not apply to SRF funds because those are ultimately dispersed by local governments, which are not party to most trade agreements.

Additionally, even state projects must have a value of at least $7.4 million to qualify for the exemption under the limited trade agreements they are party to and the average SRF-financed project costs around $3 million.

The Office of the U.S. Trade Representative and OMB officials have confirmed that international trade agreements do not apply to municipalities, according to e-mails reviewed by *Inside EPA*. Stakeholders are therefore acting with increasing urgency to keep “Buy American” out of the Senate SRF reauthorization bill after the House-passed bill included the language and delays to stimulus projects because of the provision are becoming more apparent.

For instance, Canada’s environment minister Jim Prentice recently met with House Transportation & Infrastructure Committee Chairman James Oberstar (D-MN) to communicate his concerns about the issue. Oberstar has expressed his vigorous support for “Buy American” provisions in the past.

Oberstar lauded inclusion of the provisions in the House version of the SRF reauthorization bill, noting that China holds an excess of steel reserves, and said that it would be economically unwise to open up government spending to being undercut by low prices from Chinese products.

Oberstar has requested reports from stimulus beneficiaries due April 4 seeking reams of data on how they spend their stimulus funds and other items. A spokeswoman says the reports are still being reviewed by committee staff. -- *Jonathan Strong*

EPA Poised To Seek Two-Year Court Stay To Craft CWA Spraying Permits (*Inside EPA*)

4/10/2009

EPA is declining to appeal a key pesticides ruling that requires pesticide sprayers to seek clean water permits and will instead ask the court for a two-year stay to allow it time to develop permits, according to environmentalists. But pesticide industry officials are vowing to ask the court to reverse its ruling and environmentalists, while welcoming EPA’s decision to drop the case, say they will oppose agency efforts to seek a stay. Farm groups have urged EPA to appeal *National Cotton Council, et al. v. EPA*, which vacated EPA’s permit exemption for spraying. The ruling held that pesticide spraying is a point source discharge that requires a permit but industry officials fear the court’s reasoning could also require permits for activities previously exempted as nonpoint releases.

OBAMA NAMES FORMER CALIFORNIA OFFICIAL TO HEAD EPA WATER OFFICE (*Inside EPA*)

4/10/2009

The Obama administration is moving closer to filling its remaining open slots at EPA, after the president recently announced his intent to nominate former California water official Peter Silva as the agency's next assistant administrator in the Office of Water.

Silva has won support from both California Republican and Democratic governors who appointed him to top water department slots. Silva, whose pending nomination the White House announced April 3, is a civil engineer with nearly 32 years of experience in the water and wastewater fields. He has worked in varying public sector positions with a focus on water resources policy, including "extensive experience" in U.S.-Mexico border issues, according to an administration press release.

Silva currently is a senior policy advisor for the Metropolitan Water District of Southern California, and prior to that was vice-chair of the California Water Resources Board for six years, having been appointed by both Govs. Gray Davis (D-CA) and Arnold Schwarzenegger (R-CA). During his state tenure, he also won support from both industry groups and environmentalists.

Silva was also appointed by former President Clinton to serve for three years on the board of the Border Environment Cooperation Commission (BECC). He also served as the BECC Deputy General Manager for three years in Ciudad, Juarez, Mexico.

MICHIGAN FACES HURDLES IN RETURNING WETLANDS PROGRAM TO EPA (*Inside EPA*)

4/10/2009

The state of Michigan faces a number of hurdles in returning jurisdiction of its wetlands program to EPA, including requirements for the cash-strapped state to spend money before seeing any savings and findings from the state's environment department that fewer wetlands will be regulated under the federal program, sources say.

The state is one of only two that have received authority from EPA to implement its own wetlands program -- the other is New Jersey -- but in Gov. Jennifer Granholm's (D-MI) Feb. 3 State of the State address, she recommended that the state shift wetlands regulation back to the U.S. Army Corps of Engineers and EPA to save the state up to $4 million per year.

"I will recommend returning enforcement of wetlands protections to the federal government where more staff exists to effectively safeguard our natural resources," Granholm said in the address. The state legislature is still weighing whether to adopt the proposal.

If the program is returned to federal control, developers seeking dredge-and-fill permits under section 404 of the Clean Water Act would need to petition the Corps for permits, and EPA would retain oversight.

The Michigan Department of Environmental Quality (DEQ) in a March 31 letter to EPA Administrator Lisa Jackson outlined an "alternative transfer scenario" that aims to minimize the burden on EPA, Army Corps and DEQ staff in returning the wetlands program. The letter says that short-term issues

that need to be addressed include the handling of permit decisions that are in process and pending enforcement cases, while long-term issues include access to historical permit and enforcement records. *Relevant documents are available on InsideEPA.com.*

States have long pushed EPA to make it easier for states to assume control of wetlands programs, but in the wake of the massive economic downturn, many observers are concerned state budget cuts could reduce the effectiveness of state-run environmental programs.

Sources say that any attempt to return the program is likely a complicated and drawn out process that will cost time and money before it saves any.

Additionally, DEQ in a report issued last month, is warning that returning the program could result in less stringent oversight of the program.

“It is likely that the [Corps] will regulate less wetlands than are regulated by DEQ,” the report says. It explains, “State law clearly regulates draining and dredging of wetlands as well as fill. Because federal law regulates discharges of dredge or fill material, some activities may not be fully regulated.”

And the report adds, “Because DEQ permit staff are located in multiple district offices, they have a stronger knowledge of local resources and are better positioned to complete necessary site inspections than the [Corps], including identification of wetland boundaries and rare resources.”

Another hurdle is that in order to give back the program, the state legislature would have to repeal state wetlands law, the DEQ report says.

State Sen. Roger Khan (R) introduced Feb. 4 a bill, S.B. 187, to repeal the state’s wetlands program, but it has thus-far not advanced past committee.

Spokesmen with the governor’s office and DEQ did not return requests for comment.

ACTIVISTS SEEK WATER ACT REGULATIONS FOR COAL ASH POND DISCHARGES (*Inside EPA*)

4/10/2009

Environmentalists are calling for a key House lawmaker to pressure EPA to quickly regulate polluted discharges from coal ash ponds under the Clean Water Act (CWA), opening another front in the simmering debate about regulating the facilities.

In a March 31 letter to House Transportation & Infrastructure (T&I) Chairman James Oberstar (D-MN), the Environmental Integrity Project (EIP) asked the committee to ask EPA to regulate the effluent discharge from coal ash ponds -- also called surface impoundments or “wet storage” -- into rivers and streams.

The request comes even before the agency completes a still-preliminary and uncertain rulemaking process to set technology-based discharge standards -- known as effluent limitation guidelines (ELGs) -- for the facilities.

“We respectfully request that you ask the agency to act now to limit this pollution, rather than wait for the conclusion of a lengthy rulemaking process,” the letter reads. *The letter is available on InsideEPA.com.*

Since a massive coal ash spill at a Tennessee Valley Authority plant contaminated nearby areas, much of the debate has focused on how to regulate waste storage facilities.

The ash is known to contain elevated levels of heavy metals, such as arsenic, selenium and mercury but is not a federally regulated waste. Rather, it is considered a solid waste under the Resource Conservation & Recovery Act and left to the states to regulate. EPA officials said last month that they are considering a hybrid approach for regulating the waste.

Similarly, EPA is only in the early stages of determining whether and how to develop an ELG, having left it up to state or federal permit writers to exercise their “best professional judgment” on whether to issue a permit or not. Industry officials said recently that they believe they can escape strict requirements.

Now environmentalists are signaling a tough line on how to regulate discharges from the facilities. In their letter to Oberstar, EIP decried the agency’s issuance of CWA discharge permits from the ponds when the levels of heavy metals in the discharged water is known to be above that acceptable for human health. EIP is asking Oberstar to pressure EPA to set an effluent limit.

DESPITE NOVEL EFFORT, CRITICS FAULT MERCURY RISK-BENEFIT ANALYSIS (*Inside EPA*)

4/10/2009

The U.S. Food and Drug Administration’s (FDA) first-time attempt to assess the risks and benefits of eating fish containing methylmercury is drawing praise from a number of observers who say it marks a landmark effort that could set a precedent for future assessments, although the effort is still being criticized for providing a simplified analysis that activists say could put human health at risk if it became policy.

FDA published the assessment at issue, *Report of Quantitative Risk and Benefit Assessment of Commercial Fish, Focusing on Fetal Neurodevelopmental Effects (Measured by Verbal Development in Children) and on Coronary Heart Disease and Stroke*, just a day after President Barack Obama’s inauguration.

It provides a first-time analysis of the risks and benefits of eating fish, assessing both the risks that methylmercury exposure poses to children’s development and the benefits of consuming the Omega-3 oils and proteins in fish, particularly for those at risk for cardiovascular disease.

The FDA study represents an “entirely new way” for regulators to analyze risks, according to the Society for Risk Analysis (Washington DC Chapter), which was planning to hold a forum on the study. The forum had been scheduled for April 7 but has been postponed, according to a spokeswoman.

While regulators have traditionally analyzed food contaminants and have issued warnings based on the presence and level of those contaminants, the FDA study sought to take a “more comprehensive approach” based on the assumption that consumers make decisions about whether or not to consume a food, not a contaminant, the group’s notice says.

The FDA’s more-comprehensive approach mirrors consumers’ decision-making and is considered more useful by taking into account the overall health effect of consuming the food, considering both risks and benefits, the group says.

“There has been, up until now, a tremendous effort on the part of multiple federal and state agencies to warn women of childbearing years about the dangers of consuming fish solely based on methylmercury’s contribution to the net effect of eating fish, but not on the net effect itself. This type of study may ultimately suggest a different approach,” the group’s notice says.

While EPA officials and environmentalists say there is merit to the theory of studying both the risks and benefits of eating fish, they are questioning FDA’s study, saying it does not consider the wide variety in fish species in the amount of mercury consumed or the amount of beneficial oils and proteins provided by different species.

“It is a trade-off,” says a source with the activist group Food and Water Watch (FWW), which filed adverse comments on the analysis. “There are a lot of benefits of eating tuna, especially for low-income families. It’s a great source of protein. But the risks and benefits don’t cancel each other out.”
Relevant documents are available on InsideEPA.com.

ACTIVISTS SEEK REJECTION OF RAIL PERMIT AS TEST OF JACKSON MEMO (*Inside EPA*)

4/10/2009

Environmental advocates are urging EPA to reject a permit for a controversial Massachusetts rail project, saying the decision is a key early test for agency Administrator Lisa Jackson’s pledge to make transparent choices based on science and law rather than political pressure from lawmakers who favor the project.

Public Employees for Environmental Responsibility (PEER) sent an April 7 letter to Jackson urging her not to issue a Clean Water Act permit for the proposed Fall River/New Bedford rail project in Massachusetts, which would cut through the Hockomock Swamp, the largest freshwater wetland in Massachusetts and an EPA priority wetland.

The group argues that a decision based on science would not allow the permit and says EPA’s decision will be a litmus test of the agency’s political independence.

The group's letter was prompted in part by recent news reports alleging that Rep. Barney Frank (D-MA) and other lawmakers sought to ensure that President Barack Obama's appointed EPA leaders do not oppose the rail project. *The letter is available on InsideEPA.com.*

PEER says that the rail project is environmentally unsound and should not receive a permit. The group says that if EPA grants the permit it would be a purely political decision at odds with Jackson's memo to agency employees -- issued at the start of her tenure -- pledging to make her decisions based on science, not "political agendas."

PEER's letter cites a March 28 report in the *SouthCoast Today*, which says that Frank and other project supporters have "made sure the new leadership of the U.S. Environmental Protection Agency did not include anyone with 'record of hostility' to the project." Kyla Bennett, a former EPA Region I employee who signed the PEER letter, requests that EPA investigate whether new agency appointees are required to support Frank's preferred rail route.

However, a spokesman for Frank said that the lawmaker has no intention of blocking a fair environmental review of the project. Frank is hoping that EPA appointees have not prejudged the project without considering all environmental factors, including the rail project's potential to reduce fossil fuel emissions, the spokesman says.

EPA puts brakes on 3 more mountaintop permits *(Greenwire)*

Eric Bontrager, E&E reporter

04/09/2009

U.S. EPA is objecting to three more federal permits for mountaintop-removal coal mining.

EPA asked the lead federal permitting agency, the Army Corps of Engineers, last week to temporarily hold up two permits for mountaintop-removal operations in West Virginia and another in Virginia.

The permits are for A&G Coal Corp.'s Ison Rock Ridge Surface Mine in Wise County, Va., a Massey Energy mine in Kanawha County, W.Va., and a Frasure Creek Mining operation in Mingo County, W.Va.

EPA expressed concern that the permits would threaten water quality, saying they failed to adequately account for the effects of dumping rock from blasted mountaintops into valley streams and rivers.

Collectively, the three permits would allow the burial of about 8 miles of streams under blasted rock, blocking downstream water supplies and damaging ecosystems.

"Even though ephemeral and intermittent streams may go dry during a portion of the year, they continue to provide habitat for macroinvertebrates and amphibians that utilize the interstitial

water flows in the substance below the stream," EPA said in its letter about the Frasure Creek mine, which would fill almost 3 miles of stream. "Such aquatic resources have been significantly impacted by mining in Southern West Virginia."

The letters come in the wake of EPA's announcement last month that it would review permitting for two coal mining operations in West Virginia and Kentucky (*E&ENews PM*, March 24).

EPA Administrator Lisa Jackson said then that her agency "will use the best science and follow the letter of the law in ensuring we are protecting our environment."

EPA's announcement followed a 4th U.S. Circuit Court of Appeals decision allowing the corps to issue mountaintop permits without requiring more extensive environmental reviews. The Richmond court's decision overturned a lower court ruling that found the Army Corps failed to require adequate environmental analyses.

The Clean Water Act requires EPA to review Army Corps permits to ensure water-quality protection. The corps slowed its permitting as the litigation was under way, and now must tackle as many as 250 permit proposals.

EPA spokeswoman Enesta Jones said she could not rule out that more permits would soon be reviewed.

The National Mining Association's senior vice president, Carol Raulston, said additional permitting delays could affect the more than 60,000 mining jobs. "This is a continuing concern throughout Appalachia because of the potential job impacts," she said. "You have to have these permits to operate."

Nationwide permit at issue

In its letter on the A&G operation in Virginia, EPA asked the corps to revoke the permit because it was authorized under a streamlined "nationwide permit" and to instead process the application under the Clean Water Act's individual permit process.

Last month, U.S. District Court Judge Joseph Goodwin of the Southern District of West Virginia ruled that the corps had erred in letting coal mining companies dispose of wastes under the streamlined permitting process (*Greenwire*, April 1).

Goodwin's decision affected nationwide permits for operations in his court district.

Jones said the agency's letter for the A&G operation is unrelated to the ruling. "There is no correlation," she said. "This is part of EPA's normal enforcement of the Clean Water Act."

The Virginia mining operation was of particular concern to environmental groups, which noted that the permit would have filled 3 miles of streams and nine valleys with more than 11 million cubic yards of rock and dirt.

"The days of reckless, unchecked destruction of Appalachian mountains are numbered," said Mary Anne Hitt, deputy director of the Sierra Club's Beyond Coal Campaign, in a statement. "There is much more work to do, but President Obama's EPA has taken bold action on mountaintop removal coal mining, and we applaud their intervention."

Mark Haviland, chief spokesman for the corps' Norfolk, Va., district, which issued the A&G permit, said the corps was still reviewing EPA's request.

"Obviously our folks in regulatory are going to take a hard look at the permitting and with the regulatory process in general and make a decision then," Haviland said.

Calls to the Army Corps' Huntington, W.Va., district office, which handled the two other permits, were not returned.

Click here to read the letter for the A&G Coal operation.

Click here to read the letter for the Frasure Creek Mining operation.

Click here to read the letter for the Massey Energy operation.

EPA chief urges Congress to clarify regulatory muddle *(Greenwire)*

Katherine Boyle, E&E reporter

04/09/2009

U.S. EPA Administrator Lisa Jackson called on Congress yesterday to pass legislation that would set clear boundaries for federal wetland regulators.

The federal regulatory scheme for wetlands has been a mess since the Supreme Court's fractured 2006 *Rapanos-Carabell* decision.

"There is anything but clarity on whether water means water and what wetlands are regulated," Jackson said at the screening of a PBS documentary on water pollution at the National Press Club in Washington.

Wetlands are protected under the Clean Water Act as habitat for wildlife, buffers for coastal storms, sponges for pollution and recharge areas for aquifers.

"No one does it better than Mother Nature," Jackson said. "It always takes a woman."

Senate Environment and Public Works Chairwoman Barbara Boxer (D-Calif.) and Sens. Benjamin Cardin (D-Md.) and Russ Feingold (D-Wis.) last week introduced a bill they say

would restore Clean Water Act protections for many wetlands excluded after *Rapanos* and the 2001 Supreme Court decision, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*.

Feingold and House Transportation and Infrastructure Chairman James Oberstar (D-Minn.) introduced similar legislation that floundered last session, but environmentalists predicted it will get a better reception this year. Opponents say the legislation would expand wetland protection beyond the intent of the Clean Water Act (*Greenwire*, Dec. 5, 2008).

Farm pollution

Jackson also said EPA needs to re-examine its policies on concentrated animal feeding operations, or CAFOs.

"We need change," she said. "We need change in everything from policy to enforcement."

CAFOs are considered major contributors of nutrients to waterways. Excessive nutrients overfertilize waters, spurring algal blooms and lowering levels of dissolved oxygen that aquatic life needs to survive.

"When it comes to agriculture, obviously, manure happens," Jackson said. Problems occur, however, when the land reaches its capacity to absorb the nutrients from manure.

Jackson noted that the Bush administration's EPA passed new regulations for CAFOs last year. They were unpopular with some environmentalists.

"We don't take those regulations lightly," she said.

The regulation would exempt some farms from pollution-reporting requirements under the Comprehensive Environmental Response, Compensation and Liability Act, which is commonly known as the Superfund law. The rule also would ensure that information within livestock producers' nutrient management plans is available for public comment, reviewed by the permit authority and incorporated into their permits (*E&ENews PM*, Oct. 31, 2008).

EPA predicts the CAFO regulation will prevent 56 million pounds of phosphorus, 110 million pounds of nitrogen and 2 billion pounds of sediment from entering streams, lakes and other waters each year.

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