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ADMINISTRATOR JACKSON

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JACKSON VOWS TO USE SCIENCE ADVISORY BOARD AS POLICY 'SAFEGUARD' (*Inside EPA*)

5/8/2009

EPA Administrator Lisa Jackson is vowing to rely on the agency's Science Advisory Board (SAB) to "safeguard" the integrity and quality of science-based decisions, as part of her oft-stated position that sound science should be the "backbone" of EPA programs.

In an April 21 letter to SAB, Jackson commits to working closely with SAB and relying on "the expert judgment of EPA career scientists, backstopped by strong peer review processes and the guidance of independent, highly qualified scientific advisers." *The letter is available on InsideEPA.com.*

That could be a boost for some agency science advisers who claim they were marginalized by the previous administration. For example, Bush EPA Administrator Stephen Johnson did not follow the advice of his Clean Air Scientific Advisory Committee (CASAC) in setting national air standards for particulate matter (PM), ozone and lead, spurring congressional oversight of his decision to set standards less stringent than the science advisers recommended. Johnson later rejected claims that he ignored CASAC, and said while he was required to consider all comments on proposed rules the final choice is up the administrator's sole decision.

Jackson in her first letter to SAB since becoming administrator wrote, "For 30 years, the Science Advisory Board has provided essential scientific and technical advice to the Agency. Its role is critical in ensuring the objectivity and transparency of our scientific endeavors, and I intend to rely heavily on the SAB to safeguard the integrity and quality of our science-based decisions."

Meanwhile, Jackson's letter also responds to recommendations the SAB provided the new administrator in December regarding the agency's research programs. Jackson called the recommendations for changes "extremely helpful," adding that the agency believes it is already working toward many of the recommended changes. In an attachment, EPA agrees with SAB's recommendations on broadening its interpretation of land preservation; expanding its analysis of water infrastructure; increasing research on sensitive populations and chemical mixtures and integrating economists and social sciences in EPA's work, among other recommendations.

AIR

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Pollution status of Duke plant questioned (*CharlotteObserver.com*)

EPA challenges the N.C. regulators' assumptions in classifying Cliffside as a minor polluter.

By Bruce Henderson
bhenderson@charlotteobserver.com
Posted: Friday, May. 08, 2009

The Environmental Protection Agency has questioned N.C. regulators' decision to call Duke Energy's new Cliffside power plant boiler a “minor” source of hazardous air pollutants such as mercury.

As a minor source, the coal-fired Cliffside, 60 miles west of Charlotte, isn't held to the same scrutiny of its pollution controls as a larger facility.

Duke says it will be one of the nation's cleanest plants. Environmental groups that have sued Duke say Cliffside is a major pollutant source and should be equipped with the highest achievable controls.

The state agreed to the minor designation in March, after Duke submitted data from another power plant, Marshall in Catawba County, with pollution controls like those Cliffside will use.

Environmentalists challenged the data, saying it assumed Cliffside would run at maximum efficiency all the time, and complained to the EPA.

In an April 30 letter to the N.C. Division of Air Quality, EPA also questioned the assumptions the state used in making the minor-source designation. The agency focused on one of the hazardous pollutants, hydrogen chloride.

Pollution controls would have to be 99.9 percent efficient in capturing the gas, it said, and any “small deviation” would exceed the major-source threshold. EPA recommended that the state require continuous emission monitoring of hydrogen chloride, which would yield better data.

State air division spokesman Tom Mather said the division is reviewing the letter.

Duke spokesman Jason Walls said Cliffside's state air permit already allows regulators to require continuous monitoring if hydrogen chloride emissions rise above a certain threshold.

Michael Regan of the Environmental Defense Fund, an advocacy group, said continuous monitoring would prove Cliffside isn't a minor pollution source.

The EPA letter, he said, “is significant on its face because you would think the state of North Carolina would be on the same page as (President) Obama's EPA.”

Groups cite cancer risk

People who live near leaking, unlined ash basins and landfills at coal-fired power plants run higher cancer risks, two environmental groups said Thursday.

Their report listed 17 N.C. basins and landfills, including those at Duke Energy's Riverbend and Allen plants in Gaston County, Buck plant in Rowan County and Marshall plant in Catawba County.

The Environmental Integrity Project and Earthjustice, which released the report, said they used EPA data in their analysis. They claimed EPA had previously tried to conceal the information.

Coal ash is full of metals that can contaminate groundwater.

State records show arsenic, boron and selenium, all toxic in high concentrations, have been found at potentially unsafe levels in groundwater under some of Duke's ash basins, the Observer reported last year.

Duke has said there is no evidence that water supplies have been harmed.

Walls, the Duke spokesman, said the EPA data has only recently gone out for public comment. Once it is in final form, he said, Duke will work with regulators to take any action required.

The report is online at www.environmentalintegri ty. org.

Big stakes, big challenge in Democrats' cap-and-trade bill (*Denver Post*)

By Michael Riley
The Denver Post
Posted: 05/08/2009 12:30:00 AM MDT

WASHINGTON — Beleaguered and battered, congressional Republicans have been rolled on the budget and on the stimulus. They face daunting Democratic majorities in the House and the indignity of Arlen Specter's defection in the Senate.

But the minority party has found hope in the fight over a mechanism to reduce greenhouse gases, which, if it fails to pass Congress, could topple the Democratic vision on both energy and the environment.

House Democrats on the Energy and Commerce Committee are conducting nearly round-the-clock negotiations over the so-called cap-and- trade provision. Companies would have to buy permits to emit greenhouse gases, but the provision would allow cleaner companies to sell their credits at a profit.

Cap-and-trade makes it significantly more expensive to burn carbon-based fuels such as coal. Committee chairman Henry Waxman, D-Calif., is scrambling to get enough moderate and coal-state Democrats to get the bill out of a key subcommittee and to the floor for a still uncertain vote.

Long shot in Senate

The picture in the Senate looks worse. Key Democrats say Sen. Barbara Boxer, D-Calif., appears to have the votes to get the bill out of the Senate environment committee, but getting the 60 votes to shut down floor debate is a long shot — one made longer because of regional fights between parts of the country that use or mine more coal than others.

Republicans have made Democrats' job harder with a message that has resonated with cost-conscious voters. They have referred to it relentlessly as "cap-and-tax" and focused on utilities passing along higher costs to customers.

"If you're rich, it's an annoyance. If you're poor, it makes the difference on whether you get a luxury like Hamburger Helper for that evening," said Rep. Rob Bishop, R-Utah, head of a group of House Republicans that on Wednesday released an alternative energy strategy.

The fight underscores the dangers that await the Obama administration's sweeping vision on global warming.

It also shows a key dynamic that could define the administration's first year: Republicans are getting better at messaging while fights between liberal and moderate Democrats could jeopardize many of the president's most far-reaching agenda items.

"Obviously what Republicans can do is hope Democrats are lined up in a circle firing at each other, and maybe they can come out with a win," said Julian Zelizer, an expert on Congress at Princeton University.

Obama is key

A key to all this will be President Barack Obama. Rep. Diana DeGette, D-Denver, said he told Democrats on the energy committee this week that he will vigorously campaign to pass cap-and-trade.

Talks now seem centered on a compromise that could include auctioning some pollution credits while giving others away to ease the impact on rate-payers and utilities. The impacts on some regions more heavily dependent on coal also could be eased.

But the negotiators have to find a way to reduce the bill's impact on industry without diluting its effect.

If utilities pay for pollution permits, it raises the cost of burning coal and creates incentives to move toward renewable sources of energy. If permits are free, the system does neither.

"We can't pass a smoke-and-mirror's bill," said DeGette, vice chairwoman of Energy and Commerce.

Democrats still see a way to thread the needle. If Waxman and other key Democrats can negotiate a package that addresses regional concerns, it could provide a template for the Senate. Combine that with an aggressive campaign by a popular president and cap-and-trade — by far the most significant part of the Democrat's global-warming agenda — might be saved.

"If the House comes up with a product that can satisfy the Southern concerns," said Sen. Mark Udall, D-Eldorado Springs, "if the House comes up with a product that has allocations of emissions permits in a mix of paid and free percentages that are acceptable over there . . . then that all bodes well for the swing Senate votes."

How it works

Under cap-and-trade, the government would combat global warming by setting a maximum amount — or cap — on carbon-dioxide emissions. A source, usually a company or utility, must then purchase emission allowances from the government. The source would be free to trade or sell these allowances to other sources, depending on its own emission-reduction strategy. But if a source exceeds its allowances, it would be required to purchase more or reduce its emissions through other means.

Once Bitten, Twice Shy: Republicans Raise Worries About Emissions-Trading Fraud (*Wall Street Journal*)

May 7, 2009, 4:01 PM ET

By Keith Johnson

Democrats on the Hill seem to be making progress in winning more support for a cap-and-trade bill. Republicans are redoubling their opposition.

One new tack? Less focus on cost, and more on competence—of the federal government, that is. Ian Talley of Dow Jones Newswires reports that Reps. Joe Barton of Texas and Greg Walden of Oregon have seized on a decade-old emissions-trading fraud case to question the Environmental Protection Agency's ability to run a cap-and-trade program:

Between 1999 and 2001, former California Institute of Technology economist Anne Masters Sholtz allegedly hustled New York Investment firm AG Clean Air out of more than $12 million by selling fake credits through an EPA-approved trading program aimed at cutting air pollution in the Los Angeles region […] The lawmakers asked in a letter sent to the Environmental Protection Agency on Thursday that if it and other federal authorities have difficulty in preventing, investigating and prosecuting fraud in relatively small pollution-credit-trading markets, how can the government "ensure the integrity of a proposed cap-and-trade market that would be enormous in scale?"

In making their argument, the Republican congressmen are relying on statements made by EPA officials. The letter Messrs. Barton and Walden sent to the EPA quotes a January 2008 letter from an EPA regional administrator to a U.S. judge:

"Her crimes thus have the potential to undermine confidence, not only in [the Regional Clean Air Incentives Market], but in all environmental regulatory programs which use market mechanisms…Much of the proposed climate change legislation currently before Congress would create 'cap and trade' market mechanisms which would be very similar to the RECLAIM program."

Leaving aside the fact that most of the investigation, Ms. Sholtz' guilty plea, and the eventual sentencing took place while the EPA was part of the Bush administration, the letter echoes similar complaints about cap-and-trade made by environmental groups.

That is—if you thought Wall Street's embrace of subprime mortgages and exotic financial instruments caused a lot of havoc, you ain't seen nothing yet.

EPA AIR NOMINEE BACKS HOST OF CONTROVERSIAL CLIMATE CAP PROVISIONS *(Inside EPA)*

5/8/2009

President Obama's nominee to head EPA's air office is supporting a host of controversial climate cap-and-trade measures opposed by many stakeholders, backing environmentalists' preference for auctions rather than free allocations of carbon credits while supporting offsets to mitigate the cost of emissions cuts, a top priority for industry.

The nominee, Regina McCarthy, in responses to senators' questions following her recent confirmation hearing also agreed to review a host of controversial Bush administration rules, including the agency's ozone and particulate matter air quality standards along with monitoring provisions of the lead standard.

In the answers obtained by *Inside EPA* under a Freedom of Information Act request, McCarthy also agreed with senators' request to begin working on a comprehensive plan to reduce emissions at ports and to reconsider a Bush administration policy that environmentalists say allows increased cancer risks from air toxic programs. *The document is available on InsideEPA.com.*

McCarthy outlined her policy goals in response to Senate Environment & Public Works Committee (EPW) members' written questions following her April 2 confirmation hearing.

Although EPW approved McCarthy's nomination, committee Republican Sen. John Barrasso (WY) placed a hold on her nomination, claiming she failed to ease his concerns about possible agency efforts to regulate greenhouse gases (GHGs) under the Clean Air Act (*Inside EPA*, May 1).

In the responses, McCarthy outlined her position on several controversial climate measures that are now being debated in the House Energy & Commerce Committee, which is considering a climate bill sponsored by committee Chairman Henry Waxman (D-CA) and Rep. Edward Markey (D-MA).

For example, she said she had learned the value of requiring industry to pay for carbon credits, rather than receiving them as a free allowance, through her participation in the Regional Greenhouse Gas Initiative (RGGI), a power plant climate cap-and-trade program created by states in the Northeast.

Under RGGI the majority of credits were auctioned because states understood that power producers would able to raise the price they charged consumers even if they received the free credit allowances, as they had under earlier EPA cap-and-trade programs for nitrogen oxides and sulfur oxides, McCarthy said. "In essence, these generators were not required to internalize the externalities associated with the air pollution they emit. This creates a situation where the benefits inure to the generators while society bears the cost of the pollution," she wrote.

McCarthy also backed the role of offsets to mitigate the costs of a carbon cap and backed and the role of states in implementing a federal climate program -- two issues that have sparked ongoing controversy in the congressional debate over climate legislation. "Offsets may be important to help contain costs but they must be carefully evaluated and monitored to ensure that they are real, enforceable, additional, verifiable and permanent," McCarthy wrote.

The stalled nominee also offered her support for a state partnership in a climate regime, noting, "States continue to be engines for innovation, piloting new approaches to address environmental challenges, and any federal effort to address climate change should encourage states to work in partnership with EPA in implementation of federal legislation and other complimentary actions."

Climate issues have become a key focus of McCarthy's nomination, and Barrasso, with the support of EPW ranking member James Inhofe (R-OK), is holding up the full Senate's consideration of her nomination because of the issue. Barrasso argues that McCarthy has not done enough to ease his concerns that any air act regulations would affect thousands of currently unregulated small sources, such as apartment buildings and hospitals, despite EPA Administrator Lisa Jackson's repeated statements that any agency rules would exempt small sources.

In written questions, Inhofe and Sens. George Voinovich (R-OH), David Vitter (R-LA) and Christopher Bond (R-MO) pressed McCarthy about how EPA would exempt small sources from GHG rules under the air law, which usually triggers regulations for sources emitting 100-250 tons per year.

McCarthy responded, "While I understand that EPA does not have authority to revise federal laws, it is my understanding that the [air act] leaves EPA discretion, if the agency regulates greenhouse gas emissions under the act, to do so in a way that takes account of the size of emission sources."

McCarthy also downplayed concerns from Republicans that small sources could be subject to citizen suits under air act climate regulations. "As you know, the [air act] requires that citizens give EPA and the relevant state 60 days notice before bringing a citizen suit. If confirmed, I will request that I be informed if any such notice is filed with regard to a small source, and I will follow up with the potential litigants," she wrote.

Meanwhile, environmentalists say Barrasso's hold on McCarthy's nomination will not significantly impact EPA's progress on climate rules and other air issues.

Jackson has given high-level advisors authority to make policy decisions, which is allowing the air office to move ahead without a confirmed nominee, one environmentalist says. Lisa Heinzerling, EPA's chief climate counsel is taking the lead on climate issues and Senior Counsel Robert Sussman is taking care of other air issues, the source says.

Recent actions announced by the office -- such as reconsideration of several new source review rules, and a pending announcement on the reconsideration of California's application for a waiver to regulate GHGs from vehicles -- prove EPA is moving forward on a host of air issues, the source says.

A second environmentalist says that the hold could make the agency a little less efficient, but it will not change the administration's position on issues like GHG regulations under the air act.

Additionally, McCarthy vowed to review a host of Bush administration air rules and policies. In response to questions from EPW Chairwoman Barbara Boxer (D-CA), McCarthy promised to review the Bush administration's national ambient air quality standards for ozone, particulate matter (PM) and lead. The standards have been mired in litigation and the Obama EPA has dropped its defense of the lead standard and asked the court the remand the ozone rule while the court has remanded the PM standard to the agency for revision.

McCarthy also promised Boxer that she would begin work on a comprehensive approach to reduce emissions from ports. "If confirmed, addressing port pollution will be a high priority for me and I will work with the committee and the administrator to expeditiously develop and implement an overall plan to reduce port emissions," according to McCarthy, who also vowed to work with the committee and EPA attorneys to determine whether the agency needs more authority on the issue.

Further, McCarthy agreed to reconsider a Bush administration policy that critics say allowed increased risk from air toxics, in response to a question by Sen. Frank Lautenberg (D-NJ). Although the air act gives EPA authority to protect the public against cancer risks greater than 1-in-1 million, a federal court ruled that EPA had the discretion to write air toxics rules that allowed air toxics risks as high as 400-in-1 million. Environmentalists, in their recommendations to the transition team, had urged the Obama EPA to reconsider this policy. -- *Kate Winston*

EARLY EPA TOXICS RULES SUGGEST STRICT POWER PLANT MERCURY LIMITS (*Inside EPA*)

5/8/2009

EPA's stringent proposal to cut emissions of mercury and other hazardous air pollutants from cement kilns is expected to serve as a model for the agency issuing a similarly strict maximum achievable control technology (MACT) rule for electric generating units (EGU), according to environmentalists and industry sources.

Activists -- who are likely to push for the agency to expand the pending MACT standard to cut not just mercury but all other air toxic emissions from EGUs -- also note that a settlement appears imminent in a suit they filed late last year to force a deadline for EPA to propose and finalize the standard. The rule would replace the Bush EPA's cap-and-trade program to reduce mercury emissions, vacated by a federal court last year.

One environmentalist involved in the settlement discussions says the talks may conclude with an announcement this summer, while a power industry source expects the agency to propose its MACT for EGUs before the year's end.

These sources expect EPA to propose a strict MACT EGU after the agency April 21 proposed a stringent MACT for Portland cement facilities, which EPA estimates will save 600 to 1,600 lives per year from cuts in emissions of mercury and other toxic pollutants. "The [cement] rule really shows that there is new leadership there, an EPA that actually cares about what the law says and wants to protect people. If that approach carries through, there will be a power plant rule that also complies with the law and protects people," the environmentalist says.

A second activist agrees the cement proposal "provides some insight on where they are probably going to go" in the EGU proposal, including options for defining the minimum level of emission controls. One aspect of the cement MACT proposal that could carry over to the EGU standard is "the requirement to look at similar sources in defining the MACT 'floor,'" the source notes.

The Clean Air Act requires EPA to set a MACT floor requiring facilities to match a baseline of emission cuts achieved by the average of the top 12 percent of best performers.

"In some of the case-by-case MACT determinations for coal plants, [conducted since the Bush EPA mercury rule was vacated] the agency ignores similar sources with lower limits because they don't burn precisely the same combination of fuels as the proposed source. That allows the new plant to

burn dirtier fuels and have higher emissions limits," the source says, adding the way the agency addressed the issue in the cement MACT appears to fully comply with the air act.

At the same time, a cement industry source says, "I don't see how [EPA] can do anything different" in the EGU MACT than it did in the strict cement kiln proposal. "Now they have to go back to square one, and they are constrained by the same [U.S. Court of Appeals for the District of Columbia] decisions that constrained EPA here," the source says -- referring to the court's vacatur of the mercury rule and other D.C. Circuit rulings that rejected EPA's flexibility in setting air rules, forcing the agency to issue strict MACTs.

Given the D.C. Circuit's rulings, the source says that in the upcoming EGU MACT, "I expect them to do what they've done to us [with the cement MACT], propose a very low number."

The power industry source says industry is "fearing the worst" in the upcoming proposal, "especially knowing this administration." The source adds EPA is unlikely to delve into the "nitty gritty" of the rule until the confirmation of Regina McCarthy to head the agency's Office of Air & Radiation that will take the lead on the MACT. Sen. John Barrasso (R-WY) has placed a hold on her nomination over unrelated issues.

Obama EPA officials have endorsed a stringent MACT for power plants as well as the strong need to curb mercury emissions but have yet to discuss the timing of any agency proposal.

For example EPA Administrator Lisa Jackson, commenting on a landmark May 1 U.S. Geological Survey study that documents for the first time the process in which mercury emissions travel from Asia into the North Pacific Ocean and contaminate fish and other seafood, said in a statement, "This study gives us a better understanding of how dangerous levels of mercury move into our air, our water and the food we eat, and shines a new light on a major health threat to Americans and people all across the world."

Additionally at her Jan. 14 confirmation hearing before the Senate Environment & Public Works committee, Jackson noted the pressing need to address mercury from "the potential for localized impacts and then the bioaccumulation up the food chain and all the way up to human health needs."

And EPA air office nominee McCarthy in a written answer to a question from Sen. Frank Lautenberg (D-NJ) following her April 2 confirmation hearing before the environment committee reaffirmed the agency's commitment to promulgating a strict EGU MACT rule (*see related story*).

Meanwhile, industry and states say one issue in the upcoming EGU MACT that could become significant is environmentalists' expected push to have the rule address a wide range of air toxics beyond mercury.

In the cement kiln MACT proposal, which appeared in the May 6 *Federal Register,* EPA is seeking to lower requirements for fine particulate matter and three other pollutants in a way that the cement industry source says fails to address whether cement kiln owners can achieve those standards. "EPA proposed the standards kind of in a stovepipe . . . without doing a thoughtful assessment of their collective achievability. If you are a cement plant operator, you have to design your system to comply with all the environmental standards at the same time and EPA assessed achievability individually," the source says.

A state source says EPA in developing the EGU MACT will have to decide whether it has enough data to address emissions of power plant air toxics other than mercury, such as hydrochloric acid

gases, which the source says “could become a major part of the MACT. . . . The big issue is whether the data is there, is EPA going to collect more and if so for how long.”

Environmentalists continue to tee up the issue, with Sierra Club filing an April 21 suit in federal district court in Kentucky challenging the East Kentucky Power Cooperative’s Spurlock 4 plant for operating without a MACT permit and for failing to address mercury and other air toxics, including “arsenic, dioxins, acid gases, selenium, lead and other heavy metals.”

The complaint says the non-mercury air toxics “have been shown to cause serious adverse health effects, including cancer, heart disease, stroke and neurological impairments. One of those pollutants, dioxin, is among the most potent carcinogens on the planet. Dioxin is controllable by a pollution control device called selective catalytic reduction (SCR). Spurlock 4 does not have a SCR. However, Suprlock 4 could be retrofit with an SCR to control dioxin and other pollutants.” *The filing is available on InsideEPA.com.*

An environmentalist involved in the suit says activists hope the filing brings attention to the need to address emissions beyond mercury from power plants.

And the state source says the issue of other air toxics could possibly overshadow debate over the level of mercury controls in the upcoming EGU MACT. -- *Dawn Reeves*

ACTIVISTS EYE OBAMA SCIENTIFIC INTEGRITY REVIEW TO AIR BROAD CONCERNS (*Inside EPA*)

5/8/2009

Activists will use President Barack Obama’s recent request for comment on policies to ensure scientific integrity in the White House as a vehicle to voice their broad concerns about interference with science and the need for EPA and other agencies to ensure transparency, urge greater whistleblower protections and air other concerns.

In an April 23 *Federal Register* notice, the White House Office of Science & Technology Policy (OSTP) requested public comment on a memorandum that President Obama issued March 9, which asks OSTP director John Holdren “to craft recommendations for Presidential action to ensure scientific integrity in the executive branch.” OSTP is accepting comments on steps to ensure scientific integrity through May 13.

“Science and the scientific process must inform and guide decisions of my Administration on a wide range of issues, including improvement of public health, protection of the environment, increased efficiency in the use of energy and other resources, mitigation of the threat of climate change, and protection of national security,” Obama wrote in the memo. *Relevant documents are available at InsideEPA.com.*

Many activist groups plan to comment on the memo, which they hope will address interference and transparency in agency science, as well as whistleblower protections, among other concerns.

A source with the Center for Progressive Reform (CPR) -- which in an April 3 letter encouraged OSTP to accept public comment on the memo -- says the group is concerned with “protecting [science] from interference by lobbyists, lawyers and others,” so policymakers and agency officials can then use the uninfluenced scientific conclusions for decisionmaking. “Administrators should not hide behind the science,” the source says. “It’s the administrator who steps up and picks the number” that is ultimately used in protection decisions.

The Union of Concerned Scientists (UCS) says in April 29 initial comments on the memo that scientists at EPA and other federal agencies should “have the right to review, amend and comment publicly on the final version of any document or publication that significantly relies on their research, identifies them as an author or contributor, or purports to represent their scientific opinion.”

The UCS comments also call for a review of the “existing legal barriers to the public release of scientific information,” and ask Holdren to work with Congress to “close loopholes that keep valuable information out of the private record,” including shifting the burden of proof to industry in confidential business information exemptions.

Activist groups also say there is a need for increased transparency in agencies’ scientific decisions, which a source with OMB Watch says can be “a check on any instances of interference.”

OMB Watch would like to see transparency of any documents that informed decisionmaking. “What did the agency have in front of it [when it made a decision] -- that needs to made transparent,” including privately financed science and documents that were ultimately not considered in the process, the source says.

The source says there is a need for increased disclosure of information and communications between the executive branch and the agencies regarding agency scientific conclusions, particularly if there is disagreement, as was the case with ozone pollution under the Bush administration. “When you can see those communications, it’s not solving the problem, but it is shining a light on it,” the source says.

Many groups also want to ensure whistleblower protections in the OSTP policies. In its comments, UCS asks the OSTP director to request Congress to pass the “strongest possible” legislation to protect whistleblowers, including provisions to protect federal employees from retaliation if they report efforts to suppress research and to direct agency heads not to retaliate against whistleblowers with demotions, reassignments or termination.

The groups also argue that Federal Advisory Committee Act panels should be put together in a way that balances the possible biases of the participants. The process “can’t work if you only have scientists with the slant that the chemical is not dangerous,” the CPR source says. “You’re only listening to one side.”

UCS suggests OSTP work with the Office of Governmental Ethics to develop guidelines on conflicts of interest in the committees, including specifying whether the committees are “expressly scientific” and “which are designed to gather stakeholder input.”

The CPR source also says peer review panels should not be conducted endlessly and become “an excuse for stifling,” while the UCS argues that agencies should require “only qualified and non-conflicted scientists” be involved with the panels.

Meanwhile, independent of the Obama memo, EPA's Office of Inspector General recently asked the agency to revise its procedures for addressing the "appearance of impartiality" and its guidance for establishing peer review panels (*see related story*).

One regulatory source that has worked with industry did not seen anything contentious in the memo, but suggests groups "will bring up a whole range of issues" about science at the agencies. The source added that it would be "hard to implement these principles unless you have regulatory review power in the executive office of the president so you can ensure they are being implemented."

Obama's memo focused on six principles, including the selection of candidates for executive branch science positions based on the "candidate's knowledge, credentials, experience, and integrity;" the development of rules at the agencies to ensure the integrity of the scientific process; and "[w]hen scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate."

The memo also says that agencies should make available the scientific findings and conclusions used in decision making "except for information that is properly restricted from disclosure;" agencies should have procedures to "identify and address" incidents when the scientific process has been compromised; and agencies should adopt procedures, including whistleblower protections, "as are necessary to ensure the integrity of scientific and technological information and processes," according to the notice.

The *Federal Register* notice asks those commenting to suggest recommendations that would be responsive to these aims, specific strategies to implement these principles, and data related to "the effectiveness of strategies promote scientific integrity."

In the memo, Obama also asks agencies to provide all information to the OSTP director necessary to make the recommendations. "Each agency shall coordinate with the Director in the development of any interim procedures deemed necessary to ensure the integrity of scientific decisionmaking pending the Director's recommendations called for by this memorandum," according to the memo. -- *Aaron Lovell*

INDUSTRY RAISES LEGAL QUESTIONS OVER POSSIBLE EPA AIR PERMIT REMAND (*Inside EPA*)

5/8/2009

Industry is raising major legal questions about EPA's request for a remand of a power plant air permit in a key Environmental Appeals Board (EAB) case and may take the unusual step of seeking discovery to determine whether EPA acted in "bad faith" by talking with activists opposed to the plant before seeking the remand.

Lawyers representing the proposed Desert Rock facility in New Mexico in an April 28 filing to EAB alert the board that they may seek discovery on EPA's actions and its communications with permit opponents. "[A]n important consideration in a case such as this one is whether there are 'unusual circumstances verging on bad faith.' We have reason to believe that such circumstances may exist in this case," according to the filing. *Relevant documents are available on InsideEPA.com.*

However, activists reject industry's insinuations of bad faith communications with the Obama EPA over the permit issued by the Bush EPA Region IX and say the agency has every right to seek voluntary remand to review the permit. One environmentalist says industry's latest filing appears to be a move of "desperation."

EPA April 27 asked the board to voluntarily remand the prevention of significant deterioration permit at issue in the case *In Re: Desert Rock Energy Company*. Review could give the new administration the chance to stake out its position on major air policy issues, including whether clean-burning integrated gasification combined cycle (IGCC) technologies must be considered in best available control technology reviews, whether carbon dioxide can be regulated at power plants, and how stringent mercury and particulate matter controls must be at the facilities.

One industry source says EAB has the ability to reject EPA's request for a remand because the board took sole authority over the permit after it agreed to review the case. "EPA Region IX or even the administrator's office can't unilaterally take the permit back. . . . We're hopeful that when the EAB considers the implications of this, they will agree this is a final, valid permit. Nothing EPA says now questions that."

Industry's recent filing saying that Desert Rock lawyers may pursue discovery acknowledges that discovery is rarely allowed in EAB proceedings but does cite a 2000 case as a precedent for conducting discovery during an EAB appeal. The filing also asks the board to allow industry to respond to the request for the remand before issuing a ruling.

In response, EAB in an April 28 order said it would give all interested parties until May 8 to file briefs to take positions on EPA's remand request. The board also acknowledged the possible industry discovery request, saying that in EPA's motion for voluntary remand of the Desert Rock air permit, EPA "does not mention whether it had discussed the motion with the other participants in the matter or whether any participants oppose the motion."

The industry source says the remand request "raises for the government as a whole some very tricky legal issues" about its ability to retroactively cancel a permit, particularly because Desert Rock entered into a legal agreement with the Department of Justice for EPA to finalize the permit by Aug. 1, 2008.

"In essence, [EPA is] saying the permit is valid . . . just that the new [EPA Administrator Lisa Jackson] wants to exercise her discretion to do things in a different way. That is her right on a prospective basis but she can't make new policies retroactively and apply them to a permit application filed four years ago. . . . I just don't think they can do that legally or constitutionally," the source says.

The source also calls "troubling" the fact that EPA may have consulted with parties opposed to the permit, saying, "That raises pretty serious ethical issues." The discovery request, if filed and granted, would determine the extent of those conversations. "EPA can talk to whoever it wants on big policy issues, but this is a specific permitting action involving specific parties, and different rules apply in that case."

Industry also filed an April 29 Freedom of Information Act request with EPA for information leading to the decision to seek remand of the permit that the industry source says could supersede the need to conduct discovery under the EAB, should the agency respond fully and promptly.

The source adds that if EAB rejects industry's position, options include appealing the case to federal court. Remanding a final permit "is no way to run a government program. People dealing with the

U.S. government have a right to be treated fairly and honestly, and have some sense the rules will be followed," the source says.

But the environmentalist disagrees with industry's claims and says the agency's request to the board is merely a procedural step. EPA "has clear authority under its regulations to withdraw a permit. I think the question of whether the board will grant the motion for a voluntary remand is one that's hardly worth asking," the source says.

Arguments in the ongoing case "were sufficient to convince the new leadership at EPA that . . . certain aspects of the permit were questionable and need to be revisited. That's a process that is perfectly appropriate," the source adds.

The source says Desert Rock's inference of EPA engaging in bad faith in making the decision to seek remand "seems to me a move of desperation whereby they want to attempt to avoid the agency taking a voluntary remand by engaging in a fishing expedition to try to cast aspersion on the integrity of the agency's decision."

The source says environmentalists are discussing strategies in their pending response to the industry filing and notes, "I expect this will get interesting before it gets resolved." -- *Dawn Reeves*

INDUSTRY EYES TRAFFIC EXPOSURE STUDY TO LIMIT STRICTER AIR STANDARDS (*Inside EPA*)

5/8/2009

A major air pollution research group's new study analyzing all available data on health effects from exposure to traffic-related pollution concludes the data are only "suggestive" of traffic causing effects like asthma and heart attacks, which one industry source says may help a push to limit stricter air standards.

However, the Health Effects Institute (HEI) study also finds a very strong signal that traffic-related pollution exacerbates asthma in children while the evidence is suggestive but not conclusive for pollution from the sources causing other key health effects such as the onset of asthma and cardiovascular mortality. HEI is a nonprofit corporation that receives half its core funds from EPA, and half from the worldwide motor vehicle industry.

The new study will likely help solidify expectations that EPA will refrain from including source-specific limits in its upcoming review of the particulate matter (PM) air standard, as it further underscores that there is not enough data to allow the agency to set such standards at this time, sources say. A source-specific standard could be used to mandate PM cuts from the largest sources of the most dangerous components of PM, for example targeting automobile emissions if vehicles were shown to be the biggest contributors.

The HEI study, *Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure and Health Effects*, was first presented May 3 at the group's annual meeting in Portland, Oregon. It summarizes findings from about 450 studies on traffic-related air pollution exposures from as recently as October 2008.

An HEI source says traffic-related exposure studies are still a relatively narrow part of the available science on the effects of air pollution, and a key finding in the study is that more research on the source is needed to accurately identify effects. “Given what we know and the number of people who live near roadways -- which is between 25 and 40 percent of the U.S. population -- the issue deserves attention, and is likely to be a public health concern.”

The study reflects growing concern about the mix of pollutants emitted by mobile sources, including PM, nitrogen oxide (NOx), air toxics. Worldwide, traffic emissions are expected to rise despite advanced technologies to cut tailpipe emissions, due to the growing number of new cars on the road. In addition, a growing percent of the population is living in proximity to major roadways, in part due to suburbanization trends. The study says the trend to live within the key distance of 300 to 500 meters from the emissions source will also counteract to some extent pollution-reduction regulations targeted at motor vehicles.

Barriers to setting up source-specific monitoring need to be overcome and improvements in measuring personal exposures, particularly indoors, are needed to advance the growing science of traffic exposure research, according to the source.

The study concludes: “Many aspects of the combined epidemiologic and toxicologic evidence relating adverse human health effects to exposure to primary traffic-related air pollution remain incomplete. However, the panel concluded that the evidence was ‘sufficient’ to infer a causal relationship between exposure to traffic-related air pollution and exacerbation of asthma and ‘suggestive but not sufficient’ to infer a causal relationship with onset of childhood asthma, non-asthma respiratory symptoms, impaired lung function, and total and cardiovascular mortality.”

An industry source says the inconclusive evidence on asthma and heart attacks will be important in each of the ongoing EPA national ambient air quality standard (NAAQS) reviews, including the PM NAAQS review. One major question surrounding the review is whether EPA would try to change the standard from its current size-based regulation to a more specific regulation based on particle “species,” where PM with certain constituents from certain sources is found to be more harmful than others and is regulated more stringently.

Now, the HEI study “reinforces the sense . . . that the data isn’t there,” the HEI source says. “No one expects EPA to parse out source-specific effects” in the ongoing PM NAAQS review.

The industry source agrees, saying, “Some want to say that traffic is more significant” in causing health effects, but the study shows that the current evidence does not justify that claim.

The industry source says the HEI study could also come into play as early as the NOx NAAQS review. Mobile sources are major emitters of NOx, and EPA is set to propose a new standard by June 26, under a court-ordered deadline. The agency is citing evidence in documents for the NOx NAAQS review that it says justify a significantly tighter standard, but the source says it is not too late to roll the HEI study into the current review.

The source says the HEI panel’s decision not to do a meta-analysis, which combines the results of several related studies, will itself be important in influencing EPA’s NAAQS reviews. “The NOx review relies on meta-analysis. If it’s true that it is inappropriate, it may weaken the position of those who think there needs to be a significantly tighter standard,” the industry source says.

The HEI source says the panel’s decision not to do a meta-analysis for the study was based on the scientists’ conclusion that all the available studies did not allow them to “compare apples with apples

. . . It's a decision that needs to made in each situation. We have done meta-analysis in other contexts, but it is important to not just cavalierly do them each time." -- *Jenny Johnson*

ACTIVISTS SUE BLM, FOREST SERVICE OVER OIL AND GAS OZONE CONCERNS (*Inside EPA*)

5/8/2009

Environmentalists are suing the Bureau of Land Management (BLM) and Forest Service over claims that the agencies violated federal environmental and other laws by leasing land for oil and gas development in areas of New Mexico that are on the verge of violating EPA's strict ozone air quality standard.

WildEarth Guardians, the Navajo group Diné Citizens Against Ruining our Environment and Carson Forest Watch filed suit against the agencies April 29 in the United States District Court for the District of New Mexico. The groups say the agencies' decision to lease the land violates the National Environmental Protection Act (NEPA), federal land management law and the Administrative Procedure Act.

"Business as usual clearly isn't the solution to solving our air pollution problems," Joanie Berdie with the Carson Forest Watch said in a written statement. "If the federal government is unwilling to safeguard clean, healthy air, then we need to think twice about allowing more drilling," Berdie said.

In particular, the groups argue that BLM violated NEPA by not preparing an environmental impact statement (EIS) or preparing an inadequate EIS for the leases and by failing to consider mitigation measures that would protect against a violation of the new ozone national ambient air quality standard of 0.075 parts per million. The groups say in their statement that the area is "on the brink" of violating the ozone standard and urge the court to deem the leases illegal and force the agencies to conduct new environmental reviews that consider the air quality impact of the developments. *Relevant documents are available on InsideEPA.com.*

The same activist groups last fall sued BLM and filed an administrative challenge to the Forest Service over the leases. At the time, a source with the group said the effort was a bid to win a precedent that would require all agencies to mandate air quality protection measures in their land use decisions.

"Overall, this is about holding federal land management agencies in the West just as accountable to clean air as the states," a source with WildEarth Guardians said at the time.

However, after further reviewing the leases the groups found new problems and filed a new lawsuit with additional claims, the source says. "We realized the issue was much more extensive, so we dismissed and have now filed a new lawsuit not only challenging the failure of these agencies to analyze impacts to the ozone NAAQS, but over their failure to do anything to keep pollution in check," the source says.

BROWNFIELD

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EPA: $10M coming to Michigan to clean up brownfields (*Detroit Free Press*)

By TODD SPANGLER
FREE PRESS WASHINGTON STAFF

May 7, 2009

Michigan

WASHINGTON – With President Obama's point man for helping struggling auto communities recover on the ground today and Friday in Michigan, the Environmental Protection Agency in Washington is announcing that more than $10 million in grants is available to help clean up sites in the state contaminated by hazardous chemicals or pollutants.

Michigan is expected to be the biggest recipient of these funds nationwide, with a portion of the money coming through the stimulus plan passed by Congress earlier this year.

The grants will help pay for cleaning up and redeveloping abandoned and contaminated properties known as brownfields.

Ed Montgomery, Obama's director of Recovery for Auto Communities and Workers, said the money can help Michigan redevelop property and create new jobs in struggling manufacturing communities, calling them "one important initial short term step to creating a partnership that will build on Michigan's assets – its workers, leadership and infrastructure – to revitalize Michigan in the long term."

BUDGET/STIMULUS

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2010 Budget Details: Agency by Agency (*Washington Post*)

President Obama's $3.4 trillion budget includes spending to be dispersed among federal government agencies and eliminates 121 programs previously supported in FY 2009. Below you'll find a list highlighting spending for key agenciesand Obama's corresponding remarks. Click here for recently released agency-by agency-proposals. Our latest coverage on the budget lives here.

ENVIRONMENTAL PROTECTION AGENCY
11 Billion — up 35%
The Environmental Protection Agency unveiled its biggest budget in history today, a $10.5 billion blueprint that includes money to clean up the Great Lakes, provide greater civil and criminal enforcement and restore Superfund and industrial brownfields sites nationwide. “EPA has been given extraordinary support and a revitalized mission," EPA Administrator Lisa P. Jackson told reporters in a telephone briefing this afternoon. "I won’t try to act as if that’s an austerity budget. Perhaps the last eight years were an austerity budget.” The proposal includes $474 million for Great Lakes restoration, a longstanding priority of President Obama, along with money that will fund 1,000 clean water and 700 drinking water projects across the country. EPA will add 30 new civil and criminal enforcement posts, 12 of which will focus on communities that are either poor or disproportionately affected by environmental problems. It will spend $17 million to help implement its proposed national greenhouse gas emissions registry, and $5 million to help analyze what domestic and international offsets for greenhouse gas emissions could be certified under a cap-and-trade system.

-- Staff Writer Juliet Eilperin

In the Center of Auto Country, Adapting to an Uncertain Future (*Washington Post*)

By Dana Hedgpeth
Washington Post Staff Writer
Friday, May 8, 2009

GRAND RAPIDS, Mich., May 7 -- Inside a beige, concrete warehouse -- slightly smaller than the size of a football field -- 10 workers toil to assemble rotors for $11,000 wind turbines that go on top of houses. It is the sort of work that city and state officials hope one day will provide a

new vein of manufacturing jobs to replace those that have steadily disappeared from the local auto industry.

Ed Montgomery, President Obama's point man on helping communities hit hard by the auto crisis, visited Cascade Engineering on Thursday as part of a two-day tour of Michigan to talk with auto union leaders, business owners, community leaders and politicians about what the government could do to help Grand Rapids, a city of 193,000 about 2 1/2 hours west of Detroit, and places like it.

In Grand Rapids, Montgomery announced that the Environmental Protection Agency has set aside $10.3 million to help Michigan reuse old industrial plants. And he said a federal small business program will be expanded to help steer loans to auto parts makers and dealers.

"These are just two steps along this road," Montgomery said. "We are committed to working with state and local officials to bring back, revitalize and keep strong the Michigan economy."

Behind the niceties and plant tours, however, there is harsh reality. Replacing a major employer such as General Motors or Chrysler is no easy task, especially in this economy. It would take a number of smaller companies such as Cascade to even come close.

Grand Rapids and the neighboring town of Wyoming, population 70,000, once supported three GM plants employing about 6,000 workers. Now there is one GM plant with 1,500 workers. And it is expected to close by the end of the year.

In addition, Wyoming's city manager said he's worried that a Delphi parts plant, which has already cut its workforce from 1,400 to 700, could be in danger of closing if GM files for bankruptcy.

Officials are trying to attract new companies to offset the cutbacks, which combined with a dramatic slowdown in the office furniture manufacturing business -- another major industry here -- have pushed the area's unemployment rate to 10.5 percent.

Still, Grand Rapids has weathered the downturn better than other parts of the state. Several wealthy businessmen, including the founders of Amway and the Meijer retail chain, and an heir to one of the families that started office furniture maker Steelcase, have invested in the town, financing a new sports and entertainment arena, art museums and other facilities. A $1.4 billion construction boom tied to medical research, training and patient facilities is expected to create another 2,000 jobs on a mile-long strip known as Health Hill.

But there are limits to the transformation.

"Our health care development is helping our city," Grand Rapids Mayor George Heartwell said. "But it generally doesn't help the tool-and-die worker who was making $23 an hour and has lost his job."

City officials are trying to attract "green" manufacturing businesses. A company from Barcelona recently said it would set up a shop to manage the logistics of creating a wind turbine, coordinating work among different parts manufacturers. But the mayor expects the number of new jobs would be small.

Fred Keller, the chairman and chief executive of Cascade Engineering, is just getting his foot in the door of this new industry. He started his parts company more than 30 years ago, making plastics for car bumpers and chair parts for office furniture makers. He eventually got into making tubing for engine cooling systems and floor boards to reduce noise in cars. He also branched into making trash containers and bumpers for big trucks.

When the domestic auto industry collapsed, so did his sales, which are down roughly 40 percent from what he expected at his $280 million-a-year firm. Keller said he recently laid off 50 of his 500 employees in Grand Rapids and cut workers' pay. About a year ago, he shut down one of his automotive production plants.

Intrigued by the growing interest in renewable energy, Keller spent several million dollars to convert one of his warehouses into an assembly line for turbine rotors. He's also using some of the money to try to develop a lighter, cheaper turbine. He has a backlog of some 50 orders but cautions that the volume does not approach that of making parts for cars. His production line for making plastics for floorboards in cars, for example, once made 1.3 million parts a year, on average. He said he hopes to make 1,000 of the rotors for wind turbines this year.

"Automotive is so huge, there's nothing like it," he said, as he took a reporter on a tour of his plant.

At a local community college Thursday, Keller was one of 20 panelists to talk with Montgomery about the city's needs. The meeting was open to the public for about 15 minutes before it was closed to the media for what turned out to be a two-hour event.

Panelists said later they presented a list of needs, ranging from assistance to help laid-off workers pay bills and get health care, to help in cutting through Washington's red tape in applying for programs. Keller asked for loan guarantees for companies involved in "green" manufacturing, since banks are currently reluctant to lend.

Keller said Montgomery seemed ready to do what he could.

"He's saying all the right things," Keller said. "How is this going to show up at the door is still the question."

EPA Pumps Budget $$ into Water Infrastructure, Great Lakes (*Environment News Service*)

WASHINGTON, DC, May 7, 2009 (ENS) - For the first time in eight years, the U.S. Environmental Protection Agency budget has not been cut, it has been increased. Today, EPA Administrator Lisa Jackson released the agency's $10.5 billion budget blueprint for fiscal year 2010, which she said, "takes significant strides to ensure that our air, land, and water are safe and clean."

The budget proposal brings back the polluter pays principle for Superfund cleanups and adds 30 new enforcement staffers. It will fund water infrastructure upgrades, Great Lakes restoration, a greenhouse gas emissions registry and will pass at least $1.1 billion along to the states and tribes in the form of grants.

"EPA's new budget reflects the President's commitment to growing a clean energy economy while protecting human health and the environment," said Jackson. "These investments demonstrate that it is possible to work towards both a green economy and a green environment by positioning EPA to lead the way in green jobs, in innovation and technology, and in action on global climate change."

The EPA suffered a 27 percent cumulative budget cut over the last eight years of the Bush administration, said Jackson, adding, "This is not an austerity budget, the last eight years were our austerity."

"It is important to note that a lot of the money passes right through the EPA to the states. And we are looking to bump up state and tribal categorial grants. We know state environmental programs are suffering," said Jackson, who is a former Commissioner of the New Jersey Department of Environmental Protection.

Jackson emphasized that states, localities and tribes are the front line in many environmental programs, as they implement major portions of almost all EPA programs.

The 2010 budget improves accountability and transparency, ensuring fiscal responsibility at a time when every dollar counts, Jackson said. EPA will be increasing funding for the Inspector General's office to monitor public dollars entrusted to the agency and will be making its budget documents available to the public on the web.

Budget Highlights:

EPA has allocated the largest chunk of its budget, $3.9 billion, to improve outdated water infrastructure. The funding will help build and renovate 1,000 clean water and 700 drinking

water infrastructure projects, support green infrastructure and create thousands of technical and construction jobs.

Funding will be available to help communities repair and upgrade the aging network of drinking water and wastewater pipes that are overwhelmed and breaking down. Additional funding will support creation of scientifically rigorous tools and models that will help advance the deployment of green water infrastructure.

The clean water budget includes a $475 million multi-agency Great Lakes Initiative to protect and clean up the world's largest fresh water lakes through restoration efforts, invasive species control, nonpoint source pollution mitigation and critical habitats protection.

"This is a first year effort," said Jackson. "We will cooperate with federal, state, and local agencies, native nations, and our neighbors to the north in Canada. And we will stress those projects that will show improvement in the water body sooner rather than later."

The nonprofit Alliance for the Great Lakes said that with this budget, "Great Lakes restoration, after decades of effort, is within reach."

"For the first time since the federal Clean Water Act stemmed the damage to the Great Lakes in 1972, the ‘three Ps' are finally aligning to bring the lakes back to life," said Alliance President Cameron Davis. "We now have the policies, the political leadership and - with today's White House budget announcement - the pecuniary investment."

The budget also includes funding for efforts to protect, maintain, and restore the Chesapeake Bay and Anacostia River, Puget Sound, San Francisco Bay, Lake Champlain and other large waterbodies.

To address the growing threat of climate change, EPA will make a $17 million invesment in the greenhouse gas emissions inventory. That involves new analytical tools, upgraded testing capabilities, data reporting and implementation efforts, data management systems, guidance and materials for the regulated community and source measurement technologies as well as coordination with other agencies on research and green initiatives.

The budget also includes an additional $2 million for the EPA to continue to reduce its own greenhouse gas emissions by three percent each year. Jackson said this will be accomplished by increasing clean power purchases and upgrading EPA labs.

The greenhouse gas registry proposal is currently out for public comment, and Jackson says the agency anticipates finalizing that by the end of the year. The other new EPA initiative, the declaration that the greenhouse gas carbon dioxide constitutes an endangerment to public health and welfare, also is out for public comment.

But not everyone was pleased with the EPA budget allocations.

William Becker, who heads the National Association of Clean Air Agencies, said that while the budget includes an increase in grants for state and local air pollution control agencies of $2.5 million above FY 2009, for a total of $226.6 million, the association's latest study shows that federal grants to state and local air grants should be increased by over $550 million.

"While NACAA appreciates that the President has ended the previous administration's attempts to slash state and local clean air budgets," said Becker, "we are extremely disappointed that the proposed budget does not include increases commensurate with the actual needs of state and local programs."

In recognition of the funding constraints presented by the current economy, NACAA has recommended a modest increase of $46 million in FY 2010, for a total of $270 million.

The EPA is investing $1.3 billion in hazardous waste cleanups like Superfund and Brownfields programs that employ thousands of people and restore properties for economic use.

To fund future clean-up efforts, Jackson said the budget proposes to restore the Superfund tax known as the "polluter pays" policy, which expired in 1995. Beginning in 2011, the Superfund tax is estimated to generate $1 billion of revenue a year, rising to $2 billion a year by 2019.

The budget proposes $175 million for Brownfields program for assessment, clean-up, and job-training grants, and additional $128 million for the Leaking Underground Storage Tank and Underground Storage Tank programs and $18 million for the Oil Spill Response program.

A total of $55 million will go to an enhanced toxics program to screen, assess and reduce chemical risks, including monitoring of air toxics at schools.

This budget supports rigorous, peer-reviewed scientific analyses, with $842 million for science and technology.

Roughly $600 million will go to the EPA's Enforcement and Compliance Assurance program. The funds will cover an increase of 30 civil and criminal enforcement staff "not just to crack down" said Jackson, but to work with businesses to help them comply with the law. Twelve of the 30 new staffers will be positioned to respond to the concerns of poor and disadvantaged communities.

EPA Research Gets Respectable Bump (*Science Now*)

MAY 7, 2009

District of Columbia

The 2010 request for the Environmental Protection Agency is $10.5 billion, a whopping 38% increase over last year's budget. Most of that increase would go toward improving waste-water treatment facilities, enforcement of regulations, and other activities, but science and technology would also get a 6.6% budget boost.

The Environmental Protection Agency's science and technology account would rise by $52 million to $842 million. The biggest winner, in terms of absolute increases, is air toxics and quality, for which the administration is requesting a $17 million (16.3%) increase. Close behind is human health and ecosystems, which would get $16 million (7%) more than FY 2009.

Also a getting large increase is the National Vehicle and Fuel Emissions Laboratory. It would receive $15 million (20.3%) more to improve its testing capabilities. Work on hydraulic hybrid and clean engines would get $2.2 million more, or a 12.3% increase.

A widely used database of chemical safety, the Integrated Risk Information System (IRIS), would get the bulk of a 14.7% increase to the Human Health Risk Assessment program. That would add 10 staff members to speed up delays in adding new toxicology data to IRIS. The computational toxicology program would see a nearly 30% boost, to $19.6 million, to beef up modeling efforts of hazard assessments and speed up the development of a virtual embryo, liver, and cardiopulmonary system.

—Erik Stokstad

White House: Obama wants to cut $17B from budget (*Associated Press*)

By ANDREW TAYLOR –

WASHINGTON (AP) — President Barack Obama asked Congress on Thursday to eliminate or trim 121 federal programs for a savings of $17 billion in the coming budget year. Many of the proposed cuts have already been rejected by Obama's allies in Congress, including some programs that his predecessor, President George W. Bush, repeatedly sought to end.

Despite the relatively modest nature of the cuts, , "none of this will be easy" amid the continuing deep economic slump, Obama said.

The proposed cuts amount to less than one-half of 1 percent of the total $3.4 trillion federal budget outline approved last week by the Democratic-run Congress.

Republicans immediately denounced his proposed reductions as too small. "The resulting savings are relatively minor compared with the government's fiscal woes," said House Republican Leader John Boehner, R-Ohio.

Answering criticism that his cuts were but a drop in a multi-trillion-dollar spending bucket, Obama said: "Some of the cuts we're putting forward today are more painful than others. Some are larger than others. In fact a few of the programs we eliminate will produce less than a million dollars in savings. Outside of Washington, that's still a lot of money."

Obama said that Americans are tightening their belts in these difficult times and want to know if Washington "is prepared to act with the same sense of responsibility."

"I believe we can and must do exactly that," Obama said in a statement he delivered before cameras at the White House.

The spending cuts for the budget year that begins Oct. 1 were detailed in a supplement to the broader 2010 budget outline that the president proposed in February and which Congress has already acted on.

The new proposals are not in the form of legislation.

White House budget director Peter Orszag said the president's plan for program cuts is just a start and that a lot more needs to be done to dig the government out of its fiscal hole, especially curbing the growth of the Medicare and Medicaid health care programs for the elderly and the poor.

"But $17 billion a year is not chump change by anyone's accounting," he said.

Those savings are far exceeded by a 2 1/2-inch thick volume detailing Obama's generous increases for domestic programs. And instead of devoting the savings to defray record deficits, the White House is funneling them back into other programs.

Most of the major elements of Obama's budget for next year were released in February. Additional details, including an increase in fees on airline travel to fund airport security programs, come next week.

The roster of cuts won't be easy for Congress to swallow. Lawmakers from the potent California, New York and Florida delegations are sure to fight the elimination of the State Criminal Alien Assistance Program, which gives money to states to help defray the cost of incarcerating illegal immigrants who commit crimes. President George W. Bush tried and failed to kill the $400 million program several times.

Obama is also claiming savings from eliminating a host of accounts typically earmarked by members of Congress such as a $10 million West Virginia highway project obtained by Sen. Robert Byrd, D-W.Va., and $15 million obtained by Dianne Feinstein, D-Calif., for diesel emissions reduction grants.

Obama is also proposing $145 million in savings from a clean water program administered by the Environmental Protection Agency which bankrolled 301 earmarks this year.

But Obama is not actually proposing to kill thousands of earmarks funded in the $410 billion catchall spending bill passed in March.

In fact, some of the cuts, like terminating production of C-17 cargo aircraft and phasing out direct payments to farmers with sales exceeding $500,000 annually, have already been rejected by Obama's allies in Congress. A key House panel is proposing adding $2.2 billion for 8 C-17s to Obama's pending war request, while a congressional budget plan passed last week protects the farm payments targeted by Obama.

About half the budget savings would come from an effort by Defense Secretary Robert Gates to curb defense programs, including ending production of the F-22 fighter and killing a much-maligned replacement helicopter fleet for the president that's way over budget.

Obama also is fleshing out the details of the $1.3 trillion portion of the budget that he requested Congress pass through appropriations bills for the upcoming budget year.

The administration is also proposing curbing subsidies for crop insurance to save $5.2 billion over 10 years and killing a $25 million program that funds the relocation of rail lines.

And just as Congress is beginning work on a new war bill to fund military operations in Iraq and Afghanistan into the fall, Obama is sending up a $130 billion request to fund them next year. That figure may not be adequate considering the increase in the tempo of operations in Afghanistan.

Obama has said repeatedly his administration will go through the budget "line by line" to eliminate waste. But the resulting savings are relatively minor compared with the government's fiscal woes, especially a deficit that's likely to exceed $1.5 trillion this year, the latest installment in a national debt now at about $10.7 trillion.

Many of the cuts mirror those proposed previously by Bush but largely rejected by Congresses controlled by both Republicans and Democrats. In fact, Democrats already have pared about $10 billion from Obama's appropriations requests in passing the $3.4 trillion congressional budget plan last month.

In a preview, administration officials named a few examples Thursday which mostly represented easy-to-pluck targets, like ending the Education Department's attache in Paris, at a savings of $632,000 a year. Another example: the obsolete LORAN-C marine navigation system, which still gets $35 million a year despite being made obsolete by the satellite-based Global Positioning System.

STATES SEEK ALMOST $900 MILLION BOOST IN EPA GRANTS FOR FY10 BUDGET (*Inside EPA*)

5/8/2009

Groups representing state environmental officials are urging lawmakers to provide an almost $900 million boost to EPA grants for air, water, waste and other programs in fiscal year 2010, as the White House prepares to unveil its detailed budget request expected to fund the agency at $10.5 billion.

The White House Office of Management & Budget (OMB) at press time was slated to unveil Obama's budget request outlining full programmatic spending details for each federal agency May 7, after the president in February released a narrower budget overview. That proposal to fund EPA at $10.5 billion represents a 34 percent increase over the FY09 enacted agency funding level of roughly $7.5 billion.

Ahead of the release, a coalition of six groups representing state water, waste, air and other officials May 4 asked congressional appropriators to boost EPA's categorical grants program -- which funds many state and local activities -- to nearly $2 billion in FY10, a $900 million increase over the FY09 figure of $1.1 billion. The House and Senate appropriations subcommittees responsible for EPA's budget will develop their spending bills for the agency following the release of Obama's detailed budget request.

Obama's Feb. 26 preliminary budget outline said that EPA would receive over $1.1 billion in grants for states and tribes to administer environmental programs, but provided no further details. The states specifically request $1.992 billion for 25 categorical program grants, which represents a roughly $896 million increase over the FY09 enacted categorical grant total of $1.094 billion, according to the request.

The states' budget request is based on the workload that EPA has indicated it will expect of them in FY10, and seeks the boost to EPA's state & tribal assistance grants (STAG) account because states are "integral partners and co-regulators" with EPA in the implementation of the nation's environmental laws, the request says. *Relevant documents are available on InsideEPA.com.*

The states' request was drafted as a joint product of the Environmental Council of the States, the Association of State & Interstate Water Pollution Control Administrators, the Association of State Drinking Water Administrators, the Association of State & Territorial Solid Waste Management Officials, the Association of American Pesticide Control Officials, and the National Association of Clean Air Agencies.

The states' letter highlights a "critical funding shortage" in several clean water grants programs, and urges appropriators to provide millions of dollars for a range of water programs, including Clean Water Act section 106 grants that assist states in preventing, reducing and eliminating water pollution, and section 319 funds for protecting and restoring water bodies primarily impaired by nonpoint sources.

For example, the states ask for $408 million in section 319 funding, a 103 percent increase over the FY09 enacted level of $200 million. They also request $540 million for section 106 funding, which represents a 147 percent increase over the FY09 enacted funding level for the grants.

For clean air programs funded out of the STAG account, the groups request $270 million, a $53 million increase above current levels. States will use the money for a host of air-related work, including monitoring, modeling, enforcement, and drafting plans for meeting EPA national air standards, the request says.

The state groups in their request to Congress also note that a number of new waste rules promulgated under the Resource Conservation & Recovery Act and other laws impose new burdens on states. For example, the 2005 energy law imposed several “significant” new underground storage tank (UST) requirements on states -- including mandates to inspect all tanks every three years -- that impose major fiscal burdens, the states say. To meet these requirements, the states say they need $63.1 million for their UST programs, though most of the funds are appropriated from EPA’s leaking UST trust fund, not STAG. -- *Anthony Lacey*

Record request boosts infrastructure, enforcement *(Greenwire)*

Katherine Boyle and Robin Bravender, E&E reporters

05/07/2009

President Obama today laid out the details of his plans to ramp up funding for programs at U.S. EPA, an agency facing an increasingly heavy workload from an administration pledging to bolster environmental protection and tackle global warming.

The Obama administration's proposed fiscal 2010 budget would increase the agency's total funding by nearly $3 billion, from the $7.6 billion in the fiscal 2009 omnibus to $10.5 billion, according to the proposal issued in February. The agency saw a series of budget cuts under President George W. Bush's administration.

The detailed proposal issued today includes increased funding for air, water and climate programs, and would slash several local and regional programs seen as duplicative of broader federal efforts.

Climate change and clean air programs would receive a significant boost under the proposed budget. The White House requested $249 million for clean air and climate change research and development, a $13 million increase from fiscal 2009. The agency's science and technology programs will include research on criteria air pollutants to develop federal clean air standards, studies of the effects of toxic air pollutants on human health and implementation of the renewable fuels provision of the 2005 Energy Policy Act, according to the budget request.

The administration also requested $481 million for clean air and climate programs and management, a $19 million increase from fiscal 2009. Those programs will include efforts to reduce greenhouse gasses and support the development of a comprehensive climate change

strategy, the development of a mandatory greenhouse gas reporting rule, and strategies to attain federal clean air standards.

The budget proposal also raises funding levels for EPA's compliance and environmental stewardship programs. Compliance programs and management would receive $586 million for fiscal 2010, a $24 million increase. Compliance and environmental stewardship research funding would receive $47 million, a $4 million increase.

Water, Superfund

The White House proposed a massive increase for water infrastructure, including $2.4 billion for the Clean Water State Revolving Fund, a low-interest wastewater loan program that helps states construct water treatment facilities. The fund received $689 million in fiscal 2009. The Drinking Water State Revolving Fund would receive $1.5 billion, up from $829 million this year.

The administration proposes requiring at least 20 percent of the cash for the Clean Water and Drinking Water State Revolving funds be used for "green" infrastructure or water and energy-efficiency improvement projects.

The fiscal 2010 budget request also would increase funding for science and technology related to clean and safe water initiatives from an estimated $146 million in fiscal 2009 to $168 million. The funding would help small communities meet new drinking water standards for arsenic, microbial contaminants and disinfection byproducts. Money also would go toward research aimed at managing water risks associated with carbon capture and sequestration activities, a high priority for many lawmakers.

The Obama administration's plan also would use some of the science and technology cash for research on beach evaluation tools, following an outcry over the lack of funding for beach renourishment projects in the economic stimulus package.

Science and technology funding for land preservation and restoration would increase from an estimated $24 million in 2009 to $36 million. Some of the funding is slated for groundwater research focusing on the transport of contaminants.

Funding for healthy communities and ecosystems related to environmental programs and management would rise sharply in the White House budget plan, from about $660 million in 2009 to $981 million in fiscal 2010. Much of that increase can be attributed to a massive influx of cash for the Great Lakes by way of Obama's $475 million Great Lakes Restoration Initiative. The project would combat major problems in the Great Lakes including aquatic invasive species, contaminated sediment and nonpoint source pollution. Money also would go toward brownfields programs.

Cash for clean and safe water initiatives related to environmental programs and management would rise by $20 million under the White House proposal, from $479 million in 2009 to $499 million.

The White House plan would continue EPA's focus on local watershed management, supporting ecosystem management and partnership collaborations in estuaries across the nation. Funding also would go toward helping states implement water monitoring programs aimed at helping the agency develop water quality standards and total maximum daily loads.

Cash for EPA's Superfund program would increase slightly from $1.29 billion in fiscal 2009 to $1.3 billion in the White House proposal. Funding for EPA's Office of Inspector General would remain roughly level at $45 million, as would money for EPA's leaking underground storage tank cleanup, which would receive $113 million.

Obama has indicated he plans to reinstate the Superfund excise taxes that expired in 1995. Though the taxes would not kick in until 2011, the administration says they could generate more than $1 billion per year.

Cuts

Obama's proposed budget would terminate a competitive grant program for local communities to slash greenhouse gas emissions, arguing that the program duplicates more substantial federal emission reduction programs. The program lacks focus and the scope is too broad to effectively compare competing grant proposals and target funds, according to the White House. Congress provided $10 million for the new program in 2009.

The administration also seeks to eliminate $15 million in earmarked funds for California to retrofit existing diesel engines. The budget proposes to maintain funding for the nationwide Diesel Emissions Reduction Act, which addresses the same issue for all states including California. The nationwide program is more effective at reducing diesel emissions because it provides resources based on merit rather than arbitrarily restricting grants to a specific area, the budget proposal states.

The administration's proposal would eliminate homeland security grants for drinking water and wastewater systems, citing declining obligations and decreased state demand. The budget plan notes many high-priority activities have been completed.

Funding for grants to rural Alaskan tribal communities for the construction of new or improved drinking water and wastewater systems was sliced by $8.5 million. The program will receive $10 million under the White House proposal. The budget notes the program has a history of management problems and said infrastructure funding increases in other portions of the budget would subsidize the cut.

About $145 million in water infrastructure earmarks also were eliminated in the budget proposal. The administration said the state revolving funds formula program would be a more effective way to allocate funds.

CLIMATE CHANGE/GLOBAL WARMING

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Kinetic Connection: Sustainable Wilton; if not now, then when? (*Wilton Bulletin*)

Written by Bruce Hampson

Thursday, May 07, 2009

"In the past we should have done it; today we have to do it."

So spoke Gina McCarthy, the commissioner of the Connecticut Department of Environmental Protection, at a recent meeting of the Connecticut Conference of Municipalities.

Commissioner McCarthy was referring to the urgent need to address climate change, reduce the emissions of greenhouse gas and conserve energy.

Scientists from the 43 nations of the Intergovernmental Panel on Climate Change (IPCC), NASA, whose mission includes analyzing and predicting climate change, and now the U.S. EPA have concluded that emissions of C02 from human activity are the primary cause of global warming and echoed that the need to act is urgent.

Scientists agree that the safe upper limit of CO2 in the atmosphere is 350 parts per million (ppm). Today it is at 383 ppm. Can it be returned to a safe level? Yes, the earth naturally rids itself of CO2 each year, but we're putting more CO2 into the atmosphere than the earth can eliminate.

Thousands of square miles of Arctic and Antarctic glacial and sea ice have disappeared, most recently from an area as large as Jamaica. Because the poles act as thermostats for the planet by reflecting solar radiation and heat, the accelerated melting is causing sea levels to rise

As Connecticut residents, how does global warming affect us?

• The New England coastal sea level is rising 10 times faster than rates recorded in the last 1,000-2,000 years. The EPA predicts that it will rise another 22 inches by 2100, eroding beaches and inundating coastal communities.

• The Environmental Defense Fund states that the warmer climate will be more hospitable to vector-borne diseases such as Lyme disease and West Nile Virus.

• The EPA projects that Connecticut's forests will change with global warming. We could lose between 30-60% of our hardwood forests, with our Maple Sugar trees vanishing completely. In the West, millions of acres of pine forests are dying, victims of pine bark beetle infestation. Prolonged winter temperatures are no longer cold enough to keep this pest under control.

Scientists believe that atmospheric CO2 balance can be achieved by reducing greenhouse gas emissions by 2% a year, or 80% by the year 2050. It is a realistic goal and a likely target for the climate change plan currently being addressed in Washington.

In Wilton, reducing emissions and saving energy can literally start at home with changing a light bulb, opening a window, a walk to the market, or a bike ride to the post office. The simple act of opting for Clean Energy from CL&P can reduce your household emissions by as much as 40%!

Forty percent. That's a huge step toward ensuring a sustainable future for our children and our children's children. And it's not only the "cool" thing to do-it's the right thing to do.

In future articles the Wilton Energy and Conservation commissions will identify actions that we can take to ensure a sustainable Wilton.

Mr. Hampton, a member of the Energy Commission who serves as chair of the high school building committee, is a retired manager whose company designed and installed major energy conserving systems in high rise office buildings, universities and hospitals.

ACTIVISTS SEE ECONOMY TRUMPING CLIMATE IN OBAMA AUTO TASK FORCE (*Inside EPA*)

5/8/2009

Environmentalists say economic concerns among members of the Obama administration's auto industry task force appear to be winning out over environmental priorities -- including calls to reduce the sector's greenhouse gas (GHG) emissions and increase its fuel economy requirements.

Specifically, the sources say environmental officials on the cabinet-level panel -- including White House climate and energy policy "czar" Carol Browner and EPA Senior Climate Policy Counsel Lisa Heinzerling -- appear to have lost the first round to Treasury and economic officials on the task force, which includes Treasury Secretary Tim Geithner and National Economic Council Director Larry Summers. Browner and Heinzerling were expected to be strong voices within the task force for reducing the auto industry's emissions.

The latest indications of these competing interests, environmentalists say, is that Chrysler's April 30 bankruptcy announcement and General Motors' (GM) April 27 prospectus to shareholders, released as part of its revised restructuring plan submitted President Obama, fail to endorse EPA's pending first-time GHG limit for the sector, the National Highway Traffic Safety Administration's (NHTSA's) pending rule to tighten Corporate Average Fuel Economy (CAFE) standards, and EPA's soon-to-be-issued reconsideration of California's request for a Clean Air Act waiver to implement GHG auto rules.

The Chrysler bankruptcy plan does include non-binding incentives for Fiat -- which is assuming partial ownership of the failing U.S. auto company -- to produce more fuel efficient cars. But GM's prospectus laying out potential risks to investors argues it will be difficult and costly to meet tighter CAFE requirements and says it cannot meet California's GHG limits sought in the waiver request.

These industry concerns may also spill over to impact the stringency of the pending EPA and NHTSA rules, which are expected to be proposed in August.

One environmentalist says, "There is a debate within the White House auto industry task force [about these issues]. There is a question, but it is not a question of whether NHTSA will do a new CAFE standard or whether EPA will impose GHG limits. The question is how much tougher [can these requirements] be without hurting the auto industry."

However, the source says these concerns will not affect the administration's expected approval of the California request for a Clean Air Act waiver to implement GHG standards for vehicles (*see related story*).

EPA is due in June to make a decision on the waiver request, which could include significant lead time in compliance deadlines to allow the Obama administration to establish a national policy favored by the auto industry that could effectively usurp the California requirements.

The environmentalist adds, however, that it is not inconsistent that the restructuring announcements fail to endorse GHG limits and tighter fuel economy -- hallmarks of Obama's presidential campaign -- because though the issues are related they are separate and cannot be decided together.

The restructuring proposals come as the auto industry continues its push for convergence of its future climate and fuel economy obligations under a single national standard.

The Obama administration has already backed away from stringent environmental requirements due to economic concerns facing the industry. In March, Obama scaled back the Bush administration's proposed model year 2011 CAFE standards over "serious concerns" about how the economic turmoil was impacting domestic automakers. The March 30 final rule set the passenger vehicle standard at 30.2 miles per gallon (mpg), weaker than the Bush proposal of 31.2 mpg (*Inside EPA*, April 3).

EPA declined to comment about possible task force tensions and Browner's office could not be reached. But a *New York Times* May 4 blog posting notes, "[A]t some point, some task force members acknowledge, the drive for profitability is likely to collide with Mr. Obama's fuel-efficiency and low-emission goals. GM produced heavy gas-guzzlers because they were among the most profitable in its line and, for a time, the most popular. It is unclear whether smaller cars can be as profitable."

Additionally, sources on all sides of the issue note that because the Fiat incentive -- which gives the Italian automaker a greater percentage of Chrysler ownership if it produces vehicles that achieve 40 miles per gallon (mpg) -- is non-binding it is nothing more than a nod to environmental issues.

An auto industry source says the incentive is “consistent with Obama’s push for more fuel-efficient vehicles” but it “doesn’t change the technical feasibility or the cost effectiveness of technology to meet that number. All manufacturers are working to bring more fuel-efficient vehicles to market.” The source adds that U.S. automakers are committed to meeting the fuel economy standard mandated by the 2007 energy law of at least 35 mpg by 2020, and that restructuring plans have no bearing on that commitment.

A second environmentalist says that the deemphasis of climate change concerns in the Obama administration’s auto industry deals is a “tragic irony. . . . These companies successfully fought higher fuel economy for years and that is unquestionably a contributor to their failure.” The same companies are now receiving billions of taxpayer dollars, the source notes.

The source says the environmental community must create more political pressure for the administration on climate. “It’s now or never. This is our moment and Obama has the opportunity to lead us forward and really implement solutions and instead it’s looking an awful lot like we’re going to have politics as usual. . . . Obama is focused on the political risks, not physical risks like losing the polar ice caps and [sea-level rise]. He should focus on the physical risks and transcend the political ones.”

Meanwhile, a GM source seeks to downplay the company’s prospectus statement on the difficulties of meeting new GHG and fuel economy mandates, saying that the document, designed to touch on possible shareholder risks, is a different kind of communication than the rosier outlook GM has been giving Congress and the Treasury Department of its ability to produce more efficient cars. “This is basically due diligence for investors and says if things go wrong, these are some of the things that can happen,” the source says, adding similar language would be found in such documents by other automakers. “We are fully committed to building vehicles to meet CAFE standards and whatever other fuel standards there are.”

In response, an administration official says, “In its viability plan, submitted to the auto task force, GM committed to meet or exceed federal fuel economy standards. To our knowledge, GM stands by that commitment. If there are any discrepancies between this and any other document, we refer you to GM.” -- *Dawn Reeves & Curt Barry*

EPA RFS PROPOSAL SPURS KEY DEMOCRAT’S VOW TO OPPOSE CLIMATE BILL (*Inside EPA*)

5/8/2009

House Agriculture Committee Chairman Collin Peterson (D-MN) is vowing to oppose any climate bill because the release of EPA’s renewable fuel standard (RFS) proposal that he says assigns an unfair greenhouse gas (GHG) penalty to corn and soybean-based fuel shows he cannot “trust” agencies’ actions.

“I want this message to be sent back down the Hill that the way this is going on, I am off the train. I will not support any kind of climate change bill. I don’t care, even if we fix this, because I don’t trust anyone anymore,” Peterson said at a May 6 hearing about the RFS held by the committee’s conservation panel.

“The only way I would consider any kind of climate bill is if it is ironclad that these agencies have no ability to do any rulemaking of any kind whatsoever, if we had everything dotted and crossed . . . and we could be absolutely guaranteed that these folks would not be involved,” Peterson said.

The committee’s conservation subcommittee held the hearing to discuss the GHG lifecycle provisions of EPA’s May 5 proposal to implement the RFS. The 2007 energy law mandated that EPA consider the GHG impact of significant land use changes, but EPA’s rule has ignited controversy by considering international land use change caused, for example, when farmers in other countries clear land to replace U.S. crops diverted to biofuels (*see related story*).

At the hearing Margo Oge, the director of EPA’s transportation and air quality office, defended EPA’s consideration of international land use change. “The result of disregarding land use changes would be to ignore the developing science in this area, and to overstate, perhaps dramatically, the GHG benefits of renewable fuel,” Oge said in written testimony.

However, Peterson echoed ethanol industry arguments that EPA should not consider the indirect international effects of biofuels without considering similar effects for petroleum. “You are going to kill off the biofuel industry before we even start. You’re in bed with the oil companies. Why would you put indirect costs on corn and soybeans and not put it on oil? What about all those indirect costs of protecting the oil . . . in the Middle East?”

Peterson also reserved some ire for his fellow lawmakers, arguing that the land use change provisions were tucked into the 2007 energy bill outside of the normal legislative process. “[T]his is ridiculous what’s going on here. This stuff was put in in the middle of the night, over our objections.”

The debate could represent a new hurdle that House Environment Committee Chair Henry Waxman (D-CA) must overcome in order to win widespread support from his party for his climate bill. Peterson had been in discussions with House leadership about Waxman’s draft climate bill and had begun working on climate legislation on issues, such as offsets, that would affect agriculture.

However, Peterson’s comments at the hearing may indicate a broader disenchantment with climate legislation and with agencies’ ability to interpret congressional intent. A source with the committee says it is unclear whether or not Peterson will continue to work on components of a climate bill.

Peterson was joined by numerous other Democrats and Republicans on the committee in opposing aspects of EPA’s RFS proposal. Tim Holden (D-PA), the chairman of the subcommittee, raised concerns that the RFS bars farmers from growing ethanol feedstock on land that has not previously been farmed, pointing out that Pennsylvania has hundreds of thousands of acres of abandoned mine lands that could be used for ethanol crops.

Rep. Bob Goodlatte (R-VA), the subcommittee’s ranking member, raised concerns that the RFS bars biomass feedstock from federal forests, arguing that excess biomass could lead to forest fires, which have their own climate impact.

Rep. Earl Pomeroy (D-ND) questioned EPA’s decision not to allow any biodeisel producers to be “grandfathered,” or exempt from the GHG reduction mandates of the bill, even though the agency is grandfathering enough corn ethanol facilities to fulfill the entire corn ethanol mandate.

And Rep. Stephanie Herseth-Sandlin (D-SD) questioned EPA's data about crop yields and the animal feed by-product of ethanol production, which industry argues improves ethanol's climate profile.

However, Oge defended EPA's approach, arguing the agency is simply implementing congressional mandates. The indirect land use change, prior cropland and forest feedstock requirements are mandated by the energy law, and EPA is just implementing those mandates, Oge said. But the law allows biomass to be used for the RFS if it comes from forest areas that represent a fire risk, Oge said.

And although EPA interpreted the energy law to bar grandfathering of biodiesel plants, EPA has proposed an option that would allow a facility to average its use of biodeisel from soybeans, waste oil and other sources in order to meet the GHG reduction mandate, Oge said. EPA's proposal calculated that biodeisel from soybeans only reduced GHGs by 22 percent, far short of the 50 percent reduction mandated by the law.

At the hearing, lawmakers floated options to mitigate the impact of EPA's proposal. Holden said he planned to ask the agency to extend the comment period for the proposal by 120 days and said in written testimony that the energy law needs to be changed to allow for greater flexibility.

And Rep. Jerry Moran (R-KS) said he would introduce on May 6 legislation that would restrict EPA's ability to consider indirect GHG effects, allow EPA to waive the GHG reduction mandates and allow ethanol producers to petition EPA for certification of their GHG reductions. The bill would be similar to a bill introduced in the Senate April 30 by John Thune (R-SD), Moran said.

However, other lawmakers are praising EPA's proposed rule. Sen. Tom Carper (D-DE), chairman of the Senate Subcommittee on Clean Air and Nuclear Safety, in a May 5 statement said, "I applaud Administrator Jackson for acting quickly to ensure we will have a robust discussion on the science of renewable fuels . . . I believe biofuels, if done correctly, can give us an environmentally friendly option to reduce our dependence on fossil fuels and our dependence on foreign energy production."

And some environmentalists are criticizing Peterson's stance against EPA's implementation of the RFS, arguing it is Congress, not EPA, that mandated consideration of international land use change.

"It's pretty stunning that less than two years ago, Peterson voted *for* the law requiring the EPA to account for this pollution, but he apparently now wants the EPA to break the law he voted for," said Kate McMahon of Friends of the Earth in a May 6 statement. "The EPA indicated yesterday that it plans to follow that law instead of doing Peterson's bidding, so now he throws a temper tantrum. It's embarrassing," McMahon said. -- *Kate Winston*

Berkeley approves global warming action plan *(Greenwire)*

05/07/2009

The Berkeley, Calif., City Council yesterday unanimously approved an ambitious plan to fight global warming that local officials are calling "a model for cities everywhere."

The 145-page Climate Action Plan, which outlines how the city will reduce its greenhouse gas emissions by 80 percent by 2050, will now undergo an environmental review and return to the council for final approval June 2.

Some of the first measures include improving bicycle and pedestrian paths and requiring stricter energy standards for homes that are for sale.

The plan will cost $3 million to implement in its first year, which will cover the cost of five full-time positions in the city's sustainability office and the cost of upgrading bike and pedestrian routes.

City Council will review the plan annually and make revisions based on scientific advances, updated energy data and progress on current projects (Carolyn Jones, *San Francisco Chronicle*, May 7). **-- TL**

EDITORIAL/COMMENTARY/OP ED/LETTERS

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The Climate Debate Heats Up (*New York Times*)

Published: May 8, 2009

Earlier this week, and not a moment too soon, President Obama put the weight of his office behind a bill that aims to reduce the nation's dependence on foreign oil, tackle the rise in greenhouse gases and create millions of clean-energy jobs.

The bill has been stuck in a House committee: uniformly opposed by Republicans; feared by rust-belt Democrats who think it will hurt manufacturers; regarded with suspicion by some environmentalists who think it offers too many escape hatches.

Mr. Obama told Democrats on the House Energy and Commerce Committee to work out a consensus, which they must do. Though flawed, the bill is an honorable start on a problem too

long neglected. Fix it, but get on with it, in the certain knowledge that failure to act would almost certainly doom comprehensive climate change legislation for this year and, probably, for this Congress.

The heart of the bill is a provision to reduce greenhouse gases by 20 percent from 2005 levels by 2020 and 83 percent by midcentury — cuts scientists say are necessary to avert the worst consequences of global warming. The mechanism for achieving them is a cap-and-trade system that would place a steadily declining ceiling on emissions while allowing emitters to trade permits, or allowances, to give them more flexibility in meeting their targets. This would put a price on carbon, ideally raising the cost of older, dirtier fuels while steering investment to cleaner ones.

Since previous bills focusing exclusively on capping emissions have gone nowhere, the two seasoned politicians behind this one — Representatives Henry Waxman of California and Edward Markey of Massachusetts — are offering other provisions aimed at increasing energy efficiency, encouraging cleaner energy sources and providing subsidies for industries that produce them. Their theory is that if they can win over the diverse and cantankerous energy committee they can win the House itself.

The bill deliberately left big questions open for discussion, and as negotiations proceed, Mr. Waxman and Mr. Markey must resist crippling concessions. One debate is whether companies should get the allowances the government will assign to polluters for free or whether they should pay for them at an auction.

Legislators from coal-dependent states want free allowances to mitigate costs of compliance and give emitters time to switch to cleaner fuels. Others fear that free allowances would delay hard choices while reducing revenues the government could use to make clean-energy investments and help the poor with higher energy costs.

Mr. Waxman and Mr. Markey should make only modest adjustments, if any, in their original targets; better no bill than one that would cut the 2020 reduction goal from 20 percent to 6 percent, as some Democrats have suggested. That’s a joke, not a compromise.

The Republicans are no help at all, insisting without exception that the bill would bankrupt the economy. The truth is that no one knows how much this bill will cost. A lot depends on how it is structured, how the auction revenues are applied, how quickly new, job-producing technologies come online and how much the country can save through efficiencies.

We do know that the emissions cap will not begin to bite until 2012 and that past programs to clean the air have always cost less than predicted. And, if the scientists are right, we know that the costs of doing nothing will dwarf the costs of acting now.

ENERGY

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Alliance to Save Energy Applauds President's FY10 Budget (*Kansas City infoZine*)

Friday, May 08, 2009 :: Staff infoZine

The Alliance to Save Energy applauded President Obama's FY10 budget proposal, which will provide a steady increase in most energy-efficiency programs and reinforces the President's goal of a new, clean energy economy.

Washington, D.C. - infoZine - "President Obama's budget request makes a strong statement that energy efficiency is and will continue to be a large priority for his administration," said Alliance President Kateri Callahan. "Our current economic situation makes it imperative that we put a high priority on creating a new, robust energy policy. The funding requested for the FY10 budget, combined with funding provided in the economic recovery bill, will significantly move us towards that goal."

The president's FY10 budget calls for an increase across many different energy efficiency programs, including a $10 million increase for the industrial sector and a $98 million increase in the Department of Energy's (DOE) Building Technologies Program, which includes $10 million for building energy codes. "This dramatic increase is critically important and urgently needed," Callahan stated, "because buildings currently account for 40 percent of U.S. energy use and 39 percent of carbon emissions."

Other budget items include $10 million for the Federal Energy Management Program, a $25 million increase for the State Energy Program, and increases for DOE's ENERGY STAR program, commercial buildings, residential buildings, research and development, and equipment standards.

The Alliance was disappointed, however, that the president did not recommend a substantial increase in the ENERGY STAR program at the Environmental Protection Agency.

"Six days after taking office, the president said his goal was to weatherize two million homes over the next two years, make energy efficiency upgrades to 75 percent of federal buildings, double the country's renewable energy resource base, and create nearly 500,000

new green jobs," Callahan noted. "This budget is certainly a step in that direction.

"We certainly hope that Congress follows the president's lead in seeing the validity and importance of sufficiently investing in these programs," Callahan continued. "Energy efficiency is the cleanest, most affordable way to meet our nation's energy needs; and the president has shown great leadership in prioritizing these crucial programs."

Detroit Diesel joins Energy Star program (*Truck News*)

Daily News Friday, May 08, 2009

REDFORD, Mich. -- Detroit Diesel has announced it has become an EPA Energy Star partner and will take steps to green its operations.

The company's Energy Star participation will be accompanied by an internal campaign to support company-wide energy conservation efforts, the company has announced.

Among the initiatives, Detroit Diesel says it will: measure and track the energy performance at its facilities, using tools offered through Energy Star; develop and implement a plan consistent with the Energy Star Energy Management Guidelines; and support the Energy Star Challenge, which is a national goal to improve the energy efficiency of commercial and industrial buildings by more than 10%.

Detroit Diesel has also launched a new energy program called 'Redford Conserves', which will promote energy awareness through the company.

"We are continually looking to enhance our environmental efforts, and the Energy Star program is one of the many important steps we are taking to conserve energy and reduce consumption," said Ken Saari, director of core facilities for Detroit Diesel. "The Redford Conserves energy program is a good example of how we can work together to make a difference."

Detroit Diesel already has a head start at its Redford engine plant. It recently invested US$275 million there to refurbish and retool the plant and has installed energy-efficient lighting, programmable light controllers, new boiler controls and an energy optimization system to control building systems, the company says.

The writing on the wall (*Economist*)

May 7th 2009 | BOULDER, COLORADO
From The Economist print edition

Only green compromises will allow them to survive

THE coal-fired power plant that was cancelled in Michigan on May 1st is the 97th to be rejected since 2001, and the ninth this year. The number of planned coal plants across America has plummeted from 150 to 60 in the past five years. Last year 5,465 megawatts (MW) of new electricity were announced, but more than twice that capacity—12,572mw, according to Edison Electric Institute, which represents the electricity industry—was subtracted because of cancellations or delays. The nine coal plants cancelled this year alone, Edison notes ruefully, would have provided about 6,650mw of power, or enough to heat almost 5m homes.

Environmentalists, though thrilled, know they still have a long way to go. The Energy Information Administration reports that more than 600 coal-fired plants still produce about half of America's power and will still produce 47% of it in 2030. But the government has pledged to slash greenhouse-gas emissions by 80% by 2050. "If the [planned] coal plants don't get derailed, President Obama won't be able to cut greenhouse gas emissions in the next four years," says Bruce Nilles, who heads the Sierra Club's anti-coal campaign.

At least the Environmental Protection Administration (EPA), in a complete reversal from its role under the Bush administration, is doing its best for the cause. On April 27th it withdrew an air-quality permit it had issued for a 1,500mw pulverised coal-fired power plant, called Desert Rock, which was to be built on Navajo Nation land in New Mexico. In effect, this pulled the plug on the enterprise. That ruling was the first public consequence of an EPA mandate, issued on April 17th, that the most harmful heat-trapping greenhouse gases were a threat to public health and welfare and a cause of global warming. The mandate gives Barack Obama *carte blanche* to regulate the power industry.

Among the utility companies feeling the heat is NV Energy, which is postponing plans for a $5 billion, 1,500mw coal plant in eastern Nevada. Instead, it will harvest the state's plentiful solar and other renewable resources. Farther north, Southern Montana Electric Generation and Transmission Co-operative says "regulatory uncertainties" have forced it to defer plans for its 250mw Highwood coal plant near Great Falls. It proposes to build a smaller, cleaner-burning, natural-gas power station, as well as a previously announced 9mw wind farm. And several power companies are planning to convert older coal-burning plants to run on biomass, such as woody forest waste.

Renewable resources can't yet begin to replace coal as providers of power. But a deal struck in Kansas on May 4th, ending 19 months of impasse between Sunflower Electric Power corporation and the state government, shows under what conditions coal may be able to survive. Two coal-fired plants had been planned by Sunflower. It will now build just one, which will use new clean technology, offset carbon dioxide emissions and develop wind energy on the side. In return, the Kansas Department of Health and Environment cannot impose any greenhouse-gas regulations that are tougher than those emerging from Washington. Suddenly, that seems a pretty high bar.

ENFORCEMENT

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EPA CITES ‘BANNER YEAR’ FOR FEDERAL FACILITIES UST ENFORCEMENT (*Inside EPA*)

5/8/2009

EPA is touting fiscal year 2008 as a record-breaking year for its efforts to clamp down on violations by federal facilities, including military bases, of regulations on underground storage tanks (USTs), citing a 300 percent increase in enforcement actions taken and settled against federal facilities from levels seen in FY06 and FY07.

The agency says the push on USTs on federal facilities forms part of its broader effort to improve UST enforcement in line with the requirements of the 2005 Energy Policy Act, which mandated increased efforts to avoid leaking problems with the tanks. EPA says it will keep up the pressure in FY09, but may not match the levels of enforcement actions seen in FY08.

EPA underscored its federal facilities push in an April 20 statement announcing a settlement agreement between the agency and the Army at Aberdeen Proving Ground, MD, under which alleged violations involving 28 USTs will be remedied. “In fiscal year 2008, there were record levels of enforcement at federal facilities under EPA’s underground storage tank program. EPA settled nearly 40 cases with federal facilities and filed three additional complaints,” the statement says. The total penalties assessed and settled, plus the facility cost to come into compliance, was more than $1.3 million, EPA says.

At Aberdeen, EPA says the settlement will cost the Army a $29,928 civil penalty and $209,432 in additional project costs to replace old USTs that hold a variety of fuels with new tanks. EPA cited the Army for violations including failure to install leak detection equipment, install spill and overfill protection equipment, and to maintain proper records on releases from tanks.

In a written response to questions on the broader federal facilities program, EPA says “Fiscal Year 2008 was a banner year for EPA UST enforcement at federal facilities.” The response says that “a wide range of violations have been discovered with the most common involving release detection for tanks and piping.”

EPA tightened management and reporting requirements on USTs for federal facilities, and created a requirement for the state or EPA to inspect all USTs, including those on federal facilities, every three years. EPA therefore launched a drive to inspect federal USTs in 2005, culminating in an “increased inspection activity and enforcement focus” in FY08, according to the written response.

FUEL

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Next Gen Biofuel: Verenium's Riva on Cellulosic Ethanol's Challenges (*Wall Street Journal*)

May 7, 2009, 10:14 AM ET

By Keith Johnson

The Obama administration's new road map for biofuels, announced this week, was seen as a broad endorsement of next-generation biofuels, relegating corn-based ethanol to a fading role.

Verenium CEO Carlos Riva

The market certainly seems to think so: Shares in Verenium Corp., one of the very few publicly traded cellulosic ethanol companies, have risen more than 70% since the new biofuel policy was announced.

According to the Environmental Protection Agency, the U.S. will rely mostly on so-called cellulosic ethanol to meet its biofuel requirements over the next decade: About $50 billion of the $59 billion projected investment in renewable fuels through 2022 will come in cellulosic ethanol, the EPA figures.

We chatted with Verenium chief executive Carlos Riva about the new rules, and the economic challenges that still dog next-generation ethanol.

WSJ: Are the administration's new rules more about promoting next-generation ethanol or punishing corn ethanol?

Carlos Riva: They're not punishing corn ethanol, but putting renewed emphasis on the next generation. It's a strong endorsement—with a focus on technology, building markets, building distribution systems.

WSJ: But you still need federal support to compete.

Riva: The Department of Energy support is critical. There's been a lot of investment already, but there's ongoing need to further the demonstration of these technologies. There's a need for additional funding for [production] plants between pilot- and commercial-scale. To go from demonstration plants to commercial-scale plants requires debt, and the debt market is challenging at the best of times. Now it is

not open for new technology. That's where the government could be most effective—with loan guarantees.

WSJ: Can you move ahead without federal money, such as in the Florida joint-venture with BP?

Riva: In Florida, we have the site, permits, the feedstock—we are ready to break ground in early 2010. But we need to arrange the financing. We are looking to DOE to fund us. [Otherwise] it would certainly be challenging to do so, given the state of the debt markets. We'd like to be able to replicate the Florida plant along the Gulf Coast, we'd like DOE funding for the first couple, then we'd expect that debt markets would come into action.

WSJ: Capital market reticence also has to do with your economics. It's more expensive than corn ethanol, much more expensive than refining oil into gasoline. How can you address that?

Riva: It's more expensive on a capital basis. It's early days and small-scale—it hasn't received the benefits of cost reduction that come when you advance along the learning curve. But we'll see the size of projects increase, which will address some of that.
And it's more expensive because there are more steps [in refining] than in corn ethanol. But the input costs are cheap and stable.

WSJ: Speaking of feedstocks, that's been one of the big concerns, whether it's corn or other crops needed to make new biofuels. Just feeding cellulosic refineries would require massive amounts of land, right?

Riva: First, the feedstock will be different in different parts of the country. On the Gulf Coast, it will be energy cane—like sugar cane. The important thing is we don't have a shortage of under-utilized land. The land we'd be using is currently used for pasture; it's not highly productive land. We could get 18-20 tons of biomass per acre.
And technology will improve those yields, just as it did for corn and soy yields over the past 50 years. Other advances—such as work on enzymes—also promises to boost yields. So we see the plants as the hardware, and the biology as the software. As you upgrade the software, you get better yields.

Don't Single Out Ethanol on Land-Use Changes, Says Trade Group Chief (*New York Times*)

By Kate Galbraith

May 7, 2009, 7:45 am

Bob Dinneen, the president of the Renewable Fuels Association, said ethanol is uniquely saddled with measuring the indirect land use changes associated with its production.

Bob Dinneen, the president of the Renewable Fuels Association, an ethanol trade group, stopped by our New York offices today to discuss recent moves by the Obama administration that offer both good and bad news for the industry.

On Tuesday, the administration moved to provide loan guarantees and other financial help to struggling ethanol producers. At the same time, the Environmental Protection Agency proposed a more comprehensive way of measuring the carbon impact of ethanol that that puts the industry in a lesser light.

According to Lisa Jackson, the E.P.A. Administrator, the ethanol industry currently produces 16 percent fewer emissions than gasoline — short of a requirement of 20 percent. This 16 percent tally factors in "indirect land use," in accordance with the 2007 Energy Independence and Security Act.

That means that in addition to weighing the carbon emissions from fertilizer and tractor fuel, the E.P.A. accounted for the idea that corn grown for ethanol in this country displaces food crops, driving the expansion of agriculture — and the loss of precious, carbon capturing forest land — elsewhere on the planet to compensate for the lost food and feed supply.

Mr. Dinneen emphasized that his group was perfectly willing to factor in such indirect land-use changes. But he expressed concern that biofuels are the only industry for which this calculation is made. Petroleum, for example, does not factor in land use changes — and besides, he said, "Where's the carbon impact associated with development in suburbia?"

"They can't just do it to us and not to everyone else," he argued.

Mr. Dinneen welcomed the comment period that will follow the E.P.A.'s proposals, and said that the ethanol industry believed that adjustments on the land-use front are needed.

"Right now, I think the model is too uncertain, the assumptions are out of whack and it needs to be promulgated more fairly," he said.

On the subject of cellulosic ethanol — a fledgling but more climate-friendly type of ethanol made from non-food sources like stalks or switchgrass — Mr. Dinneen expressed doubts that federal requirements for the country to use 100 million gallons of the fuel next year would be met. No commercial-scale plants are currently operational in this country, although a few are being built, with a Range Fuels plant in Georgia being perhaps the furthest along.

"One hundred million gallons in 2010 is going to be a challenge," Mr. Dinneen conceded. The 2011 target of 250 million gallons, he said, is "probably also going to be hard to meet."

Biodiesel Makers Lash Out at E.P.A. Rule (*New York Times*)

By Kate Galbraith

May 7, 2009, 2:10 pm

Bloomberg News A proposed emissions standard from the E.P.A. would "cause a significant failure in the biodiesel industry," said Joe Jobe, the chief executive of the National Biodiesel Board.

Like their ethanol counterparts, biodiesel producers are chafing at the Environmental Protection Agency's proposed methods of calculating their fuel's greenhouse gas emissions.

The E.P.A.'s proposed rule, released on Tuesday, finds that biodiesel made from soybeans (the predominant feedstock in this country) produces, under one scenario, 22 percent fewer emissions than petroleum.

That is well short of requirements in 2007 energy legislation, which states that biodiesel must produce 50 percent fewer emissions than petroleum (though the rule proposed on Tuesday could nudge that requirement, which allows for some flexibility, down to 40 percent).

"It is just inaccurate to call what the E.P.A. is using here as science," said Joe Jobe, the chief executive of the National Biodiesel Board, an industry body (click here for a related press release).

"It's a guess, and it's a bad guess at that because it absolutely defies common sense," Mr. Jobe added.

Biodiesel producers led by Mr. Jobe are particularly incensed about how the E.P.A. accounted for "indirect land use changes," a subject that has generated controversy in the ethanol industry as well.

The idea is that growing soybeans in the United States to make biodiesel could displace cropland for growing food. Crops for food would then theoretically relocate to places like Indonesia, where clearing the land to make way for the crops might involve cutting down the carbon-digesting forests.

The E.P.A. proposal calls for including emissions associated with such potential land-use shifts when measuring the overall emissions profile of biofuels and ethanol.

“We clearly disagree with first of all their hugely broad interpretation of this indirect emissions,” said Mr. Jobe. “We also disagree with their assumptions and we disagree with their methodology.”

Mr. Jobe said that, without the indirect emissions taken into account, his industry accounted for 80 percent fewer emissions than conventional diesel in the United States.

Like the ethanol industry, he argued that petroleum producers ought also to be held to account for their indirect emissions, in a spirit of fairness. The accounting for future international land-use changes resulting from biodiesel production, he said, is simply “hypothetical.”

Should the E.P.A.’s proposed rule go through, Mr. Jobe warned, “It would cause a significant failure in the biodiesel industry.”

The E.P.A. proposal is the latest in a wave of troubles battering the biodiesel industry. Europe has slapped a tariff on American biodiesel exports; the price of regular diesel has fallen below that of biodiesel; the credit crisis has harmed new plants; and a tax credit set to expire in December has not (yet) been extended.

Major refiners like Imperium Renewables in Washington State have suspended production, and the National Biodiesel Board has estimated that production could fall by half this year compared with last.

“It’s been blow after blow,” said Mr. Jobe.

EPA tough on ethanol, tougher on biodiesel (*Agriculture Online*)

Dan Looker

Successful Farming magazine Editor-in-Chief

5/07/2009, 7:54 AM CDT

Proposed rules released by the Environmental Protection Agency this week have the potential to keep new ethanol plants from selling into a government mandated market. But the biodiesel industry could fare even worse.

Members of the biofuels industry on Wednesday testified before the House Agriculture Committee's subcommittee on Conservation, Credit, Energy and Research. Manning Feraci of the National Biodiesel Board said the effect of the EPA's rule, if unchanged, would be to lock soybean-based biodiesel out of the revised renewable fuels standard. And, because of that, there

would not be enough biodiesel available to meet a 2012 mandate under the 2007 energy bill that requires the nation to use 1 billion gallons of biodiesel.

The reason is that EPA appears to be counting increased soybean acreage devoted to biodiesel production as an incentive to clear rain forest and grasslands to grow soybeans in Brazil, even though Brazilian soybean production decreased from 2004 to 2008 while the U.S. biodiesel industry was ramping up from 25 million gallons to 690 million.

Even the EPA Raps the Biofuels Boondoggle (*Reason Online*)

Ronald Bailey | May 7, 2009, 11:04am

The *Des Moines Register* is reporting that biodiesel produced using soybeans fails to meet the federal standard for reducing the carbon dioxide emissions thought to contribute to global warming.

Biodiesel is required to reduce greenhouse gas emissions by 40 percent to 50 percent when compared with conventional diesel to be counted toward meeting the mandate. The Environmental Protection Agency is crediting biodiesel made from soybean oil with only a 22 percent reduction.

Congress set an even lower standard for corn-based ethanol:

There is a target of 20 percent for reducing emissions from corn ethanol, but Congress exempted existing ethanol plants from meeting that requirement and the EPA has the authority to lower the threshold to 10 percent.

Ethanol from standard, gas-fired plants would reduce emissions by 16 percent, according to the EPA. Other facilities would fare better if they lower energy requirements. Ethanol from coal-fired biorefineries would actually increase emissions compared with gasoline, the EPA found.

And let's not forget that the whole biofuels enterprise is built on subsidies:

The biodiesel industry already is reeling from the loss of its European market, because of the imposition of duties, and falling petroleum prices that have made it unprofitable to make biodiesel from vegetable oils.

And as a couple of studies published last year suggest, the EPA's generous allowances for biofuel greenhouse gas abatements may well be too high. As the *New Scientist* reported:

One analysis looks at land that is switched to biofuel crop production. Carbon will be released when forests are felled or bush cleared, and longer-term emissions created by dead roots decaying.

This creates what Joseph Fargione of The Nature Conservancy and colleagues call a "carbon debt". Emissions savings generated by the biofuels will help pay back this debt, but in some cases this can take centuries, suggests their analysis.

If 10,000 square metres of Brazilian rainforest is cleared to make way for soya beans - which are used to make biodiesel - over 700,000 kilograms of carbon dioxide is released.

The saving generated by the resulting biodiesel will not cancel that out for around 300 years, says Fargione. In the case of peat land rainforest in Indonesia, which is being cleared to grow palm oil, the debt will take over 400 years to repay, he says.

Turning food into fuel is a bad idea for many reasons, but it's minimal effect on the problem of man-made global warming make the biofuels mandates even more idiotic.

Update: According to Reuters, the biofuels vote threats and logrolling in Congress are already in progress:

The Obama administration is unfair to the ethanol industry with its proposals on greenhouse gas reduction, the House Agriculture Committee chairman said on Wednesday, and he will not support any climate change bills.

"You're going to kill off the biofuels industry before it even gets started. You are in bed with the oil industry," Collin Peterson told officials from the Agriculture Department and the Environmental Protection Agency at a hearing on ethanol's impact on land use and greenhouse gases.

"I want this message sent back down the street. I will not support any climate change bill. I don't trust anybody anymore," said the Democrat from Minnesota.

EPA proposes renewable fuels rules as part of Obama biofuels push (*Oil & Gas Journal*)

Nick Snow
Washington Editor

Texas

WASHINGTON, DC, May 7 -- The US Environmental Protection Agency issued proposed new renewable fuels regulations for 2010 and beyond on May 5 as part of a broader Obama administration initiative.

US President Barack Obama also issued a directive forming a biofuels interagency working group to be chaired by Sec. of Agriculture Tom Vilsack, Energy Sec. Steven Chu, and Environmental Protection Agency Administrator Lisa P. Jackson. The president also announced that another $786.5 million from the recently enacted federal recovery and reinvestment act will be available for biofuels research and development and for biofuel refineries.
The new renewable fuels regulations were outlined in a proposed rulemaking notice on the Renewable Fuel Standard. They outline EPA's strategy for increasing the supply of renewable fuels as mandated by the 2007 Energy Independence and Security Act. EPA would establish four renewable fuels categories (cellulosic biofuels, biomass-based diesel, advanced biofuels, and total renewable fuel).

The proposal would require 36 billion gal of renewable fuels be produced annually, 16 billion gal of which would have to be cellulosic biofuels and 1 billion gal of which would have to be biomass-based diesel. At the most, 15 billion gal of the renewable fuel mandate could be met by corn-based ethanol and other conventional biofuels.

Comparable reductions
For the first time, some renewable fuels would have to achieve greenhouse gas reductions comparable to the gasoline and diesel fuel they displace. Refiners would have to meet the requirements to receive credit toward meeting the new standards, according to EPA. It said thresholds for new categories would be 20% less GHG emissions for renewable fuels produced from new facilities, 50% less for biomass and advanced biofuels, and 60% less for cellulosic biofuels.

The proposed regulations also would address the GHG lifecycle issue for the first time. If adopted, EPA would solicit peer review analysis of methods to measure various fuels and feedstock combinations' GHG impacts, including indirect emissions from land use changes, before implementation.

Lifecycle emissions include emissions from growing, harvesting, and transporting the biomass and from producing and transporting the fuel, according to the US Department of Energy's Energy Efficiency and Renewable Energy (EERE) office.

"With land use changes included, EPA proposed to allow only the five most sustainable process pathways for producing ethanol from corn starch to qualify as renewable fuels, while ethanol produced from sugar in a biomass-fueled facility can qualify as an advanced biofuel. Likewise, biodiesel from virgin plant oils qualifies as a renewable fuel, while biodiesel can qualify as an advanced biofuel," EERE said in a May 6 newsletter posted on its web site.

EPA will accept public comments on the proposed regulations, which it expects to put into effect on Jan. 1, 2010, for 60 days following their publication in the Federal Register. Several groups and individuals responded immediately.

'Questions unresolved'

National Petrochemical & Refiners Association Pres. Charles T. Drevna noted that while the trade group plans to comment more specifically, "the questions of commercial viability, product liability, and the lack of adequate scientific review with regard to mandated increase quantities of ethanol remain unresolved."

Drevna said, "We hope more light will be shed on these problems during the comment period, and trust that EPA will seriously and transparently consider the concerns raised by fuel, public health, environmental, and engine manufacturing interests as it proceeds toward finalizing guidelines for RFS implementation."

Renewable Fuels Association Pres. Bob Dineen said the fuel ethanol trade association welcomes debate on indirect GHG impacts. "The science of market-mandated, secondary impacts is very young and needs more reliance on verifiable data and less reliance on unproven assumptions. Done correctly, such an analysis will demonstrate a significant carbon benefit is achieved through the use of ethanol from all sources," he said.

Steffen Mueller, principal research economist at the University of Illinois at Chicago's Energy Resources Center, said he was encouraged by EPA's announcement that its treatment of indirect land use would be subject to scientific review. "Based on the limited body of science that exists, our land use studies, and our most recent work on satellite imaging used to assess land use impact, it is clear that additional time is required before indirect land use rules can be applied with any certainty," he said.

Contact Nick Snow at nicks@pennwell.com.

Obama biofuel plans welcomed (*tce today*)

$1.8b strategy paves way for second generation

by Claudia Flavell-While

7/5/2009

Obama pushes more sustainable biofuels

US PLANS to help biofuel production while encouraging the switch to second-generation biofuels have received widespread approval, particularly from environmental groups.

The US administration earlier this week announced it would spend a total of $1.8b to help the country's biofuels industry. The money will be split between $1.1b in financial support for the construction of new biorefineries meeting tougher environmental standards and associated biofuel infrastructure, and a previously-announced $786m to support the development of second-generation biofuel processes which no longer use food crops as their raw material.

In a memo, US president Barack Obama instructed the Environmental Protection Agency (EPA) to form a new Biofuels Interagency Working Group with the Department of Energy and the Department of Agriculture. The working group will identify and coordinate the policies needed to encourage the production of more sustainable biofuels.

While the EPA says it will stick with the old target, set by George W Bush, to raise US consumption of biofuels to 36b gallons (40b l) by 2022, to count towards the target biofuels will have to deliver an environmental benefit compared with fossil fuels. First-generation ethanol from maize will have to produce at least 20% less greenhouse gases across their full lifecycle compared with fossil fuels; while biofuels from biomass and cellulosic materials will have to deliver savings of 50% and 60% respectively. The lifecycle assessment will also take into account emissions from changes in land use, such as emissions from different farming methods or clearing forests to make way for arable land – one of the key demands made by critics of the biofuel industry.

On top of this, the EPA specifies that of the 36b g/y of biofuels to be consumed by 2022, 16b g/y has to come from cellulosic crops, 15b from first-generation processes and 1b g/y from biomass. The idea is to bring about a gradual but steady shift towards non food-derived fuels.

"Corn-based ethanol is a bridge to the next generation of fuels," says EPA's chief Lisa Jackson. "As we work towards energy independence, using more homegrown biofuels reduces our vulnerability to oil price spikes that everyone feels at the pump."

Obama gives biofuels mandate the green light (*Today's Trucking News*)

Call Jack Meli, 416/614-2200, or e-mail jack@todaystrucking.com with your request.

WASHINGTON -- President Obama announced steps to increase the use of biofuels in the U.S., although, surprisingly, traditional soy-based diesel would be limited in an EPA proposal.

Obama signed a Presidential Directive establishing a Biofuels Interagency Working Group and announced additional Recovery Act funds for renewable fuel projects. He also announced his administration's Notice of a Proposed Rulemaking on the Renewable Fuel Standard.

EISA will establish four categories of renewable fuels: cellulosic biofuels; biomass-based diesel; advanced biofuels; and total renewable fuel.

The U.S. Environmental Protection Agency proposal outlines the EPA's strategy for increasing the supply of renewable fuels, poised to reach 36 billion gallons by 2022 -- of which 16 billion gallons must be cellulosic biofuels; and 1 billion gallons must be of biomass-based diesel.

Refiners must meet the requirements to receive credit toward meeting the new standards.

In recent years studies have emerged that show that biofuel production -- especially that which involves transforming tracts of cropland to biofuel harvesting -- actually increases emissions worldwide as well as food prices.

The National Biodiesel Board -- which represents soy farmers -- complains that the "EPA, in determining the greenhouse gas profile for biodiesel, is penalizing the U.S. biodiesel industry for

land use decisions made outside the U.S. that have little if anything to do with the domestic biodiesel production."

Says Manning Feraci, the NBB's vice president of federal affairs: "A final rule that is based on questionable science and is structured in a manner that restricts the role of sustainable vegetable oils in the program will make it nearly impossible to meet the Advanced Biofuels goals established by statute."

Canada is preparing to move forward with a B2 biodiesel mandate by 2012. In B.C., the provincial government wants to mandate a B5 blend average starting January 1, much to chagrin of petroleum companies and truckers who feel the policy unfairly place much of the burden of compliance on them.

-- with files from Truckinginfo.com

Warmist infighting reveals the folly of ethanol (*American Thinker*)

Thomas Lifson
May 07, 2009

Those of us who believe Global Warming is a huge scam designed to profit those interests pushing it as "consensus science" just got a big boost from a powerful Democrat committee chairman in the House of Representatives.

Rep. Collin Peterson, a Democrat representing a rural Minnesota constituency and chairman of the House Agriculture Committee, has told the Obama administration he will not support climate change legislation. Regrettably, it is not skepticism over the unproven modeling at the basis of the climate predictions, but rather the threat of uncovering the folly of using ethanol to reduce carbon emissions motivating him. Feedstuffs.com reports:

> "I'm off the train," Peterson said May 6 during a strongly worded statement at a hearing on the Environmental Protection Agency's new proposal for assessing indirect effects of ethanol production on greenhouse gas emissions. Peterson predicted that the EPA proposal, combined with the climate change legislation under consideration, could "kill off corn ethanol."

Peterson said, "I will not support any kind of climate change bill -- even if you fix this -- because I don't trust anybody anymore. I've had it."

Peterson said his position was not negotiable. "I don't have any confidence. The only way I would consider supporting any climate change legislation would be if it was ironclad that these agencies had no ability to do any rulemaking of any kind whatsoever ... (that) we could be absolutely guaranteed that these folks would not get involved," he said.

The mandated use of ethanol for auto fuel has driven up corn process, benefitting Peterson's constituents as it starves the poor overseas. Ethanol processing and transportation uses a high amount of energy (with associated emissions), and requires a large amount of land be devoted to production for fuel.

Obviously, a sincere warmist would want to understand the actual full impact of ethanol production and use. And someone interested in fattening the special interests he protects would not be interested in a full discussion. Just like Al Gore, with his massive investment ibn companies that would profit from carbon trading schemes.

With warmists, it always pays to follow the money.

EPA ASSERTS GHG ROLE IN COMMENTS ON NHTSA FUEL ECONOMY PROCESS (*Inside EPA*)

5/8/2009

EPA is widely seen as signaling its intent to take an aggressive role in cutting greenhouse gases (GHGs) from vehicles after warning the National Highway Traffic Safety Administration (NHTSA) to be “very cautious” in its assumptions about future GHG mandates as NHTSA advances it forthcoming fuel economy standards.

At issue are May 1 written comments by EPA to NHTSA on its April 1 notice that it will begin the environmental impact statement (EIS) process to evaluate the potential environmental impact of new Corporate Average Fuel Economy (CAFE) standards for the 2012-2016 model years.

In the letter, EPA warns NHTSA about making too many assumptions about future GHG mandates, a move that a wide range of observers -- including state, industry and environmental sources -- see as an attempt by EPA to assert a central role in developing federal climate policies. The agency’s warnings come as NHTSA and EPA are expected to coordinate on developing first time federal limits on GHG emissions from vehicles.

The letter urges NHTSA to “judiciously” incorporate assumptions and data that was used in the final EIS for the 2011 CAFE standard, “taking into account areas where the earlier analysis is no longer applicable, including key baseline assumptions, the predicted price of fuel, and the analysis of the social cost of carbon.”

“EPA further believes that NHTSA, when assessing the cumulative impacts of new proposed CAFE standards, should be very cautious about trying to incorporate future, yet-to-be promulgated actions into the assessment, as this could prove to be highly speculative and not appropriate in the current rapid flux of potential related legislative and regulatory action,” says the letter, signed by Susan Bromm, who directs EPA’s Office of Federal Activities. *Relevant documents are available on InsideEPA.com.*

EPA joined activists and states in raising serious concerns last September that NHTSA’s draft EIS, which included first-time consideration of the benefits of reducing GHGs, seriously underestimated those benefits.

And while NHTSA’s final EIS, issued last October, reflected higher gas price projections, the agency then “tinkered with technology costs to come out with a lower standard in 2011 than in the proposed rule,” one environmentalist says. The Obama administration scaled back the Bush administration’s proposed model year 2011 CAFE standards over “serious concerns” about how the current economic turmoil is impacting domestic automakers, prompting a lawsuit from environmentalists (*Inside EPA*, April 3).

“The price of carbon was also a significant issue, with NHTSA pulling $7/ton out of a hat and then ultimately lowering it to $2/ton with a focus on domestic costs only. This was a political decision from the Bush administration. I understand this administration, perhaps with EPA leading or [White House climate czar Carol] Browner, will assess how it will value carbon and address the international/domestic focus.”

A state source says EPA’s letter sends “a red flag” to NHTSA as it prepares to propose new CAFE rules this summer that are expected to be complementary to EPA’s forthcoming first-time GHG emissions rules for vehicles, also expected to be proposed this summer.

An industry source says while the exact meaning of EPA’s letter is unclear, because it is referring to “things that haven’t happened yet . . . Reading between the lines, to me this says, ‘Move over bacon. Now there’s something meatier.’”

A second environmentalist agrees that the letter, which the source calls “densely coded,” signals that EPA is “in the GHG game now,” particularly since it has issued its proposed endangerment finding, and that will likely mean stricter GHG limits than if NHTSA were acting alone.

The industry source notes, “EPA didn’t have the mandate to set future GHG standards until last month” with the endangerment finding’s issuance. “That vastly expands their role.”

Meanwhile, the auto industry continues to press for a single national GHG vehicle standard from EPA, NHTSA and states as EPA is expected next month to grant California’s request for a Clean Air Act waiver allowing it and 13 other states to implement their own first-time GHG vehicle rules with the caveat of an alternate compliance mechanism that would effectively result in one national rule (*Inside EPA*, April 10).

Some auto industry sources are suggesting if there is a single national standard then granting California's waiver "may not be necessary" given expected convergence of the three efforts, the second environmentalist says denial of the waiver is not politically possible for Obama.

The second environmentalist source endorses the alternate compliance option that would allow compliance with the federal rule to serve as compliance with state rules, provided the federal standard is stringent enough.

"There is generally uniform agreement among [California], NHTSA, the White House and even [environmental groups] that there should be one national target," the source says. "The only difference is what the target should be and what that means for California's waiver authority."

The source explains if the national GHG standard satisfies California, the state could be granted the waiver but not have to implement it. That would set a precedent making it more difficult to deny future waiver requests. "That would preserve the state's ability to [pursue future waivers] and California's program would still be in force."

The source also says activists will block the auto industry from seeking to use the Obama administration's acceptance of its arguments that there should be one national standard "as an excuse to not provide California a waiver." Preserving the waiver is crucial for the state and activists, "And the reality is we would never accept [a denial]. California and the 13 other states [that adopted the rule] would never accept it. It is just a non-starter for Obama to kick off the next 100 days being challenged by 14 states, and politically it just [isn't] going to happen."

However, achieving the sought-after convergence is complicated by the fact that EPA is required by a congressional deadline to finalize its reconsideration of the waiver by June 30, while the agency and NHTSA are not expected to propose their GHG rules until August, in order to finalize them by the March 2010 deadline, the first environmentalist acknowledges. "The timing is not quite right," the source notes, but says if done properly, the standards could converge for model year 2012.

Granting the waiver in the meantime also allows California to go ahead with its next round of GHG rules, addressing model years 2017 to 2022 -- a process it expects to begin this summer, the source notes. -- *Dawn Reeves*

ETHANOL INDUSTRY EYES RFS PEER REVIEW TO BOOST FUEL'S GHG BENEFITS (*Inside EPA*)

5/8/2009

The ethanol industry is praising EPA's decision to conduct a scientific peer review of data on the greenhouse gas (GHG) reduction benefits of biofuels in the agency's just-released renewable fuels standard (RFS) proposal, claiming the review could boost projections of biofuels' GHG reductions far beyond EPA's estimates.

In addition, industry plans to urge the agency to revise its calculations for estimating GHG emissions from gasoline, which is the baseline against which biofuels are compared. The ethanol industry wants EPA to consider indirect climate impacts, such as GHG emissions associated with energy-intensive Canadian tar sands development and the military involvement required to protect U.S. petroleum interests in the Middle East.

Broadly, industry's plan is to use the comment period on EPA's RFS proposal to argue for new modeling that could show that the agency vastly underestimated the GHG-reduction benefits of using biofuels. Such data could improve the climate profile of biofuels and allow more of them -- such as corn-based ethanol -- to qualify for credit under the RFS and encourage future investment in the ethanol industry, according to industry sources.

EPA May 5 proposed rules to implement the RFS, at the same time the administration announced formation of a new interagency task force, including EPA, the Department of Energy and the Department of Agriculture, to promote biofuels research, infrastructure and financing. *Relevant documents are available on InsideEPA.com.*

The long-delayed RFS proposal, which Congress directed EPA to finalize by last December, outlines the regulatory structure to implement the renewable fuel mandates of the 2007 energy law. The proposal defines the fuels that will qualify for the cellulosic, biodiesel, advanced biofuel and corn ethanol categories of the RFS.

EPA's proposal also includes proposed methods for calculating the GHG impact of biofuels because the energy law mandated that new biofuel facilities must reduce GHGs by 20 to 60 percent compared to gasoline. EPA considered direct emissions from crop production, ethanol production and ethanol use, as well as indirect emissions that result from domestic and international land use change.

Ethanol advocates have long argued that consideration of international land use change is an unfair penalty to the fuel, and urged EPA not to quantify the impacts. But environmentalists said EPA should calculate the impacts and some activists fear that certain methodologies will underestimate the GHG impact of biofuels. The 2007 energy law required EPA to consider indirect land use impacts in the RFS.

In the proposal, the agency found that international land use change can have a significant impact on the GHG profile of fuels. For example, the direct emissions of corn ethanol reduced GHGs on average by more than 60 percent compared to gasoline, but when international land use change is factored in, corn ethanol reduces GHGs on average by 16 percent compared to gasoline, the proposal says.

Although the average emissions from corn ethanol do not meet the 20 percent reduction required of new ethanol plants, EPA's proposal found that efficient ethanol facilities, for example, that burn natural gas or process the animal feed by-products less, can still qualify to meet the GHG reduction mandate.

Amid ongoing controversy about the climate calculations in the RFS, the agency announced that it would be conducting a scientific peer review of the climate modeling, in addition to taking public comment on the proposal. In particular, EPA is seeking scientific input on the satellite data used to predict land use changes, the emission factors for GHG emissions from land use changes, GHG estimates for foreign crop production, the timeframe for measuring GHGs, and the proposal's combination of different climate models.

Industry is welcoming the peer review process, arguing that EPA's models underestimate the climate benefits of modern agriculture and overestimate the impact of international land use change -- which occurs when farmers in other countries clear forests to plant crops to compensate for U.S. crops diverted to biofuels.

Renewable Fuels Association President Bob Dinneen said the group is confident that the peer review will show that the GHG impact from international land use change is lower than EPA's prediction in the proposal.

Dinneen said on a May 5 teleconference, "We absolutely believe it's going to change and I think the administration is reflecting the uncertainty of that number itself by taking the unusual step, but appropriate step, of directing that that international land use assessment be subjected to a separate peer review."

In particular, the group plans to urge EPA to consider recent gains in U.S. crop yield and the high nutritional value of the animal feed by-product of ethanol production, which would show ethanol production is displacing fewer crops than the agency predicted, Dinneen said. The group will also comment on the timeframes EPA used, arguing the agency picked timeframes that overestimate deforestation and underestimate crop yields, he said.

Industry also plans to urge EPA to consider indirect climate effects of petroleum, such as increased energy used to process Canadian tar sands, as it works to finalize the RFS proposal, Dinneen said. "If they are going to count the angels on the head of a pin for biofuels, it seems to me they ought to take at least a cursory glance at some of the indirect effects of petroleum use," Dinneen said.

Retired Gen. Wesley Clark, the co-chairman of the ethanol group Growth Energy echoed this sentiment in a separate May 5 teleconference and referred a to recent study published in the journal *Biofuels, Bioproducts & Biorefining,* that found that GHG intensity from gasoline increased by two-fold when emissions from military operations needed to protect oil supplies are taken into account. -- *Kate Winston*

HAZARDOUS WASTES

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Secret EPA study: Big cancer risks from coal-ash ponds (*Charleston Gazette*)

by Ken Ward Jr.

Friday
May 8, 2009

Every year, coal-fired power plants dump nearly 100 million tons of various wastes — fly ash, bottom ash, and scrubber sludge — into landfills and impoundments. Can living near one of these dumps increase your risk of getting cancer?

The U.S. Environmental Protection Agency thinks so. But under the Bush administration, the agency didn't want you to know that. Now, the Obama EPA has released a previously secret study that found residents near these coal-ash dumps have as much as a 1 in 50 chance of getting cancer from drinking water contaminated with arsenic.

That's according to a new report being released right now by the Environmental Integrity Project and Earthjustice. I've posted the report, "Coming Clean: What EPA Knows About the Dangers of Coal Ash," here and a list of the coal-ash dumps examined in the secret EPA study here. The EPA study itself is posted here.

Among the key findings:

– *The problem may be twice as big as the date indicate* — The number of unlined and clay-lined ash ponds and landfills currently in operation in the United States is likely to be more than double the number of units represented in the EPA survey data.

– *The coal ash threat could linger for 100 years* — Because some of the EPA data go back to the mid-1990s, it is possible that some of the listed dumps are no longer in use. The EPA warns, however, that peak pollution from ash ponds can occur long after the waste is placed and is likely to result in peak exposures about 78 to 105 years after the pond first began operation.

– *Higher cancer risk for up to 1 in 50 nearby residents* — The EPA estimates that up to 1 in 50 nearby residents could get cancer from exposure to arsenic leaking into drinking water wells from unlined waste ponds that mix ash with coal refuse. Threats are also posed by high levels of other metals, including boron, selenium and lead.

– *Higher non-cancer risks from lead and other sources* — The EPA also predicted that these unlined ash ponds can increase the risk of other "non-cancer" health effects, such as damage to vital organs like the liver and kidneys, or damage to the central nervous system. Unlined waste ponds that mix ash and coal refuse will result in exposures up to nine times the federal standard for lead, a deadly neuro-toxin that can damage the central nervous system, especially in young children.

This report is the latest — and among the most significant — bit of information about coal-ash dangers to surface since December's disastrous collapse of a similar facility at the TVA's Kingston Plant in East Tennessee. As Coal Tattoo readers well know, the TVA mess made clear how poorly regulated coal ash handling and disposal is, and put the issue on the front burner for the Obama administration and Congress. It's sure to put more pressure on EPA Administrator Lisa Jackson, who has promised to deal with coal ash, but has lots of things on her plate.

Now, the risk numbers — dealing with additional health risks for folks who rely on well water and live near where coal-ash dumps contaminated groundwater — were for the most part

released two years ago, when EPA published an August 2007 Risk Assessment study. But what's new here is that essentially the same information was available to EPA nearly five years earlier in this October 2002 report — but the Bush EPA never gave the information to the public. In March, the Obama EPA quietly posted the document on an agency rulemaking Web site. (It's also important to note that the August 2007 report itself didn't get nearly the attention it deserved from reporters like me, even after the TVA disaster).

And, the 2002 report reveals some incredible new findings about risks to aquatic ecosystems and wildlife: According to EPA data, ash ponds are predicted to leak boron into surface waters at concentrations 2,000 times higher than what is safe for aquatic life. And, EPA data also shows levels of arsenic and selenium will be 10 times higher than what is safe.

"We now have the full picture about coal dump sites across America, and it is not pretty," said Eric Schaeffer, director of the Environmental Integrity Project. "The EPA's data shows that the disposal of coal ash, especially in unlined ponds, results in alarmingly high risks of cancer and diseases of the heart, lung, liver, stomach and other organs and can seriously harm aquatic ecosystems and wildlife near disposal sites."

Earthjustice attorney Lisa Evans, one of the environmental community's top experts on this issue, said:

Given what the agency already knows, coal ash ponds must be phased out — and cleaned out — within five years, to keep their toxic cargo from building up and jeopardizing the health of nearby residents, poisoning wildlife, and contaminating rivers and streams.

So-called "dry landfills" — especially those that are unlined — also pose unacceptable risks, and ought to be regulated as hazardous waste disposal sites. The EPA's risk assessment clearly establishes that unlined coal-ash disposal sites — wet and dry — are hazardous to human health and the environment.

We hope the new leadership at the EPA will act on that knowledge before further serious damage occurs to our health and environment.

Waste dumps pose health risks (*Atlanta Journal-Constitution*)

11 coal ash ponds in Ga. could leach into water supplies, activists say.

By Rhonda Cook

Friday, May 08, 2009

Eleven coal waste and ash dumps in seven Georgia counties, including Cobb, pose a much higher risk of cancer and other health problems to people living nearby than was previously thought, according to two environmental groups that reviewed federal Environmental Protection Agency records.

“Can living next to one of these dump sites increase your risk of getting cancer or other diseases?” said Eric Schaeffer, director of the Environmental Integrity Project. “The Environmental Protection Agency thinks so, especially if you live near one of those wet ash ponds or surface impoundments.”

The EPA data showed one in 50 people had increased risk of cancer if they drew water from wells near the ponds, Schaeffer said. Contaminated surface water increases the risk of cancer or other diseases for swimmers and anyone who eats fish from those streams, rivers or lakes, he said.

“EPA is also quickly moving forward to develop regulations to address the management of coal combustion residuals,” EPA spokeswoman Adora Andy said in an e-mail. “EPA anticipates having a proposed rule ready for public comment by the end of the year.”

A spokesman for Georgia Power Co., which owns 10 coal-fired power plants in the state, said there is nothing to suggest its coal ash ponds have caused any cancers or illnesses, or have leached into the groundwater or nearby streams or rivers. Coal ash usually contains high concentrations of arsenic, boron, cadmium, cobalt, lead and other toxins.

Jeff Wilson said the utility frequently inspects its 28 unlined coal ash ponds. Two of those ponds also require periodic checks by the state because of the size of their dams.

Wilson said the EPA study was in draft form. “Once the EPA issues that assessment in final form, we will review it and work with regulators and other stake holders to address any issues,” he said.

The list of 210 sites nationwide, released by the Environmental Integrity Project and Earthjustice, included 11 coal ash ponds in Georgia. The report from the two environmental groups listed power plants in Cobb, Chatham, Putnam, Floyd, Bartow, Heard and Monroe counties.

“We now have the full picture about coal dump sites across America, and it is not pretty,” Schaeffer said.

Schaeffer noted a major spill from a coal ash pond at a Tennessee power plant in December. Wet coal ash breached an earthen retaining wall, and 1 billion cubic yards of slush spewed forth, burying nearby homes.

“Since last year’s coal ash spill at a Tennessee Valley Authority facility in Kingston, Tenn., the EPA has executed new efforts to prevent future threats to human health and the environment,” said Andy of the EPA. “EPA is expeditiously evaluating all liquid coal impoundments in the country to determine whether they raise the type of structural integrity issue that led to the TVA spill.”

EPA report cites cancer threat in Iowa ash pits (*DesMoinesRegister.com*)

By PERRY BEEMAN
pbeeman@dmreg.com

May 8, 2009

Iowa

Coal-ash pits - like those found at two dozen sites around Iowa - pose a cancer risk up to 2,000 times what federal environmental regulators consider acceptable, according to 2002 U.S. Environmental Protection Agency data made public by two environmental groups Thursday.

Chemicals in the ash could give residents nearby a 1-in-50 to 1-in-500 chance of getting cancer from drinking tainted water, according to the Environmental Integrity Project and Earthjustice. The EPA usually attempts to limit the cancer risk posed by pollution to 1-in-100,000 to 1-in-1 million.

"That's what we've been worried about," said Lorraine Hilmer, whose acreage near Waterloo is near one of the biggest ash disposal areas in Iowa. She and her husband, Robert, fought a proposed coal plant in Waterloo in part because they felt their health was threatened by the ash heap.

The ash left over after coal is burned in power plants contains selenium, boron, mercury and other dangerous elements and chemicals - some linked to cancer and widespread damage to river and lake life.

The EPA declined for decades to regulate the material as hazardous waste. But the issue made national news after a Tennessee Valley Authority lagoon break in December polluted 300 acres.

Under the Bush administration, the EPA repeatedly declined to release the 2002 research showing a greater risk from the pits, despite several federal Freedom of Information requests. The risk analysis was released March 4, after President Barack Obama pledged more openness at federal agencies.

The analysis was more severe than previously reported, said two national environmental groups that analyzed the data.

The EPA also disclosed that pollution from the ash dumps would pose the biggest threat 80 years or so after the first material was deposited in the makeshift landfills.

"The EPA's findings make it clear that coal combustion waste disposal practices are an unacceptable threat to human health," said Donna Wong-Gibbons, a public health specialist at Plains Justice, an Iowa nonprofit group. "Now that this information has finally been made public, it is past time for the EPA to start protecting Iowans by regulating this toxic coal waste."

The Iowa Department of Natural Resources had been drafting rules but decided to wait until the EPA issues its own regulations before making final plans.

Eric Schaeffer, director of the Environmental Integrity Project, said: "We now have the full picture about coal dump sites across America, and it is not pretty. The EPA's data show the disposal of coal ash, especially in unlined ponds, results in alarmingly high risks of cancer and diseases of the heart, lung, liver, stomach and other organs, and can seriously harm aquatic ecosystems and wildlife near disposal sites."

At particular risk, according to the EPA, is anyone drinking water from wells near unlined ash disposal sites, which account for most of Iowa's ash-dumping areas. Iowa is one of three dozen states with five or more ash sites at high risk of polluting waterways, the groups reported.

Iowa has 13 landfills that take coal ash, and four other spots in abandoned gravel pits and the like that use the material as fill, said Chad Stobbe of the state land quality bureau.

Plains Justice said there are two dozen coal-ash sites in Iowa, including closed ones in Boone and elsewhere. Several have landfill-style liners, but even those leak, according to state records.

The number of confirmed ash dumps across the United States has topped 420, more than 40 percent above what the EPA estimated before a new inventory this year.

The EPA included seven Iowa ash dumps among the 181 disposal areas studied in 2002.

Environmental Integrity Project said the high-risk sites included utility ash deposits in Muscatine, Council Bluffs, Salix and Lansing.

Ivan Martin of Muscatine moved from an industrial area to another part of town after battling ash from a coal storage area that often caught fire. "You betcha I'm concerned about the pollution," said Martin, 71. "I cough up a lot of phlegm. They should regulate that stuff."

EPA DEVELOPING VOLUNTARY STANDARD TO CERTIFY 'GREEN REMEDIATION' (*Inside EPA*)

5/8/2009

EPA is in the early stages of developing a voluntary "green remediation" standard as part of a broader ongoing effort to encourage the use of best management practices at cleanup sites to incorporate sustainability principles and reduce the overall impact of cleanups on the environment.

States and EPA regions are increasingly focusing on evaluating all environmental aspects of a cleanup, such as reducing air emissions from vehicles used at cleanup sites, but state and EPA officials say many barriers -- including lack of knowledge -- prevent the widespread use of green cleanup approaches.

EPA defines green remediation as "the practice of considering all environmental effects of remedy implementation and incorporating options to maximize the net environmental benefit of cleanup actions."

As part of the agency's focus on green remediation, Region III last month released a draft framework for developing a voluntary green cleanup standard. The framework encourages practices such as minimizing the use of energy; reducing the use and waste of water; reducing the cleanup's impact on surrounding natural resources; and encouraging the reuse, reduction and recycling of materials on-site. *Relevant documents are available on InsideEPA.com.*

EPA plans to finalize the framework by the end of June and begin collaborating with the American Society of Testing & Materials International (ASTM) to complete an actual standard by the end of 2011, according to EPA sources. ASTM has expressed interest in developing a green remediation standard, and EPA has begun preliminary discussions on developing a joint standard, the sources say.

The standard will be voluntary, developed through consensus with stakeholders and obtained through independent third-party or self-certification, according to a presentation EPA Region III's Deborah Goldblum made April 15 to the Association of State & Territorial Solid Waste Management Officials (ASTSWMO). The standard will also be flexible -- allowing for program or state-specific recognition options -- and will promote technology innovations, the presentation says.

EPA last year released a technical primer, *Green Remediation: Incorporating Sustainable Environmental Practices into Remediation of Contaminated Sites*, which provides an introduction to green remediation best practices and includes examples of how and where they have been used.

And earlier this year, the agency's Superfund Green Remediation Work Group began developing a draft strategy that sets out the Superfund program's plans to promote green remediation practices during site cleanups. While green remediation is not limited to energy and climate impacts, the strategy currently focuses on reducing the carbon footprint of site cleanup by reducing energy usage and increasing use of renewable energies, according to a presentation Larry Zaragoza of EPA's Office of Superfund Remediation & Technology Innovation made at the ASTSWMO meeting.

Zaragoza noted that numerous federal and state statutes and executive orders require or recommend reductions in energy and water consumption as well as increased use of renewable energy.

Among the actions recommended in the agency's draft green remediation strategy are the development of policies that clarify the role of green remediation within the statutory frameworks of the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) and National Contingency Plan; incorporating green remediation into EPA enforcement agreements; developing tools like informational Web sites and training on green remediation; and incentivizing green remediation through awards and financing.

Kevin Carpenter of the New York Department of Environmental Conservation noted in a presentation to ASTSWMO that green remediation initiatives could easily be incorporated into CERCLA five-year reviews. Under the five-year review criteria, EPA is required to identify ways to "improve the performance" and "reduce the cost" of the cleanups.

"Periodic reviews at sites where a cleanup action does not allow for unrestricted use or unlimited exposure provide opportunities for project managers to consider whether green remediation can be integrated into a site cleanup," Carpenter's presentation says, quoting from EPA's draft green remediation strategy. EPA plans to finalize the green remediation strategy by the end of June.

The principle of equating sustainability with optimization could be extended to similar statutory reviews in other state and federal programs, including brownfields, underground storage tanks and voluntary cleanups, according to Carpenter's presentation.

Meanwhile, the ASTSWMO Greener Cleanups Task Force has identified through a survey what states see as the top three barriers to implementation of green remediation, as well as which barriers are likely the easiest to overcome. The task force received 44 responses from 27 states.

The top barriers are lack of knowledge or awareness of greener cleanup practices; the fact that green remediation may require more upfront costs than traditional cleanups; the fact that green remediation approaches are not included in existing regulations; and regulators' inability to offer incentives, according to information Carey Bridges of the Missouri Department of Natural Resources presented at the ASTSWMO meeting.

State respondents said the barriers most easily overcome are the lack of knowledge and a current comfort with conventional practices, Bridges said.

Several states, however, are already working on encouraging the use of green remediation, including California and Wisconsin.

California's green remediation pilot program went into effect last August. The state's Department of Toxic Substances Control began an initiative for evaluating cleanup efforts on closed defense facilities, munitions sites and active and closed military bases and identifying site-specific methods of reducing their impacts.

The California program is dedicated to a "life-cycle approach" towards applying green remediation, which identifies environmental stressors -- harmful air emissions and soil toxicity among others -- and finds ways to mitigate those impacts. Among the solutions identified by the department are using renewable energy to power pump-and-treat systems and using heavy machinery that runs on biodiesel fuel.

Wisconsin is working with a consultant to develop a green remediation guidance document and recommending sustainable options for six selected state funded remediation sites, according to a presentation by Mark Giesfeldt of the Wisconsin Department of Natural Resources. The guidance document will incorporate existing applicable information on sustainability and green technologies and methodologies from multiple sources including EPA, the Sustainable Remediation Forum, the Air Force Center for Engineering and Environment and other states, the presentation says.

OBAMA EPA SIGNALS OPENNESS TO REPEALING TWO KEY BUSH-ERA WASTE RULES (*Inside EPA*)

In response to lawsuits filed by environmentalists, the Obama EPA is signaling it may repeal two controversial waste rules that the Bush administration finalized during its final weeks by preparing a notice to withdraw one rule and taking the unusual step of having a public meeting to discuss concerns over the other final rule.

In a May 5 announcement, the agency says it is planning to propose a rule withdrawing the Bush EPA's "comparable fuels" regulation that increased the number of hazardous wastes that can be burned as fuel without being subject to strict waste-management requirements, citing broad stakeholder concerns over the rule.

In the same announcement, EPA says it will in June host a public meeting to discuss possible revisions to the Bush administration's controversial definition of solid waste (DSW) rule, which could eventually lead to its repeal. The meeting is in response to an administrative petition in which environmentalists raised concerns that the rule, which was aimed at promoting recycling, went too far in relaxing hazardous waste rules.

Both waste regulations proved highly contentious and environmentalists highlighted the last-minute rules as prime examples of so-called midnight regulations that the Bush EPA finalized shortly before leaving office. Earthjustice filed suit over the DSW rule and a separate lawsuit over the comparable fuels rule.

The Obama EPA in its announcement says it plans to publish a proposal to withdraw the comparable fuels rule in the *Federal Register* in November. "The proposal will present the agency's concerns and request comments from the public after publication . . ." the agency says.

“The final rule . . . has been criticized for allowing hazardous waste to evade the hazardous waste regulatory system, and also for being difficult to administer,” EPA adds. “Industry members have also criticized it because of the detailed and prescriptive conditions for reclassification, which they believe will limit its use.”

Meanwhile, EPA says that its upcoming meeting on the DSW rule “will assist the agency in deciding whether to make revisions to the rule and how such revisions would further ensure that the rule appropriately and safely encourages resource conservation for those hazardous secondary materials that are conditionally excluded” from the definition of solid waste, the agency says.

A *Federal Register* “notice announcing the meeting will raise specific questions for consideration, particularly related to reclamation that is not under the control of the generator” of waste, according to EPA. “Any revisions to the rule would be made through the full public rulemaking process,” the agency says.

Under the DSW rule, hazardous waste destined for recycling is exempt from Resource Conservation & Recovery Act requirements so long as it is “contained,” the activist law firm Earthjustice noted in the Jan. 29 lawsuit it filed on behalf of the Sierra Club.

The term “‘contained’ is said to mean ‘placed in a unit that controls the movement of the material out of the unit into the environment,’” Earthjustice noted. “But EPA set no standards for what counts as ‘control’ so there are no objective means to determine when hazardous materials have been ‘contained.’”

Environmentalists “appreciate the direction” the Obama EPA is taking on the comparable fuels rule, an activist says, but adds that they would have preferred the agency to have “been bolder” regarding the DSW rule.

Nonetheless, it is “encouraging” that the Obama EPA appears “very willing to take a hard look at these Bush administration decisions,” the activist says.

PESTICIDES

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ENDANGERED SPECIES AMONG TOP CHALLENGES FOR EPA PESTICIDES OFFICE (*Inside EPA*)

5/8/2009

EPA’s Office of Pesticide Programs faces a number of major challenges including taking steps to ensure compliance with the Endangered Species Act (ESA) when assessing the risk of pesticides,

developing guidance on pesticides that can drift, and a host of other policy and scientific priorities, according to a key agency official.

Debbie Edwards, EPA's director of pesticide programs, told CropLife America's April 28 spring conference in Arlington, VA, that ESA "continues to be a very big challenge in the program." She also discussed the status of a high -profile discharge permit lawsuit affecting pesticide users and said the agency was in settlement negotiations in a 2006 suit brought by activist groups questioning agency practices for testing pesticides on humans.

EPA is under a court order to consult with the National Marine Fisheries Service and the Fish & Wildlife Service about the risks of a slew of pesticides, after a federal district court found in 2002 that EPA had failed to protect salmon from pesticides under the ESA.

EPA's pesticides office is "working on the long-term goal of being in full compliance" with the act while posing the minimal impact on agriculture, she said, adding that there "rumors" of additional, bigger lawsuits being brought under the act, Edwards told the CropLife America conference.

Her remarks come after Donald Brady of EPA's Environmental Fate & Effects Division said in an April 23 presentation at the Pesticide Program Dialogue Committee (PPDC) meeting in Arlington, VA, that the agency faced several "critical issues" as it sought to "develop a nationwide risk assessment process to evaluate impact of pesticides on listed species and critical habitat" in compliance with the ESA.

The agency is also poised to issue a draft pesticide registration notice for spray drift labeling later this year, which will include general statements on spray drift and more specific statements for particular products, Edwards said. EPA policy seeks to prevent spray drift, as the drift of spray from pesticides can cause harmful human health and environmental effects.

At the PPDC meeting in Arlington, VA, last month, officials said the notice would be a "guidance document" for applicants and registrants to illustrate the kind of acceptable statements for products that tend to drift, while the agency will also issue a "labeling interpretation document for state lead agencies" and a *Federal Register* notice discussing both documents.

At the CropLife meeting, Edwards said the agency was looking forward to receiving comments on the documents, which will be open for public comment.

EPA will also issue its first test orders under the endocrine disruptor screening program, which was mandated by Congress in 1996 as part of the Food Quality Protection Act, sometime this summer, Edwards said (*see related story*). She added that the agency envisions the "real-time science evolving as the screening program unfolds," possibly through a high-throughput screening tool.

Meanwhile, after the U.S. Court of Appeals for the 6th Circuit ruled earlier this year in *National Cotton Council et al. v. EPA* to vacate EPA's rule exempting pesticide application from National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act (CWA), Edwards said the agency had requested a stay and would be working with the Office of Water on the issue.

At the PPDC meeting, officials said, if the court grants the stay, EPA will develop and propose final NPDES general permits only for those states that do not have delegated NPDES authority -- Massachusetts, Idaho, New Mexico and New Hampshire, as well as tribal areas and territories -- and "will work closely with NPDES-authorized states to develop their general permits . . . to expedite implementation."

Edwards said the pesticides office is also anticipating movement on several policy issues, including a possible increased focus on workers' issues given EPA Administrator Lisa Jackson's stated priority of looking at "disproportionate impacts" of environmental problems, including a reexamination of protections for pregnant farmworkers and a look at how benefits are calculated under the Federal Insecticide, Fungicide & Rodenticide Act (FIFRA). Activist groups have long-called for action on both issues, she said.

Edwards also said she "would not be surprised" if the administration sought to move forward on the ratification and implementation of the Stockholm Convention on persistent organic pollutants (POPs), an international agreement to restrict and ban certain persistent organic pollutants, and the Rotterdam Convention on prior informed consent procedures, a treaty requiring participating countries to notify each other of hazardous chemical exports.

Edwards said EPA is currently in settlement negotiations with activist groups over a high-profile 2006 lawsuit in which the groups challenged the agency's human pesticide testing rules, arguing the practices violate a 2005 law "mandating strict ethical and scientific protections for pesticide testing on humans," according to a 2006 announcement from the Natural Resources Defense Council. EPA has until June 5 to conclude the settlement discussions, Edwards said.

The agency is also reviewing at least two petitions calling on EPA to evaluate inert ingredients that are viewed as hazardous under other environmental statutes.

There are a number of high-priority science-based issues that the pesticides office is working on, Edwards said, including looking at air quality and semi-volatile pesticides, chemicals that tend to volatilize after application. Edwards said she "expects we will find very low levels of some pesticides" in the results of a high-profile EPA program monitoring air quality around U.S. schools, announced in March by Jackson. -- *Aaron Lovell*

POLITICAL

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OBAMA PICKS FOR TOP EPA, DOE CLEANUP POSITIONS DRAW ACTIVISTS' IRE (*Inside EPA*)

5/8/2009

President Barack Obama's nominees for the top waste office slots at EPA and the Department of Energy (DOE) are drawing the ire of environmentalists who fear that the candidates will not pursue sufficiently stringent cleanups at contaminated sites, and may even relax cleanup standards in favor of economic redevelopment.

“Basically, there’s no one on Obama’s staff we can go to,” one environmentalist says. “There’s a terrific debate going on in the environmental community as to whether to speak up publicly about this, because if we do we burn our access,” the source says about Obama’s nominations of Dr. Ines Triay to head DOE’s Office of Environmental Management (EM) and Mathy Stanislaus to head EPA’s Office of Solid Waste & Emergency Response.

But the nominees have received generally smooth Senate confirmation hearings recently, which suggests that both Republican and Democratic lawmakers are comfortable with Obama’s choices. The White House did not return a request for comment on the criticisms of the nominees by press time.

At press time, the Senate Environment & Public Works Committee was set to vote on Stanislaus’ nomination May 7, while it is unclear when the relevant Senate panels will vote on Triay.

Several activists criticize the pick of Triay -- second-in-command at EM since the Bush administration -- with the environmentalist saying that activist groups “desperately tried to prevent her nomination and failed.” Critics say Triay’s track record on nuclear cleanups is far less stringent than they would prefer.

Sources say Triay’s nomination represents a continuity with the Bush administration’s negative track record on cleaning up nuclear weapons legacy sites. Under Bush, DOE routinely gave congress budget requests far lower than what would have been required to meet cleanup milestones, misappropriated and wasted money it did receive, and pushed project completion milestones far into the future, Triay’s critics say.

The Bush administration and Triay have “run the [EM] program into the ground,” another environmentalist says, citing delays, cost overruns, missed milestones and chronic underfunding as causes. “This disconnect, I don’t believe [Triay] and her group has a handle on the situation, nor are reaching out to get one.”

Triay went before the Senate Energy and Natural Resources Committee April 23 and the Senate Armed Services Committee April 28 for her confirmation hearings -- both committees share jurisdiction over her program -- and while senators sought commitments and asked questions on a range of cleanup issues, both hearings proved non-controversial and the nominee appears set for confirmation by the full Senate.

At the energy panel hearing, Sen. Maria Cantwell (D-WA) questioned Triay on her plans to remove high-level nuclear waste from scores of single-shelled leaking underground storage tanks at the Hanford Nuclear Site in Richland, WA -- one of the most daunting and costly programs in the EM portfolio.

Triay replied that she would assess the tanks’ capacity and the need to construct additional double-shelled tanks as needed. Cantwell told *Inside EPA* after the hearing that she was generally satisfied with Triay’s replies to the question, but added that she was interested in seeing the nominee’s pending written responses for the record. “The fact is, the state -- and country -- needs to determine what to do about this tank waste,” Cantwell said. “I’d like if she’d tightened her answers up when I asked for a specific time frame.”

Few senators attended Stanislaus’ April 28 Environment & Public Works Committee confirmation hearing, and the nominee also appears set for confirmation as committee ranking member James Inhofe (R-OK) offered Stainslaus his support. In contrast, Inhofe is supporting Sen. John Barrasso’s

(R-WY) hold on Regina McCarthy to head EPA's air office over concerns about possible Clean Air Act greenhouse gas rules.

The environmentalist says Stainislaus' nomination raises some questions because of his background in brownfields redevelopment, which they say could be indicative of a willingness to relax cleanup standards in favor of development. Stanislaus has an academic background in chemical engineering and environmental law and has began his career as general counsel at EPA Region II and later in private practice. He served on EPA's National Environmental Justice Advisory Council and currently serves on the board of the New York City Environmental Justice Alliance, Inc., and co-founded and co-directs the New Partners for Community Revitalization, a not-for-profit organization.

Other environmental justice organizations, however, have emphatically backed Stanislaus' nomination and believe he will work to give them a greater voice within EPA. One state source who has worked with Stanislaus calls his nomination "a very strong statement" reaffirming EPA's commitment to advancing environmental justice concerns, while another community-based activist says the actions of the Obama EPA -- including Stanislaus' nomination -- are "such a tremendous departure from the last administration," in terms of addressing environmental justice priorities.

At Stanislaus' confirmation hearing, Senate environment panel Chairwoman Barbara Boxer (D-CA) sought and received assurance from the nominee that he would work with the committee to find ways to improve the number of cleanups undertaken by the Superfund program and to determine whether it needs additional funding.

The concerns from some environmentalists over the nominations for the top waste slots at EPA and DOE lead some activists to say that while Obama has vowed to tackle climate change, his administration's policies on waste, cleanups and related issues remain unclear and possible cause for concern.

"Our concern is that the Obama administration doesn't have an environmental agenda outside of energy and climate change," says one source with Public Employees for Environmental Responsibility (PEER). "But on clean water, mountaintop removal, grazing reform -- their policies may be pot luck."

The source claims the administration has been "opaque" with environmentalists on its policies, adding, "Even during our briefing to the transition team, there was no feedback."

Critics of the nominations also say they are fresh disappointments from the administration following the nomination of McCarthy -- appointed by a Republican to head Connecticut's environment department -- to head EPA's air office, and Obama's selection of former New Jersey environment department head Lisa Jackson as EPA administrator rather than some environmentalists' preferred pick of activist lawyer Robert Kennedy Jr.

But the same sources say they do not disagree with every nominee Obama has chosen. For example, they welcome Cynthia Giles, the nominee to head EPA's Office of Enforcement and Compliance Assurance, who has received high marks from PEER. Other nominees activists endorsed include Hilda Solis at the Department of Labor and Jane Lubchenco for the National Oceanic & Atmospheric Administration. Another source is also encouraged by the nomination of Jon Wellinghoff to head the Federal Energy Regulatory Commission and Cathy Zoi as DOE's Assistant Secretary for Energy Efficiency and Renewable Energy. -- *John Heltman*

SUPERFUND

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Last phase of Superfund cleanup to begin this month (*News of Delaware County*)

By Lois Puglionesi

CORRESPONDENT

Posted on Thu, May 7, 2009

According to information EPA officials presented at a recent public meeting, the plume of contamination at the Havertown Superfund site is getting smaller.

On display April 20 was a color-coded diagram illustrating how the contaminated area has decreased between 2000 and 2008.

“It shows a good story,” said Remedial Project Manager Jill Lowe. Lowe noted that one deep groundwater well which formerly had high levels of pentachlorophenol (PCP), the primary contaminant, is now "non-detect."

"This is a major accomplishment in two years," said Harish Mital, a consulting engineer with Tetra Tech. "One of the worst wells is now clean."

Lowe proceeded to give an update on OU3, EPA's third and final phase of remediation.

A two-part process, OU3 will continue to address groundwater contamination in the “source area” at Eagle and Lawrence Roads with installation of a 125-foot-deep well near the loading dock to the bubble gum factory. This location was chosen because it provides optimal conditions for deep extraction. “We tried five different locations,” Mital said.

Three additional wells will be used to inject an aqueous solution, currently under development, that will “help loosen contamination and flush soils,” Lowe said.

ROS area

EPA will also excavate a 50-foot-by-50-foot Residential Open Space (ROS) area behind Rittenhouse Circle, and along a nearby abandoned sewer line. The line had transported contaminants before it was discovered in May 2003. A portion that remains unsealed is slated for removal.

After testing, contaminated soil will be transported to a hazardous waste disposal facility. EPA will backfill excavated areas with clean soil and new vegetation.

EPA also plans to install three new extraction wells for drawing out contaminated groundwater in in the ROS area. An underground pipe will transport the water to EPA's treatment facility off Eagle Road and Hillcrest Avenue.

The groundwater treatment plant has been updated to expand capacity to 70 gallons of water per minute, Lowe said.

Additionally, EPA will construct a temporary stone bridge over a tributary to Naylor's Run to facilitate access.

Mid-May, early June

Construction begins mid-May or early June, with target completion by Sept. 30. Work will occur during regular business hours. While traffic and noise may increase, EPA does not anticipate major traffic issues.

Funding

The project received $5 million from the Recovery Act because the funds will enable it to become "construction complete," Lowe said. The total budget for this phase is $5 million.

However, the site won't meet groundwater quality or remedial action objectives. "Once we reach those standards we'll do a risk assessment again," Lowe said. She noted that 12 consecutive quarters of positive data are needed before treatment can cease. "I think that's way in our future."

The site will be turned over to the Pennsylvania DEP in 2013.

Q & A

Present in the audience, Commissioner Dan Siegel inquired about health issues and risks. Lowe said the Agency for Toxic Substances and Disease Registry "did a study," and risk assessments are available in EPA's Record of Decision.

"Ground water isn't used for drinking, so that limits risk," Lowe said. Contaminated soil in the ROS area does pose risk, "and that's why we're taking it out." The soil will be placed on liners and covered, with security provided, Lowe said.

Siegel also asked about redevelopment of the bubble gum factory. Lowe said it's possible as long as construction does not interfere with EPA's infrastructure, which includes over 20 wells and piping. The wells are flush mounted and can be driven over, but can't be built on. "I think you could build something there, but you might only have 2.5 to 3 acres to work with."

Lowe said EPA would consider relocating some monitoring wells if necessary.

"It's not like we don't work with people. We try to be mindful and put things on edges when we can. But my charge is to clean up the groundwater and soil at this site and make it protective of human health and environment," Lowe said.

Vapor intrusion

Lowe also noted that while PCP isn't volatile, MTBES (Methyl Tertiary Butyl Ether) and TCE (Trichloroethylene) are also in groundwater and present vapor intrusion risks.

"I would use a vapor barrier and build with some sort of air exchange," Lowe said. "You have to build in a smarter way. It might cost more…"

Environmental scientist Mike Levin asked if the gum factory foundation and basement could be excavated. The answer was a tentative yes, but the developer would have to demonstrate that work would not disturb contaminated groundwater or change site dynamics.

Levin later balked at EPA's statement about the narrowing plume. Maintaining that EPA has not provided sufficient documentation to support that assertion, Levin penned a letter to Congressman Joe Sestak requesting a public retraction. "To give unsubstantiated information based upon a few pictures without documentation is unconscionable," Levin said.

Status

In November 2008 the township initiated eminent domain proceedings to acquire the gum factory after officials failed to reach an agreement with current owners, the Fenimore family. The case is currently in Delaware County Court of Common Pleas.

The YMCA of Philadelphia and Vicinity remains interested in establishing a branch at the site.

On the National Priorities List since 1983, the Havertown Superfund site became contaminated from liquid wastes, primarily diesel oil mixed with PCP, that were dumped down a well by the former National Wood Preservers between 1947 and 1991.

For more information, contact Lowe at (215) 814-5540, lowe.jill@epa.gov. Or visit www.epa.gov/reg3hwmd/super/sites/PAD002338010.

NEW YORK DISPUTE HIGHLIGHTS CLASHES OVER EPA SUPERFUND LISTING (*Inside EPA*)

5/8/2009

An ongoing battle between the New York City mayor's office and the state environment department over whether to place a contaminated site on EPA's Superfund National Priorities List (NPL) highlights a broader clash between those who favor listing to achieve a strict cleanup and others who want old sites redeveloped using brownfields funds that would avoid the stigma of being listed on the agency's NPL.

Environmentalists are also seizing on the New York City dispute to reiterate their claims that the Superfund listing process is flawed and should be more transparent. They argue that listing

decisions are based more on political issues such as funding than whether objective science warrants a listing.

New York City Mayor Michael Bloomberg (I) is strongly objecting to the state Department of Environmental Conservation's (DEC) push to list the Gowanus Canal -- a 1.5-mile canal in Brooklyn contaminated with a number of persistent bioaccumulative toxins, coal sludge and sewage -- as a Superfund site on the NPL. Listing would spur EPA oversight of the cleanup and make the agency responsible for securing cleanup funding.

Bloomberg says the listing would ruin the city's plan to redevelop the area as residential and commercial properties because of the stigma associated with the Superfund program for cleaning up toxic waste sites. A number of potential developers have said they will pull out of the deal if the site is listed.

Bloomberg instead wants the site to be cleaned up under the city's own newly-minted brownfields program, the first municipal program to offer binding indemnity agreements to developers. Pending an agreement with the state and EPA Region II, the city program will have the same authority to absolve developers of liability as would be offered by the state or EPA.

Supporters of NPL listing say the dispute between Bloomberg and DEC highlights existing problems with the NPL process because critics say the process is dominated by political rather than scientific concerns. For example, in New York City, observers say Bloomberg wants to keep the site off the NPL for purely economic reasons even though contamination levels at the site may otherwise warrant a listing as a Superfund site.

Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), known as the Superfund law, states can elect to have sites placed on the NPL regardless of their score on the Hazard Ranking System (HRS) that is used to determine listing. The listing decision under the current regime is "largely political," the source says. "Not every site on the NPL is there because of their HRS score."

Highlighting the fact that NPL sites are not necessarily listed for environmental reasons, an environmental attorney who specializes in brownfield cleanups says more states are recommending sites for listing on the NPL that might otherwise be undertaken by their state brownfields programs because many states are facing budget shortfalls. Last year, for example, Pennsylvania sent a letter to EPA asking them to list an asbestos pile in Ambler, PA on the NPL, which was finalized April 8. The DEC also recommended EPA list the Newtown Creek/Greenpoint site in Brooklyn on the NPL, the source says, and the city is resisting that listing as well.

The environmental attorney adds that the potential trend in favor of NPL listing is a return to the philosophy of the 1980's soon after CERCLA was passed. At that time, many states actively sought to have sites placed on the NPL in order to take them off their hands. By the late 1990s the trend had changed because real estate had risen in value and the Superfund program made such slow progress that private developers sought to pursue cleanups and redevelopments on a quicker pace under the brownfields programs.

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progress that private developers sought to pursue cleanups and redevelopments on a quicker pace under the brownfields programs.

SUPREME COURT SIDES WITH INDUSTRY ON 'PRODUCT' DEFENSE FROM SUPERFUND (*Inside EPA*)

5/8/2009

Rejecting arguments the Department of Justice (DOJ) made on behalf of EPA, the Supreme Court has backed Shell Oil Co.'s use of the so-called "useful product" defense from Superfund liability at a contaminated site in California, overturning an appellate ruling that industry groups feared could undermine their use of the defense.

In its May 4 ruling in the consolidated cases *Shell Oil v. United States* and *Burlington Northern and Santa Fe Railway Co. v. United States*, the high court also sided with industry in finding that lower courts are not obligated in all circumstances to hold parties responsible for contamination joint and severally liable for the entirety of EPA's cleanup costs, as the railroads involved in the case had argued. *The ruling is available on InsideEPA.com.*

In urging the Supreme Court to uphold the U.S. Court of Appeals for the 9th Circuit's ruling holding Shell liable for contamination at the California site, DOJ had noted the company "arranged" the delivery of polychlorinated biphenyl-containing agricultural chemicals it had manufactured to its customer at the site and that Shell "had actual knowledge" the "deliveries directly and routinely resulted in disposals of hazardous substances (through spills and leaks) for more than 20 years."

But in the high court's 8-1 majority opinion, Justice John Paul Stevens writes that "knowledge alone is insufficient to prove that an entity 'planned for' the disposal, particularly when the disposal occurs as a peripheral result of the legitimate sale of an unused, useful product.

"In order to qualify as an arranger, Shell must have entered into the sale of [the agricultural chemicals] with the intention that at least a portion of the product be disposed of during the transfer process by one or more of the methods described" in the Superfund law, Stevens writes. "Here the facts found by the District Court do not support such a conclusion."

Stevens adds that "the evidence revealed that Shell took numerous steps to encourage its distributors to reduce the likelihood of such spills, providing them with detailed safety manuals, requiring them to maintain adequate storage facilities, and providing discounts for those that took safety precautions. Although Shell's efforts were less than wholly successful, given these facts, Shell's mere knowledge that spills and leaks continued to occur is insufficient grounds for concluding that Shell 'arranged for' the disposal" of the chemicals.

Justice Ruth Bader Ginsburg offered the only dissent to the majority opinion. "Although the question is close, I would uphold the determinations of the courts below that Shell qualifies as an arranger within the compass" of Superfund law, Ginsburg writes in her dissent.

Ginsburg noted that Shell had changed its product distribution methods, moving from shipping its products during the 1950s and early 1960s in 55-gallon drums, “thereby ensuring against spillage or leakage during delivery and transfer,” to delivering its chemical to the customer at the California site in bulk truckloads, which “led to numerous tank failures.”

Ginsburg also agreed with the lower courts that Shell was properly ranked as an arranger, writing that the company “specified the equipment to be used in the transferring” and “did not simply know of the spills and leaks without contributing to them.”

TOXICS

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EPA officials waiting for dioxin directions (*The Saginaw News*)

by Jeff Kart | The Bay City Times

Thursday May 07, 2009, 8:12 AM
Michigan

Cleanup set to begin at Saginaw County park

Talks over a comprehensive cleanup of dioxins in the Saginaw Bay watershed remain on hold.

But work on the project continues.

Federal officials at a community meeting on the dioxin issue held Wednesday at Delta College said they're awaiting word from Washington, D.C., on whether talks will continue with Midland-based Dow Chemical Co. on addressing toxic contamination in the watershed from historic company operations along the Tittabawassee River.

Discussions between Dow and the U.S. Environmental Protection Agency were suspended in March, and EPA officials in Chicago are awaiting the results of a fact-finding mission launched shortly after by Lisa Jackson, President Barack Obama's new EPA administrator.

"We hope for direction soon," said Mick Hans, an EPA spokesman.

Dow Chemical officials were invited to speak at the meeting, but none came forward.

Meanwhile, EPA-supervised work to scoop contaminated soil from a Saginaw County park along the Tittabawassee is scheduled to begin next week, weather-permitting.

And the state Department of Community Health has launched a program to educate tens of thousands of people on the right kinds of fish to eat to lower health risks from dioxin and other chemical contamination.

Brian Schlieger, an on-scene coordinator with the EPA in Chicago, said Dow-funded work on the West Michigan Park area in Saginaw Township will involve digging out a foot of soil, replacing that with a foot of clean fill, installing new playground equipment and elevating that equipment by a foot to lessen the impact from future flooding.

The park already has been closed in preparation for the digging, and is due to re-open in mid-July after new grass has been planted.

A similar project was completed last year on Riverside Boulevard in Saginaw, Schlieger said.

Kory Groetsch, a toxicologist with the Department of Community Health, said his agency has launched a program with $75,000 in EPA funding to raise awareness about fish that are safe to eat - and those that shouldn't be eaten - from the Tittabawassee and Saginaw rivers and Saginaw Bay.

It's an extension of a long-running state fish consumption advisory guide that has fallen out of circulation in recent years due to budget cuts and is now only accessible online.

The idea is to target the most sensitive populations, including children and women of child-bearing age, along with anglers who regularly eat fish from the rivers and bay.

Four partners - the Bay and Saginaw county health departments, the First Ward Community Center in Saginaw and the Bay City State Recreation Area's Visitor Center in Bangor Township - have committed $77,000 worth of in-kind support.

"The Saginaw River is a year-round fishery and a diverse population is fishing it," Groetsch said. "People are fishing for sustenance. There are some people who just need food and they're not aware" of fish consumption advisories.

The new fliers - much easier to decipher than the state's lengthy fish consumption guides - will be distributed to clinics, hospitals and doctors' offices, and handed out to people with poles in their hands, he said.

Bay City state park officials also will help develop a curriculum to teach fourth- and sixth-graders about what fish are safe to eat, and how to reduce contamination by trimming fat from fish and cooking it properly.

Grant money will be used to pay to bus students to the park, Groetsch said.

The program will last until September 2010.

FORMER EPA MERCURY EXPERT FAULTS FIRST-TIME FDA RISK-BENEFIT STUDY (*Inside EPA*)

5/8/2009

EPA's former top expert on mercury is faulting the U.S. Food and Drug Administration's (FDA) analysis of the risks and benefits of consuming fish due to what the expert says is flawed modeling, improper data selection and insufficiently protective analysis in FDA's first-time effort.

Kathryn Mahaffey, the former EPA staffer and now a lecturer at George Washington University's school of public health, in April 21 comments questions FDA's conclusions, finds flaws in its modeling and argues that FDA's assessment is not protective of "a substantial portion of the at-risk population of women, pregnant women, lactating women, the fetus, and children."

The recently released FDA report compares the risks of delayed development from methylmercury often present in fish to the benefits of oils and proteins in the fish in reducing the risks of cardiovascular disease, and concludes that eating more than its and EPA's current guideline of 12 ounces of fish per week is beneficial.

Some environmentalists and public health advocates have concerns that FDA intends to use what they consider a flawed assessment that overstates the benefits of fish consumption to justify raising the existing fish advisory. And EPA strongly criticized FDA's scientific methods, calling the document "scientifically flawed" in its April 20 comments on the assessment.

Mahaffey notes that FDA's dose-response modeling is linear, and argues that "this assumption is likely invalid for multiple reasons," including evidence of a plateau in benefits of the amount of fish consumed.

"By ignoring any threshold or plateau in the dose-response slope, the draft [risk-benefit assessment] overestimates benefits from fish consumption," Mahaffey writes. She writes that the study FDA based its model on "demonstrated a plateau in benefits" from eating more than one to three meals of fish per week. However, FDA's analysis used a linear model, with no threshold in benefits.

Mahaffey notes an additional factor in overestimation of neurological benefits of eating fish is that the study FDA used for this assessment relied on data from the United Kingdom. Mahaffey says FDA acknowledges in an appendix that the British population in the data consumed fish that was "2.8 times lower in mercury than fish commonly consumed in the United States." Were the amounts of mercury in the fish comparable, "one would anticipate an attenuation of benefits from methylmercury" and FDA's resulting model would "return fewer benefits from fish consumption" than it found, Mahaffey writes.

Mahaffey also echoes earlier concerns from others, including the Environmental Working Group (EWG), that FDA's analysis does not consider the differences between fish species, which can vary widely in the amounts of beneficial oils and proteins they provide and the amounts of mercury they

contain. EWG again notes this concern in its most recent comments on the FDA analysis, and urges FDA to withdraw it.

“Given the fundamental flaws in this assessment noted by multiple scientists and EPA and confirmed by EWG, we advocate that this draft be withdrawn, and that any fresh starts involve scientists with expertise in methylmercury toxicity to pregnant women, young children and other vulnerable populations; address all of the basic errors and shortcomings raised in the dozens of pages of comments submitted with regard to FDA’s draft; include early and frequent involvement by stakeholders; and involve review of study design and findings by a qualified panel of experts.” *Relevant documents are available on InsideEPA.com.*

EWG in its April 21 comments also faults FDA for asking the wrong questions, which are “fraught with technical challenges but also is of limited utility to consumers and health professions who are attempting to distinguish safer fish species and maximize the neurodevelopment and cardiac benefit.”

However, other recent comments praise FDA for attempting the risk-benefit analysis, with fishing industry associations and the American Heart Association applauding FDA for performing the assessment.

“This report, along with any subsequent FDA advisories, can help the public better understand the relationship between fish consumption and health effects, and we are pleased that the report recognizes the beneficial effects fish consumption can have on cardiovascular health,” writes Timothy Gardner, president of the American Heart Association April 21 comments.

The Competitive Enterprise Institutes’s April 21 comments also welcome the FDA study, noting that a 2006 National Academy of Sciences report “called for a better way ‘to characterize the risks combined with the benefits’ derived from eating commercial fish species.” -- *Maria Hegstad*

OMB CRITICS CITE IRIS PROCESS INFLUENCE IN CALL TO STREAMLINE REVIEWS (*Inside EPA*)

5/8/2009

A key lawmaker and activists say EPA’s Integrated Risk Information System (IRIS) program -- which is slow to produce assessments of industrial chemicals -- underscores the argument that the role of White House regulatory review offices should be streamlined as the Obama administration rewrites a key executive order.

An April 30 hearing by the House Science & Technology Committee’s Subcommittee on Investigations & Oversight focused on the role of science in regulatory reform, particularly in light of President Obama’s orders to rewrite Executive Order 12866, which governs the structure of regulatory review and the role of the White House Office of Management & Budget’s Office of Information and Regulatory Affairs (OIRA).

At the hearing, subcommittee chairman Brad Miller (D-NC) said that the regulatory review office's involvement in the process has greatly extended the procedure for completing IRIS assessments. IRIS determinations are widely used by state and local regulators to set safety, regulatory and other standards. Miller said the role of OIRA also came up during 2008 hearings on the IRIS process.

He said the IRIS program only generates two assessments annually despite the fact that more than 600 new chemicals are introduced into commerce every year, and questioned the need for the additional steps that OIRA last year added to the process. "How can we structure OIRA's participation that makes the review process timely, that makes it happen when it needs to happen?" Miller asked the panel.

Rick Melberth, director of regulatory policy for OMB Watch, said the IRIS process is "one of the reasons OIRA should not be involved in scientific information" because it interferes with the agency collecting information, not making a policy or risk management decision. "That's not an appropriate role for OIRA," he said.

The Bush administration in 2008 overhauled the process for completing IRIS assessments, but many charged that the changes have slowed down the process. A Government Accountability Office report released last year said the additional steps, including reviews by other agencies and the White House Office of Management & Budget (OMB), resulted in a process where assessments are obsolete by the time they are released by the agency.

In November, Peter Preuss, a key EPA risk assessor, called for the new process to be scrapped, estimating that it stymied publication of 90 percent of the assessments.

At the hearing, Melberth noted: "The quote-unquote simplified process that OIRA put into place with EPA's help in 2008 changes that process so not only is it more complicated, but our understanding is that it gives certain agencies affected by the potential policy outcome of a profile of a chemical the right to veto whether or not the assessment gets finished, whether or not the IRIS office actually does their work," he said.

Rena Steinzor, of the University of Maryland Law School and the Center for Progressive Reform, agreed, saying, "OIRA should stop serving as a representative of aggrieved industries and agencies like the Department of Defense in obstructing IRIS numbers from coming out."

But Cary Coglianese, director of the Penn Program on Regulation at the University of Pennsylvania, cautioned against concern with the number of steps in the process. "It's not just the number of steps, but how long it takes to get through those steps" and also depends on "the will and motivation of the regulators and decision-makers."

EPA RELEASE OF LIBBY ASBESTOS MEMO PROMPTS FRESH ACTIVIST CONCERNS (*Inside EPA*)

5/8/2009

EPA's release of a long-sought Inspector General (IG) memo on the agency's asbestos cleanup in Libby, MT, in response to activists' lawsuit, is raising more questions than it answers regarding how the agency has handled the potentially precedent-setting cleanup and why it initially blocked public release of the document, the activists say.

At issue is the so-called "Rumple Report," a memo IG Special Agent Cory Rumple drafted in 2006 after conducting an investigation in response to complaints from Libby residents that EPA and its contractors were not properly cleaning their asbestos-contaminated homes.

The memo prompted the IG in December 2006 to issue a quick reaction report titled *EPA Needs to Plan and Complete a Toxicity Assessment for the Libby Asbestos Cleanup*, which found the agency had never conducted a proper risk assessment in the town. But the Bush EPA declined to release the Rumple memo itself, despite repeated requests from activists.

The Obama EPA released the document April 29, along with a new explanatory memo by Rumple, in response to an April 21 lawsuit filed by Public Employees for Environmental Responsibility (PEER). *The document is available on InsideEPA.com.*

The activist group praised the document's release as a key indication that President Obama and Attorney General Eric Holder's pledges for openness will be honored.

But the document itself reveals "critical deficiencies" in EPA's cleanup efforts in Libby, PEER says, including a "thorough 'disconnect between scientists and the agency' over how to conduct the" cleanup, "[d]istribution of 'exceptionally deceiving' public health information to Libby residents," and "[b]itter in-fighting within the EPA that led to dysfunctional decisions and resignations of key specialists."

In addition, PEER questions why the IG launched a 21-month criminal investigation following Rumple's 2006 memo despite Rumple's conclusion that such an investigation was unnecessary and that the IG's Office of Program Evaluation should instead analyze the programmatic lapses his memo identified. The criminal probe ultimately led to a referral that was declined by federal prosecutors, PEER notes.

"As a result of the Inspector General pursuing a fruitless criminal inquiry, today we still do not have a clear idea of whether the Libby clean-up is protective of the public," PEER says. "Nor do we have any assurances that EPA will not repeat the same mistakes tomorrow."

WATER

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Cape could face lawsuit to clean up waters, attorney says (*Wicked Local Orleans*)

By Doreen Leggett

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CAPE COD - More than two decades ago, years of frustration born of dodging human waste, tampon applicators and other undesirables on the beach convinced Bill Golden to take on powerful, entrenched institutions to stop the pollution of Boston Harbor.

Golden has lived in Falmouth for the last 12 years; he has seen the Cape's struggle with its own wastewater woes and come no closer to solving them. That pains him, so much so that he may resurrect the David versus Goliath role he took on over the bridge.

He'll sue.

Golden, sandy-haired and boyish-looking, doesn't seem much older than he did in 1982 when he was Quincy's solicitor. The lawyer is still a crusader for the environment – on a recent Friday he was about to take off for Oregon to check out a wind project – and still has fire in his eyes when it comes to causes.

Golden's efforts then launched a lawsuit that created the largest sewage treatment plant in the world at the cost of $4.5 billion.

"I have personally reached the conclusion that unless the towns on Cape Cod join together with the support of the Legislature to create a regional water sewer authority for the Cape, that litigation is inevitable," he said. "What we have to do on the Cape is file the kind of lawsuit I filed in Boston."

He tried working with the state Legislature and others. But to no avail.

And, like last time, the powerful nonprofit Conservation Law Foundation has been compiling data and laying the groundwork for a possible lawsuit. With Boston Harbor the foundation was almost a year late when it came to litigation, but it had the deep pockets and resources to sustain the decade-long battle. This time, it may not be content to sit on the sidelines in the beginning.

"They intend to sue," Andrew Gottlieb, the director of Cape Cod Water Protection Collaborative, said matter-of-factly.

The multi-million dollar question is who?

“It’s a puzzling question that has huge ramifications,” Gottlieb said.

Golden years

Golden may have had it a little easier when he took up the gauntlet in the 1980s. There was an entity, the Metropolitan District Commission, MDC, that repeatedly failed to solve the pollution problem. The two dinosaur treatment plants, one on Deer Island, the other on Nut, flooded even during mild rainstorms, sending – according to some accounts – six billion gallons of untreated wastewater a year directly into Boston Harbor, some of which ended up on Wollaston Beach, where Golden jogged.

Golden said he didn’t want to file a lawsuit. He went to Gov. Ed King and asked for assistance; he was refused. He went to U.S. Attorney William Weld; no help there either. He went to the chairman of the legislative committee that held the purse strings of the MDC; again, he was rebuffed.

“He said if it would cost his constituents one more penny to flush their toilets, it won’t get through the Legislature,” Golden recalls.

So he took matters into his own hands and filed an injunction in state Superior Court against any new sewer connections in the 43 communities served by the treatment plants.

“People flipped out,” he said.

But, he added, it also gave those who wanted to solve the problem political cover to do so.

“There is a single common and critical factor in whether or not these issues are addressed successfully and that is, quite simply, political will,” said Golden.

And in Golden’s mind, there wasn’t any back then and it’s pretty scarce on the Cape now. Decades ago, Golden says, people knew the failure to treat septage and sewage properly on the Cape was significantly degrading not only water quality, but the quality of life on the Cape.

“And it’s only gotten worse,” he said.

Elected officials find it difficult to address the problem, Golden continued, and Cape Cod lacks the institutional infrastructure to effectively address the issue. Added to that, he said, is the “abject failure” of state government to enforce water quality laws.

So nothing happens until someone pushes, hard.

“There is a point of paralysis in the first and second branches that can only be broken by the third branch,” he said.

It also required an activist judge.

Golden waited six months to file the suit so it would land in the lap of Judge Paul Garrity. He appeared before the judge with a box emblazoned with a skull and crossbones.

Golden pulled on his wife's long yellow dish-washing gloves and took out two exhibits enclosed in glass jars; neither was pretty. The water was taken from Wollaston Beach and contained excrement and other disgusting materials.

Golden asked Garrity if he should open the jars; no, that isn't necessary, the judge replied.

Garrity later prohibited commercial connections to the antiquated sewer systems, derailing a business building boom that was generating close to $500 million a year. The stay didn't last, but forced the Legislature to act, prompting it to create the Massachusetts Water Resource Authority, which was given the authority to bond and raise sewer rates.

That remarkable moment also led to a federal suit not only against the MDC for flouting the Clean Water Act and discharging billions of gallons in untreated wastewater into the harbor, but against the Environmental Protection Agency for allowing it to do so.

The two agencies were mandated to come up with a cleanup plan, with court-set benchmarks. Not long after, the EPA moved from being a defendant to a plaintiff in the case.

By the mid-1990s, construction of the other-worldly enormous egg halves began on Deer Island and the outfall pipe (which caused considerable consternation on the Cape) that would carry approximately 350 million gallons of treated wastewater a day to Massachusetts Bay became a reality.

The cleanup of Boston Harbor took almost 20 years, but is considered by most to be a momentous success story.

Rich Delaney of Provincetown Center for Coastal Studies was with Coastal Zone Management at the time, and said before the lawsuits were filed there was movement in state government to deal with the immense problems the plants posed, but that something needed to break the status quo.

"The lawsuits elevated the urgency and put a timetable on things," he said.

Since progress is being made on the Cape, he doesn't think the "Draconian hammer" of a lawsuit is needed, at least not yet.

"I'm not sure the issue needs to be forced," he said.

The Cape's turn?
Golden isn't the only one who has contemplated a lawsuit.

Lindsey Counsell of Three Bays Preservation, Inc. went to CLF several years ago and asked if there was something, anything, enforceable under state or federal law where an entity, or

homeowners, could be held accountable for polluting a bay or estuary. Three Bays includes West, North and Cotuit bays in Barnstable.

He and his members had been to too many meetings where officials from the Department of Environmental Protection were presented with information that towns were violating the Clean Water Act, and most are, and said they had no intention of enforcing the statute.

As long as towns had plans to address the problem, no matter how cursory and far off those plans were, they were off the hook, said Counsell.

“They don’t have any timelines,” he said. “It is tremendously frustrating.”

So Counsell watches the years pass and in the 10 years since Three Bays was formed he has watched the steady advancement of algae. Nitrogen from septic systems throws the ecosystem out of balance and overfeeds plants, such as sea lettuce, that cover the water in thick mats and make it difficult for shellfish to breathe. The thick green topping can also knock down enjoyment of the bays, and house values at the same time.

Sea lettuce hadn’t even reached North Bay a decade ago, now it’s in the South End.

Counsell, whose laid-back attitude belies a stubborn streak, has tried to push the town to act quickly. He has also pushed for innovative methods, such as dredging, to help address the problem.

“We have made our case a number of ways,” he said. But progress is “glacially slow.”

He knows there was a group of residents in Florida that sued the EPA over excess nitrogen polluting their watershed and groundwater, but that’s the only case example he can draw on.

“This could be a million dollar lawsuit and we don’t have that kind of horsepower,” he said. “We weren’t sure it was a winnable case.”

Gottlieb has much the same question.

He knows Conservation Law Foundation will sue; staff said as much at a public meeting in Cotuit recently.

“But they haven’t said who,” Gottlieb said.

Running through the options, Gottlieb said the nonprofit could sue the federal government, the state, or individual towns. A suit against the four towns that have sewage treatment plants already would be more likely.

There is the possibility that the culprits, or homeowners and businesses with septic systems, would be sued. That’s tricky, said Gottlieb, because many of them wouldn’t have the ability to comply and the victory would be pyrrhic at best.

The collaborative is operating under the notion that a lawsuit is imminent and Gottlieb says the best protection towns have is to accelerate their wastewater plans.

Gottlieb said although a lawsuit would likely increase the cost to towns, if there is a solid plan in place: “If you lose, the worst you get is (an order) to follow your own plan.”

That’s not to say he is encouraging Conservation Law Foundation.

“I don’t think anyone welcomes court involvement,” he said.
CLF isn’t committing to lawsuit.

“We are still deciding what course of action is best to take,” said Cynthia Liebman, a staff attorney for CLF. “Nothing has been filed. We are considering all our options. Litigation is one option.”

The environmental advocacy group is determined to take action, and wants to involve residents in discussions about how best to address the growing problem.

“We’re concerned about the pace and the fact that the bays are getting worse each year,” Liebman said. “Title 5 isn’t functioning to protect the environment in the bays.”

Golden would support a CLF suit; he doesn’t think of lawsuits as adversarial, more of a means to an end. Although he blames the Department of Environmental Protection for the lack of action on the Cape, he believes the suit should be filed against the towns, and perhaps Cape Cod Commission. That way, he said, towns could have a more active role in crafting the solution.

Not the same situation

Gottlieb sees stark differences between Boston Harbor and the Cape experience.

Cape towns have been working on solving the problem, he said. A lot of towns were in a “holding pattern,” waiting to see what kind of financial assistance would come along. Now that the collaborative, with the aid of legislators, has secured 0 percent loans and an understandable regulatory framework, many towns are forging ahead.

It’s also true that some towns have done little in the realm of wastewater planning and others are in denial.

Those differences are just as pronounced as you start talking to different people in the same town.

“Osterville and Cotuit are on board,” Counsell said of his attempts to get the message out. “In Centerville they don’t really know we have a problem.”

That worries him because no one has actually approved spending money yet, and fights over where treatment plants are sited and what treatment is used are inevitable.

That's one of the reasons Counsell thinks a regional entity with teeth may be necessary. If there is no overall plan, the result will be a "hodgepodge" and considering the interconnectedness of the Cape's waters may be ineffective.

An entity can also mandate approval, without two-thirds support at town meeting and a positive vote at the ballot box.

"Bonding is key," Counsell said. "Everyone needs to pay for this. We are all part of the problem."

Been there, didn't work

On Monday, Bob Duncanson, Chatham's director of health and environment, hopes to watch taxpayers approve a $59 million plan to sewer the entire town.

A member of the Cape Cod Water Protection Collaborative, he remembers the struggles around its beginnings more than five years ago.

Originally, the idea was to have an entity such as the MWRA, a regional institution that could bond and look at the Cape as whole.

Residents rebelled.

"There was a hue and cry," Duncanson recalled. "They didn't want an authority like the MWRA. They didn't want a top-down approach."

There were even discussions of a Cape-wide tax to fund wastewater infrastructure improvements.

"That went over like a lead balloon," he said.

To rehash those arguments again, Duncanson believes, would be counterproductive.

Chatham has been working on wastewater planning for a decade, he said. It can't just stop and sit tight in the hopes others will quickly come up with a Cape-wide plan.

"Then nothing happens to address the problem," he said. "We aren't willing to continue to wait."

If regional solutions begin to take shape, Duncanson added, Chatham can easily hop aboard.

"Chatham is looking at a 30-year implementation program; changes can be made," he said.

Thinking small

If Conservation Law Foundation does sue, it won't be to superimpose Boston Harbor's solution on Cape Cod.

"The biggest lesson I learned from the Boston Harbor cleanup is we didn't work hard enough to look at alternative approaches to wastewater," said Peter Shelley, a vice president at CLF who was involved in the Boston Harbor suit.

Back then the idea of smaller treatment plants was floated, but a couple of factors were working against the idea.

"Because so much of the system had already been built, it was hard to imagine doing it any other way and reversing the engineering," Shelley said.

The geology of the area also made it easy to move wastewater flow long distances via gravity relatively cheaply. Then there is human nature. People want their waste dumped in some other community rather than their own, Shelley said.

Because of groundwater seeping into the system, the big plant, big pipe solution is now taking clean water out of a number of ecosystems and putting it nine and half miles out into Massachusetts Bay. (Not to mention that ratepayers are spending money to treat clean water.)

Shelley also believes that replacing the plant in 10 to 15 years is going to turn out to be far more expensive than what it would have cost to update a series of smaller facilities.

CLF is turning away from sewers as the be-all, end-all solution. The conventional technology may have a place in some areas, but enhanced treatment at individual homes – with a utility that maintains them – and using the natural environment to remove nitrogen should be explored as well.

These methods are becoming mainstream in other parts of the country, but aren't catching on here, Shelley said.

"DEP is very conservative," he said. "The knee-jerk engineering answer is to sewer because it's known technology.

"Our interest on the Cape is that these other approaches are considered and that residents aren't rushed into things by municipal officials who tend to be very risk averse," Shelley said.

CLF readily admits that the Cape's problem isn't as noticeable as Boston Harbor's.

"The damage to the Cape environment is different … you have a chronic, escalating problem of eutrophication," Shelley said. "It's not quite as dramatic as a turd on the beach."

Still it’s pollution that is strangling the Cape, and through a lawsuit CLF may not only prompt the peninsula to address its wastewater conundrum; it may also gain influence so it can help fashion a comprehensive plan.

“How do we develop wastewater management services on the Cape that will serve the Cape well and protect the Cape’s environment 50 years from now?” Shelley asked.

That’s the billion dollar question.

GRANVILLE NOT SELECTED FOR WATER-PROJECT FUNDS (*Newark Advocate*)

May 8, 2009

GRANVILLE -- Granville didn't get a slice of the $278 million the state awarded in federal stimulus funds for sewer and water projects.

The six projects the village submitted for consideration were not among 324 selected for funding under the American Recovery and Reinvestment Act. A total of 3,300 projects were submitted statewide. The list still needs to be approved by the U.S. Environmental Protection Agency.

The projects submitted by the village were improvements to the wastewater treatment plant and utility extensions serving possible development on River Road.

Village Manager Don Holycross said he was disappointed, but added, "The competition was stiff. Some of the factors were the municipality's ability to pay for the improvements and its ability to raise fees. Ours are among the lowest. I'm sure that was a strike against us."

In Licking County, Buckeye Lake and Newark were the only municipalities to receive grants. Buckeye Lake will receive $6.5 million in loans or loan-principal forgiveness for a water distribution system. Newark was awarded $5 million to reduce the $28 million loan it received to build a new sewage treatment plant.

Ponds at power plants pose risk to drinking water (*Atlanta Journal-Constitution*)

By RHONDA COOK

Thursday, May 07, 2009

Georgia

Eleven coal waste and ash dumps in seven Georgia counties, including Cobb, pose a much higher risk of cancer and other health problems to people living nearby than was previously thought, according to two environmental groups that reviewed federal records.

“Can living next to one of these dumpsites increase your risk of getting cancer or other diseases?” said Eric Schaeffer, director of the Environmental Integrity Project. “The Environmental Protection Agency thinks so, especially if you live near one of those wet ash ponds or surface impoundments.”

The EPA data showed one in 50 people had increased risk of cancer if they drew water from wells near the ponds, Schaeffer said. Contaminated surface water increases the risk of cancer or other diseases for swimmers and anyone who eats fish from those streams, rivers or lakes, according to Schaeffer.

“EPA is also quickly moving forward to develop regulations to address the management of coal combustion residuals,” said spokeswoman Adora Andy. “EPA anticipates having a proposed rule ready for public comment by the end of the year.”

A spokesman for the Georgia Power Co., which owns 10 coal power plants in the state, said there is nothing to suggest their coal ash ponds had caused any cancers, illnesses or leached into the ground water or nearby streams or rivers. Coal ash usually contains high concentrations arsenic, boron, cadmium, cobalt, lead and other toxins .

Jeff Wilson said the utility frequently inspects its 28 unlined coal ash ponds. Two of those ponds also require periodic checks by the state because of the size of their dams.

The Environmental Integrity Project and Earthjustice list of 210 sites nationwide included 11 Georgia coal ash ponds. Two on the groups’ list, however, appear to be duplicates and does not include all the coal ash ponds Georgia Power has.

Wilson also said the EPA study was only in draft form, and “once the EPA issues that assessment in final form, we will review it and work with regulators and other stake holders to address any issues.”

The report from the two environmental groups only listed power plants in Cobb, Chatham, Putnam, Floyd, Bartow, Heard and Monroe counties.

“We now have the full picture about coal dump sites across American and it is not pretty,” Schaeffer said. “Its past time for EPA to turn the lights on and regulate these hazards.”

Schaeffer noted a major spill from a coal ash pond at a power plant owned by the Tennessee Valley Authority just last December. Wet coal ash breached its earthen retaining wall and 5.4 million cubic yards of slush spewed from TVA pond, burying nearby homes.

“Since last year’s coal ash spill at a Tennessee Valley Authority facility in Kingston, Tenn., the EPA has executed new efforts to prevent future threats to human health and the environment,” said Andy of the EPA. “EPA is expeditiously evaluating all liquid coal impoundments in the country to determine whether they raise the type of structural integrity issue that led to the TVA spill.”

INDUSTRY SEES STRICTER OBAMA EPA POLICY ON REVIEWING WATER PERMITS (*Inside EPA*)

5/8/2009

Mining industry officials are pointing to several recent EPA actions involving mountaintop mining as evidence the Obama EPA is using new, stricter standards of review to evaluate Clean Water Act (CWA) permits, even as environmentalists and industry are still trying to determine the new administration’s stance on the controversial activity.

Among the actions are EPA Region IV’s April 28 announcement that it is moving to veto a proposed Army Corps of Engineers permit for a Kentucky mountaintop mining project, citing environmental concerns. The action is only the 13th time the agency has used its authority to veto a CWA section 404 permit in over almost 30 years. *The proposed veto is available on InsideEPA.com.*

Environmentalists, however, attribute the veto in part to a recent appellate decision that they say has limited EPA’s role in interagency deliberations over mountaintop mining permits, forcing the agency to use the “drastic” measure of a veto to stop environmentally harmful projects.

Additionally, industry says EPA is relying on a Region III study on the downstream effects of so-called valley fills to require examination of a project’s impacts further downstream than in the past, while also requiring more extensive mitigation to match those impacts.

EPA cited the study in March 23 letters to the Corps raising concerns about proposed mountaintop mining permits for the Big Branch mine in Kentucky and the Reylas surface mine in West Virginia. The permits are two in a series of mountaintop mining permits currently under review after EPA announced earlier this year it would be re-examining the permits due to environmental concerns (*Inside EPA*, March 27).

Industry is critical of the study, which examined the impact of mountaintop mining valley fills on mayfly populations, and charges EPA headquarters is using the study to require additional permit conditions after the agency's regional offices have already reviewed the permits.

"With a few exceptions, these permits have already been reviewed by EPA regions," a mining industry source says, but "now, suddenly, EPA comes, after the fact, raising a whole host of [water quality] concerns and . . . concerns that have nothing to do with [water quality] -- such as fill minimization and post-mining land use. In addition, EPA raises issues that have been litigated and lost from their perspective -- such as whether mitigation must replace the exact stream function and structure."

The source says the Region III study is flawed because it relied on a mayfly population that is particularly intolerant to conductivity -- a measure of how well water carries an electrical charge, which is an indicator of the dissolved solids in the water. But the population is not typically one used to measure the long term quality of waterbodies, the source says.

"Industry has plenty of data to show high conductivity does not cause similar impairments below modern mining fills. To date EPA has not wanted to have that discussion with industry," the source says.

Environmentalists last year cited the prize-winning study to argue against EPA concurrence for a Bush-era Department of Interior (DOI) rule that would explicitly allow mountaintop mining projects to dump waste into streams (*Inside EPA*, Oct. 10). But EPA sources at the time downplayed the significance of the study, saying the agency would consider a range of studies in determining on a case-by-case basis whether the so-called stream buffer rule complied with the CWA (*Inside EPA*, Oct. 17).

Now in the Obama administration, EPA is relying on the Region III study to block the Big Branch project in Kentucky.

In its March 23 letter to the Corps, EPA says that according to the Region III research, mountaintop mining and valley fills "are strongly related to downstream biological impairment, as indicated by raw taxonomic data, individual metrics that represent important components of the macroinvertebrate assemblage, or multi-metric interpret narrative standards."

Per Kentucky's water quality standards, "the water quality effects demonstrated by the EPA study must be taken into consideration before the Section 404 permit can be issued," EPA says.

And, because the downstream effects must be taken into effect, a mile-by-mile replacement of streams disrupted by the valley fill will no longer suffice because it does not address degraded downstream water quality and may not fully restore the aquatic life uses or ensure that water quality standards are met, EPA says.

But a January 4 decision from the U.S. Court of Appeals for the 4th Circuit, *Ohio Valley Environmental Coalition (OVEC) v. U.S. Army Corps of Engineers*, ruled the Corps did not need to include such an analysis, noting that the Corps' guidelines say "districts should require compensatory mitigation projects for streams to replace stream functions where sufficient functional assessment is feasible. However, where functional assessment is not practical, mitigation projects for streams should generally replace linear feet of stream on a one-to-one basis."

The industry source says measuring stream function is difficult because "no tool currently exists," a point also noted by the 4th Circuit in *OVEC*. "[A] full functional assessment protocol is not yet

available to the Corps, and the Corps is thus entitled to use its best professional judgment to assess structural and functional losses for purposes of the guidelines," the court ruled.

Meanwhile, an interagency "task force" continues to review mining regulations. One environmentalist says EPA, the Corps, the Department of Interior (DOI) and the White House Council on Environmental Quality (CEQ) have been the main agencies involved, but the Department of Labor was also invited to participate.

The Bush administration in December finalized a rule explicitly allowing mountaintop mining projects to dump waste into streams. But Interior Secretary Ken Salazar announced April 27 he was directing the Department of Justice to to ask a federal court to vacate the controversial rule.

In an interview with *Inside EPA*, CEQ Chair Nancy Sutley said the group is reviewing "guidance from EPA that the Corps relies on for mountaintop mining permits" and "in light of the secretary of Interior's announcement to pull back the 2008 stream buffer rule they'll be looking at what's in place now, which is the 1983 buffer rule, and how that's being managed and enforced."

Environmentalists say portions of Salazar's announcement that he was seeking to rescind the Bush-era stream buffer rule signaled DOI would not strictly enforce the 1983 rule.

But Sutley noted the rule is "one of those programs that's delegated to the states. And my understanding is there has been less than the desired amount of oversight over the state programs, at least over the last few years. And so, I think it's an opportunity to take a look at that. We're less than 4 months into the administration so we haven't quite figured everything out yet."

While many say EPA's recent veto of the mountaintop mining permit shows a bitter interagency dispute between EPA and the Corps, Sutley downplays any acrimony. "I think that they're working together pretty well," Sutley said.

An EPA source also downplays the division. "We are working hard with our partners at the Corps, [DOI's Office of Surface Mining Reclamation & Enforcement], and the states to achieve these goals. One agency can't do it alone. The Administrator is showing great leadership on this issue and we are following her cue."

ACTIVISTS TARGET KEY DEMOCRATS FOR CLEAN WATER BILL COMPROMISE (*Inside EPA*)

5/8/2009

Environmentalists and other stakeholders are targeting Senate environment committee members Max Baucus (D-MT) and Amy Klobuchar (D-MN) to work on compromise legislation to define the scope of the Clean Water Act, after Baucus floated a draft bill in competition with legislation written by Sen. Russ Feingold (D-WI).

The Democrats are emerging as key votes on a bill to define the water law's scope amid uncertainty about whether the majority has the votes to move Feingold's bill out of committee.

All Republican panel members are demanding a hearing on the bill prior to markup, while Sens. Baucus, Klobuchar, George Voinovich (R-OH) and Lamar Alexander (R-TN) recently sent a letter to committee Chairwoman Barbara Boxer (D-CA) asking her to delay a slated May 7 markup of Feingold's bill. The committee postponed the markup, and sources say it may take place late next week.

Stakeholders who favor S. 787, Feingold's Clean Water Restoration Act, are now trying to find ground for a possible compromise measure between that bill and Baucus' competing legislation that could split Environment & Public Works Committee (EPW) Democrats over the issue (*Inside EPA*, May 1).

One informed source says focus is turning to Baucus' proposal and predicts "we'll see a revised Baucus bill entered by the committee as an amendment to Feingold by way of a substitute."

Feingold's bill 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.

To address concerns that the two rulings have narrowed the law's scope beyond congressional intent, Feingold's bill eliminates the law's current language that subjects only "navigable" waters to jurisdiction, which the high court had sought to interpret in its two rulings. Feingold and Rep. James Oberstar (D-MN) introduced versions of the bill in the last Congress but faced stiff opposition from industry, Republicans and Democrats from rural districts.

In contrast, Baucus' draft hews closely to a proposal from the Environmental Council of the States to codify EPA's regulatory definition of "waters of the United States," while codifying for the first time EPA regulatory exemptions for waste treatment facilities and prior converted croplands.

Industry sources say the two bills are provoking strong reactions among committee lawmakers and various stakeholders. One industry source says in addition to opposing Feingold's bill, industry groups have unified in opposition to Baucus' alternative because it does not retain the word "navigable."

The "biggest issue," the source says, is "regulatory creep." For instance, between when EPA issued a version of its CWA regulations in 1985 and 2001, when the *SWANCC* decision was issued, the reach of the water law increased by "light years," the source argues. Industry officials worry legislation that does not retain the tie to "navigable" waters could meet the same fate.

Baucus' draft language strikes the law's current jurisdictional focus on "navigable" waters but requires waters to be connected to interstate commerce for EPA to retain jurisdiction and also includes key portions of EPA's regulatory definition of "waters."

In general, the bill says waters fall under the act's jurisdiction if they are "currently used, were used in the past, or may be susceptible to [use] in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide," the draft says. Such a definition evokes language

in an 1870 Supreme Court case, *The Daniel Ball*, that established a key navigability test for U.S. waters.

The draft also grants EPA jurisdiction over solely intrastate waters -- which the high court had limited in *SWANCC* -- if “the use, degradation, or destruction of which would or could affect interstate or foreign commerce.”

Baucus’ bill includes in its statutory language two key exemptions from the CWA that industry has sought: waste treatment systems and prior converted croplands. One environmentalist reiterated that activists are opposed to codifying the exemptions, currently contained in EPA rules, because it would forever shut the door to regulating those areas under the CWA. But the source expects them to be included in the final bill that passes committee.

In spite of the split between committee Democrats over the versions of the legislation and the request from Baucus, Klobuchar and others for delay, one conservationist source expresses optimism that the majority may be able to collect enough votes to move the legislation through committee.

For example, the source says EPW member Sen. Tom Udall (D-NM) is not a co-sponsor of Feingold’s bill but has “promised” to vote for it in meetings with proponents of the legislation. And the source believes Baucus and Klobuchar’s actions show they are trying to appear sympathetic to concerns about the legislation, rather than opposed to it. -- *Jonathan Strong*

EPA EXPANDING USE OF GREEN INFRASTRUCTURE IN POTW ENFORCEMENT (*Inside EPA*)

5/8/2009

A recently proposed consent agreement between a Missouri publicly owned treatment works (POTW) and EPA highlights a slowly building effort to include “green” infrastructure stormwater retention projects in enforcement actions against sewage treatment operators while the agency is also pushing to include the techniques in new Clean Water Act (CWA) permits.

EPA April 1 announced an agreement with the city of Independence, MO, to make major improvements to its sanitary sewer system and complete $450,000 of supplemental environmental projects (SEPs) to “enhance [the] Missouri River watershed by improving stormwater detention basins and stabilizing stream banks.” *The document is available on InsideEPA.com.*

An EPA staffer says that the agency’s enforcement office plans to increase its use of green infrastructure techniques in consent agreements with POTWs, though mainly in the form of supplemental projects.

The consent decree follows an Aug. 16, 2007, assurance memo from EPA saying that green infrastructure techniques generally fit into the regulatory framework of the water act for the purposes of controlling stormwater, in hopes of alleviating some common concerns of permitting authorities. The memo says the agency will take green infrastructure into account as an option when taking enforcement steps and establishing consent decrees, and encourages states with delegated

authority to do the same. Permitting authorities, the memo says, may also use green infrastructure in developing permit requirements, as well as in creating guidance for stormwater.

Green infrastructure is the use of techniques that mimic or employ natural systems, such as green roofs, wetlands or permeable pavement, to direct stormwater to be filtered, recycled, or evapotranspirated. The methods, also called low impact development techniques, are generally thought to be cost effective and environmentally friendly. EPA has been encouraging their use in place of or in addition to more traditional “grey” infrastructure, such as gutters and stormdrains.

A POTW source involved in the pending Independence, MO, consent decree says the city brought up the possibility of using green infrastructure during conversations with EPA and Justice Department.

The source says the enforcement actions stemmed from a few watersheds in the city which were impacted by wet weather events that resulted in sewer overflows and bypasses of some sewage treatment. The SEP falls in line, the source says, with “EPA national priorities” in doing “green infrastructure and bank stabilization work” to reduce wet weather influx into the system.

The Independence, MO, consent decree is currently out for a 30-day comment period, and a source involved with the project expects a signed version around the middle to end of May.

One key EPA consultant, however, is questioning whether SEPs are the appropriate place for EPA to focus its green infrastructure push. Former EPA water chief Tracy Meehan at an American Law Institute-American Bar Association conference April 23 suggested that green infrastructure techniques are better suited for inclusion in new discharge permits rather than enforcement of existing permits.

“It seems to me that this shouldn’t be an enforcement issue anymore,” Meehan said.

The agency should be moving towards watershed-based permitting that would address point sources, stormwater issues and so-called blending of fully and partially treated wastewater, Meehan added.

“Why don’t we have those all under one umbrella or bubble permit, if you will?” Meehan asked, “to allow for the deployment of [low impact development] . . . and environmental benefits.” Municipalities are “struggling to make this mainstream in their system,” Meehan said, noting that only the city of Portland, OR, has incorporated green infrastructure into its long-term control plan to prevent sewer overflows.

He further notes that green infrastructure will better serve waterbodies in urban areas “to the extent that we can better integrate [it] . . . under a robust . . . [National Pollutant Discharge Elimination System (NPDES)] permit,” especially given increased populations and massive growth in impervious surfaces, particularly due to sprawl.

EPA water permits Director Linda Boornazian at the same conference noted that the agency is “very focused on the stormwater program and . . . [is] looking at watershed approaches.”

EPA press officials did not respond to requests for comment or information about broad use of green infrastructure in consent agreements, but a November green infrastructure newsletter from the agency notes that communities are increasingly incorporating the techniques in sewer overflow planning.

SENATE WATER FUNDING BILL AVOIDS 'BUY AMERICAN' AND 'GREEN' MANDATES (*Inside EPA*)

5/8/2009

Senate lawmakers are opting to bypass inclusion of controversial "Buy American" requirements, mandates for "green" infrastructure funding set-asides and a Davis-Bacon prevailing wage clause in a pending bill to reauthorize EPA's clean water and drinking water state revolving loan funds (SRFs), sources say.

Senate Environment & Public Works Committee (EPW) minority staffer Luis Luna told an audience at the National Clean Water Policy Forum in Washington, DC, May 5 that the three provisions -- included in a recently passed House version of the legislation -- would not be included in the senate version. He added that the bill has the support of panel Chairwoman Barbara Boxer (D-CA), ranking member James Inhofe (R-OK) and the water subcommittee chair and ranking member.

The three controversial provisions floated for inclusion in the legislation would impact the use of funds under the SRF program, which disperses billions of dollars in low-cost loans to localities each year for water infrastructure projects. The SRF program received $6 billion in the economic stimulus law, which included the "Buy American" requirement, green mandates and Davis-Bacon provisions.

And the House bill, H.R. 1262, passed March 12, followed the stimulus law's lead, including the "Buy American" provision, requiring EPA to set aside 25 percent of the total SRF funds for green infrastructure projects and disadvantaged communities, and expanding the use of prevailing wage requirements to not only federal dollars, but to state matching funds as well.

The "Buy American" provisions in the stimulus law and House SRF reauthorization bill have prompted concern because only a limited amount of water infrastructure equipment and materials is manufactured in the United States, sources say.

Environmentalists, meanwhile, are still pushing for a green infrastructure set-aside like one included in the stimulus legislation and on the House side, though one is not likely to be included in the bill that goes to markup. The Senate SRF bill instead closely follows legislation introduced in the Senate's last session, allowing prioritization and loan-forgiveness for broadly-defined "green" projects, including energy and water efficiency projects and projects designed to reduce stormwater flow.

The House SRF bill and the stimulus law both included Davis-Bacon prevailing wage requirements that will not be in the introduced Senate bill, sources say. Critics, including ranking member Inhofe, argue that the requirements diminish the overall level of funds available for infrastructure spending. While Luna said the Senate SRF reauthorization bill will not include Davis-Bacon provisions, he predicted Democrats would attempt to add the provision via amendments in the committee markup of the bill as well as during the floor debate.

An industry source following the legislation says that the Senate legislation is sticking close to last year's negotiated bill in an effort to foster bipartisan cooperation, and that the Davis-Bacon provisions provide a political problem for Inhofe, and will thus be introduced on the floor, after the bill has moved out of the EPW committee.

Luna said that while there has been bipartisan cooperation on the bill, its specifics were still controversial. “They’ve decided to lock arms and jump off the cliff together,” Luna said of the Republican and Democratic senators who are backing the bill.

ACTIVISTS URGE AGENCY TO UPDATE SHIP SEWAGE DISCHARGE STANDARDS (*Inside EPA*)

5/8/2009

Activists are urging EPA to update its standards for sewage discharges from large ships, arguing the agency has neglected to update the standards to account for new technology since they were issued more than 30 years ago.

Friends of the Earth (FOE) filed an April 28 petition with EPA asking the agency to set new sewage discharge standards for cruise ships and other large vessels. “The current regulatory program for the treatment of sewage from these and other large vessels is woefully inadequate and has failed to keep up with both the growth of the industry and the development of sewage treatment technologies,” FOE says in the petition. *The petition is available on InsideEPA.com.*

Although ship sewage discharges are exempted from the national pollutant discharge elimination system standards that govern most point-source discharges, they are regulated under section 312 of the Clean Water Act, which mandates that ships treat sewage before it is discharged into navigable waters.

The new standards are necessary because EPA has not updated its ship sewage standards since they were set in 1976 and the currently-mandated technology is not adequate to meet EPA water quality standards, the petition says. Although newer wastewater treatment systems are economically feasible, only 40 percent of cruise ships in U.S. waters have voluntarily installed the systems, the petition says.

In addition, the standards are necessary because the cruise ship business is rapidly expanding, growing from 500,000 passengers in 1970 to 9.2 million passengers departing from North American ports in 2007, the petition says. Ship size is also growing, with the largest cruise ships having the capacity to discharge 74,000 gallons of sewage a day, the petition says.

“Unless countered by more stringent sewage regulations, this expected industry growth will exacerbate the health and environmental effects of vessel discharges,” the petition says. Ship sewage can lead to human illness contracted through swimming in polluted water or eating contaminated shellfish and can harm aquatic life by creating oxygen-depleted deadzones or scarring coral reefs, the petition says.

EPA DOWNPLAYS EFFECT OF OMB DENIAL OF CONSTRUCTION STORMWATER ICR (*Inside EPA*)

5/8/2009

EPA sources say the White House Office of Management & Budget's (OMB) recent denial of a data collection request tied to the agency's construction stormwater regulation is unlikely to have any significant impact on whether the agency opts to require numeric turbidity limits for the discharges.

At issue is the agency's proposed effluent limitations guidelines (ELG) for the construction sector, which includes three options. Option 1 would require non-numeric erosion and sediment control measures, and options 2 and 3 would require additional numeric limits of 13 nephelometric turbidity units, a measure of water's clarity.

As part of the ELG proposal, EPA submitted an information collection request (ICR) to OMB for approval because option 2 would require operators to perform turbidity monitoring. But OMB denied the ICR March 27, telling the agency it should resubmit the ICR at the final rule stage.

An EPA source says the ICR will cover data collection once the rule has been finalized but does not apply to any data used to support the rulemaking.

The Paperwork Reduction Act requires EPA to have an approved ICR for any regulation that requires monitoring, and OMB requires EPA to submit an ICR for approval at the same time it proposes a rule, the source says. An industry source recently said the denial could present some problems for EPA's stormwater rule, but the ICR in no way is related to collecting data that could help EPA justify choosing more stringent control options (*Inside EPA*, May 1).

It is common for OMB to reject the initial proposed ICR because the monitoring burden is not yet known, the EPA source says. Only once the final rule is complete does EPA actually know the burden to permittees associated with the rule, the source says, adding that EPA will submit the ICR at that time.

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