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AIR

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California considers requiring motorcycle smog checks (*Los Angeles*)

Proponents say every effort will help in the air pollution and climate change fight. Foes say it would be an infringement on bikers' rights.

By Susan Carpenter

May 5, 2009

Cars do it. Trucks do it. And now the state of California may require motorcycles to do it, too.

Biennial smog checks would be required for motorcycles manufactured in the 2000 model year and later under a bill making its way through the California Legislature.

Introduced in the Senate in late February, SB 435 targets bikes with illegally modified exhaust systems and would go into effect in 2012 if passed and signed by Gov. Arnold Schwarzenegger, an avid motorcyclist.

The measure has won support from health and environmental groups that say the move is critical to reducing the state's smog pollution but has angered motorcycle-rights groups, dealers and manufacturers, which say it's bad for business and an infringement of riders' freedoms.

Motorcycles account for 3.6% of registered vehicles in the state and make up just 0.8% of vehicle-miles traveled, yet account for 10% of passenger vehicles' smog-forming emissions, according to the California Air Resources Board, which backs the measure. Although fuel-efficient bikes emit significantly less carbon dioxide per mile, the ARB says they are, on average, 14 times more polluting per mile when it comes to emissions of oxides of nitrogen and hydrocarbons -- smog-forming pollutants that have been shown to trigger asthma attacks and worsen respiratory and cardiac illnesses.

The ARB estimates that 5.2 tons of pollutants would be prevented from entering the atmosphere daily if motorcycle smog checks become law.

"Five tons of smog out of 5,691 tons emitted daily from all statewide sources is so minuscule,"

said John Paliwoda, executive director of the California Motorcycle Dealers Assn. in Lake Elsinore. "Our feeling is that fewer people will want to buy motorcycles if they'd have to go through a smog check where no smog check is required right now."

Already, the industry is aching from the freezing of consumer credit and plummeting personal wealth, which have led to a 30.5% decline in new sales for the first quarter of 2009 over the same period last year, according to the Motorcycle Industry Council.

But the ARB says every emission source is fair game in its effort to corral pollutants linked to health problems and climate change.

"It's so difficult to find new sources of emissions reductions, particularly for L.A.," said Tom Cackette, the ARB's deputy director. "Some people think motorcycles look small, and percentage-wise they are tiny, but so is everything else that's available for emissions reductions."

California's existing smog check programs already stop 400 tons of smog-forming pollutants daily, primarily from light-duty cars, trucks and SUVs; but the state must, by 2023, come up with several hundred more tons of pollution savings per day to meet federal clean air requirements. The state also is committed to reducing greenhouse gases.

If motorcycle smog checks become law, the vehicles would join light-duty diesel trucks, which will be subject to smog checks beginning next year, and, potentially, older vehicles. A tougher measure, AB 859, is also working its way through the Legislature. It would require smog checks every year, rather than every other year.

In pursuing bikes of 280 cc and above made in the 2000 model year and beyond, SB 435 attempts to home in on the size of motorcycle more likely to have a modified exhaust system, and an era of bikes equipped with catalytic converters. Motorcycles that employ catalytic converters are more reliant on them to reduce emissions and are at greater risk of becoming gross polluters when those systems are removed.

It's these gross polluters that SB 435 is after.

Whether for improved performance, a different sound or a custom look, 38% of on-road motorcycle owners replace or modify their exhaust systems, according to the Motorcycle Industry Council's 2008 Owner Survey. Cruisers are the most common type of bike with a modified exhaust, followed by sport bikes, touring models and competition dirt bikes.

But a 2008 study of aftermarket activity by the ARB found that 85% of bikes 280 cc and larger had modified exhausts. "Most" of those, said Cackette, were illegal.

Not all modified exhausts are illegal; some comply with the emissions requirements that govern what makes and models can be sold in the state. But many modified exhausts remove the bikes' catalytic converters, causing them to emit twice the legal limit of hydrocarbons and oxides of nitrogen.

"Motorcyclists perhaps don't realize that those catalytic converters are absolutely critical to improving our air quality," said state Sen. Fran Pavley (D-Agoura Hills), author of SB 435. "I would like to challenge the motorcycle dealerships to work with us in educating motorcycle riders about the importance of keeping their catalytic converters on their bikes, as well as realizing that since all cars are part of the smog-check program and because we really have air pollution problems in so many parts of California, they need to be part of the solution."

California was home to nine of the country's 10 worst cities for smog, according to a recent report by the American Lung Assn., a co-sponsor of SB 435.

"I'm sure that many of these riders have families. They have children, who are especially susceptible to pollution," said Bonnie Holmes-Gen, senior policy director for the American Lung Assn. of California. "I believe people that ride are concerned about these issues also but maybe just don't understand how serious the problem is."

Although stalled in the Senate's Appropriations Committee, SB 435 is expected on the floor later this month and could be sent to the Assembly in June. A full vote would not be expected before August. Schwarzenegger "owns and rides motorcycles," but has not taken a position on the bill, said spokesman Aaron McLear.

The California Department of Consumer Affairs would oversee development of the test if the bill passes and has not estimated its cost to motorcycle owners. "It will probably be a simple test -- maybe a visual inspection or a tailpipe test," Pavley said. "It wouldn't be as complicated or sophisticated as it is for automobiles."

Tim Buche, president of the Motorcycle Industry Council in Irvine, said the aims of the test could be circumvented more easily by motorcyclists than by other motorists: Aftermarket exhaust systems, which cost $1,000 to $4,000, can be removed in several hours and reinstalled after the test.

"The whole impact to the consumer of not being able to customize and personalize your motorcycle and tune it as you would like is something we can't support," Buche said, "because we know how valued that is by our customers."

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Clean-air plans may be threatened (*Houston Chronicle*)

EPA report says effects of global warming could hamper efforts to reduce smog in Houston

By MATTHEW TRESAUGUE
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May 4, 2009, 10:25PM
Texas

Houston's elusive goal of meeting clean-air standards could become more difficult because of global warming, according to a new government report.

In a recent study, the U.S. Environmental Protection Agency found that the projected effects of rising temperatures could worsen smog levels in certain regions, particularly in the Southeast.

The findings prompted the federal agency to urge that climate change in 2050 and beyond be considered in the development of any smog-fighting plans. The report's release came on the same day that the EPA took its first step toward regulating carbon dioxide and other heat-trapping gases that contribute to climate change.

The report also comes as state and local officials continue their work on the latest planto protect area residents from lung-scarring ozone, the key ingredient of smog. The eight-county Houston region, one of the nation's smoggiest places, has yet to meet federal ozone standards — more than 30 years after its first deadline to comply.

And the prospects for the future present "an even more impossible task" for the Texas Commission on Environmental Quality, which is responsible for the development of the region's anti-smog plan, said Matthew Tejada, executive director of the Galveston-Houston Association for Smog Prevention.

Ground-level ozone is formed when emissions from tailpipes and smokestacks mix with sunlight. The toxic, colorless gas can damage the lungs, cause headaches and nausea, and aggravate asthma.

Not a critical role

Houston's car-dependent lifestyle, heavy industry and weather give the area one of the nation's longest smog seasons, from March through November, and significant obstacles in its campaign against ozone.

The EPA concluded that rising temperatures could lengthen the smog season and push ozone concentrations beyond historical ranges by as much as 8 parts per billion, or 8 molecules of ozone out of every billion molecules of air.

The agency tightened its health-based ozone standard from 84 parts per billion to 75 parts per billion last year. Houston's ozone levels have improved recently but still registered at 103 parts per billion over the past three years, federal data show.

Ralph Marquez, a former TCEQ commissioner who is now an industry lobbyist, said rising temperatures should be considered with Houston's anti-smog plan but won't play a critical role.

"The biggest problem is that industrial emissions already have been reduced dramatically in Houston," Marquez said. "What's left is controlled by the federal government."

Federal regulators are responsible for tailpipe emissions, which account for more than half of smog-forming pollution in Houston.

What's more, any regulation of carbon dioxide and other emissions tied to global warming would be done at the national level.

Still, the EPA considers ozone to be a local problem and requires particular regions to make pollution cuts.

The approach occasionally results in some regions looking myopically at air pollution, said Jed Anderson, a Houston attorney who works with industry on regulatory matters.

He noted, for example, that one of Houston's primary strategies is for plants to use a process that reduces emissions of smog-forming nitrogen oxides but increases the presence in the atmosphere of heat-trapping gases that contribute to global warming.

Beyond ozone

Anderson said the EPA must change to a holistic approach in order to combat smog and climate change.

"We need to look at air quality, not just ozone," he said.

The EPA report's authors acknowledged that the coupling of ozone and climate change "presents considerable challenges because of the large number of physical, chemical and biological processes involved, many of which are poorly understood, all interacting in complex ways."

The agency has launched a research effort to expand on the conclusions of the report.

But in what could foreshadow the themes of the debate in Houston, the Sierra Club and other environmentalists already are using the EPA's new report to challenge a proposed smog-fighting plan for Lexington, Ky. They argue that Lexington's plan doesn't adequately address climate change.

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EPA seeks remand of Navajo power plant permit (*Associated Press*) This story also appeared: *Native Times*

MONDAY, MAY 04, 2009 1:09:57 PM

Written by SUSAN MONTOYA BRYAN

ALBUQUERQUE, N.M. (AP) – The U.S. Environmental Protection Agency has asked an appeals board to allow the agency to reconsider an air permit issued last year for a planned coal-fired power plant on the Navajo Nation in northwestern New Mexico.

Regional EPA officials want to reconsider the parts of the permit for the $3 billion Desert Rock Energy Project that were appealed by the state of New Mexico and environmentalists who were concerned about air quality, carbon dioxide emissions and violations of the Endangered Species Act.

EPA spokesman Darrin Swartz-Larson said Monday it was unclear when the Environmental Appeals Board will rule on the EPA's request, but environmentalists were already hailing the agency's motion as a big roadblock for Desert Rock.

"It's still our position that the project should not be built," said Nick Persampieri, an attorney with Earthjustice, which represents a coalition of environmental groups. "There's no demonstrated need for the project and we are hopeful that the final outcome will be that the project will not be built."

The tribe's Dine Power Authority and Houston-based Sithe Global LLC have partnered to build the 1,500-megawatt power plant on the Navajo reservation south of Farmington. They have said Desert Rock would be one of the cleanest coal-burning plants in the nation and it would generate more than $50 million in annual revenues and create jobs on a reservation where more than half of people are unemployed.

Navajo President Joe Shirley Jr. said Monday he was disappointed to learn of the EPA's move only after the motion was filed. He said he had hoped that a new administration in Washington would mean a change in the way the federal government has consulted with his tribe.

Shirley has requested a meeting with President Barack Obama to talk about Desert Rock.

"This isn't just about energy," Shirley said. "This is about sovereignty. This is about saving self. This is about the Navajo Nation regaining its independence by developing the financial wherewithal to take care of its own problems."

Jeff Holmstead, lead attorney in the fight to build Desert Rock and a former assistant administrator for air at EPA, was surprised by the EPA's action and said the agency seems to have little regard for due process or fairness.

"We are well into the appeals process, and now EPA wants the Navajo Nation and its partners to go back and start over again under different rules," he said.

If the motion to remand the permit is granted, it will be sent back to the EPA for further analysis, something that could take many months and another round of public comment.

According to the EPA motion, the agency wants to reassess the limits for particulate matter emissions and whether the plant would use the best available pollution control technology.

The agency also wants to finish consulting with the U.S. Fish and Wildlife Service about endangered species issues and fully analyze methods for controlling hazardous emissions.

Mike Eisenfeld of the San Juan Citizens Alliance said the permit should not have been issued in the first place, but he was hopeful that EPA "will take its responsibilities seriously" under the new administration.

The environmental groups have argued that Desert Rock – which would be the third coal-fired power plant in the Four Corners region – would further degrade air quality, harm the environment and impact human health.

State officials, including Gov. Bill Richardson and Environment Secretary Ron Curry, applauded the EPA's move.

"We still have work to do to make sure that this project only moves forward with the proper environmental safeguards," Richardson said in a statement.

Shirley has said that tribal leaders would not have supported such a project if it endangered their people or residents in neighboring states.

"We're talking clean coal. We're talking carbon capture," Shirley said in a recent interview. "We want the Desert Rock power plant to be not only a model for the United States of America but for the world regarding the use of clean coal technology."

Advisors Eye Research Shift To Boost Multi-Pollutant Air Policies (*Inside EPA*)

Monday, May 04, 2009

A key air advisory group in a pending report will urge major shifts in EPA's emissions research including source-specific monitoring to help fill knowledge gaps on the health effects of mixtures of air pollutants, which the group hopes will bolster a move to comprehensive multi-pollutant air quality management policies.

Still, members of NARSTO, the group releasing the report, say there remain major barriers that limit the long-needed shifts in air quality research and management decisions. For example, legal requirements focus monitoring and research on specific pollutants, which may ignore potent toxics. There is also a need to develop new research methods to accurately model exposure to mixtures of complex pollutants from sources such as traffic.

NARSTO -- a public/private partnership among the United States, Canada and Mexico to advance policy-relevant research on air pollution -- is aiming to motivate such difficult shifts in emissions research and monitoring through a report on multi-pollutant accountability set for release this summer.

“Air quality management should identify and assess the most significant exposures, risks and uncertainties and take a multi-pollutant approach to controlling emissions that pose the greatest threat,” NARSTO’s William Pennell said at the group’s executive committee meeting April 15 in Washington, D.C. The group also says source-specific monitoring is needed to improve personal exposure estimates and assessment of health impacts.

The report aims to help refocus research on gaining an understanding of which specific pollutants are causing the most problems and in which combinations. There is also suspicion that certain mixtures of pollutants may worsen the health and environmental effects of any individual pollutant.

“All exposures are from complex mixtures . . . The biggest knowledge gaps are what causes what and what combinations are important,” Joe Mauderly of Lovelace Respiratory Research Institute said at the meeting. “Our current knowledge precludes apportioning effects among hundreds of pollutants.”

Concern in the research community is growing that reduction strategies to meet national ambient air quality standards (NAAQS) are targeting criteria pollutants such as ozone and particulate matter (PM), while each of those pollutants is the product of complex mixtures of individual reactive constituents.

Each constituent is not studied for its level of toxicity within the pollutant mix, and some experts suspect that some constituents are causing more harm than others. If targeted directly as opposed to through total PM regulation, better health outcomes could be achieved more efficiently, they say.

In addition, the monitoring network is currently situated so as to not be influenced by particular sources, while concern grows that there is a dearth of data about simultaneous exposures to ozone, PM and other emissions from sources such as roadways. For example, one researcher involved in the NARSTO report is faulting EPA’s monitoring network for the ongoing review of the PM NAAQS, saying in recent comments that it is not sufficiently located to be able to inform evaluation of exposures to individual components of coarse PM from a roadway.

The National Research Council called for a shift to multi-pollutant air quality management in 2004, but progress has been slow. EPA implemented a pilot program in 2007 in which a few states agreed to do the additional work of creating an umbrella plan to implement air toxics and criteria pollutant reduction strategies, but the plan was met with skepticism in part because the agency did not provide any funding.

NARSTO’s report may help reinvigorate the effort, however. The group’s reports have influenced EPA’s policy agenda in the past, and several high-level officials contributed to the conclusions in the upcoming report. These include Ron Wyzga of the Electric Power Research Institute, EPA Office of Air Quality Planning and Standards economist Brian Hubbell, Science Advisory Board member Chris

Frey, former EPA Clean Air Scientific Advisory Committee (CASAC) chair Joe Mauderly, CASAC PM NAAQS review panel member Ken Dmerjian, and ozone NAAQS review panel member Daniel Jacob.

A risk-based framework for assessing exposures to mixtures of air pollution is a necessary first step toward the more comprehensive multi-pollutant management regime that NARSTO, EPA, some states and researchers are aiming to create, experts say. They also say the new management scheme should be incorporated alongside an “accountability” mechanism that evaluates the effectiveness of measures to reduce emissions.

NARSTO says its recommendations are not aimed at justifying tighter or weaker air standards. “We’re not talking about changing the current regulations but about evolving research and management goals to address current needs,” Mauderly said at the recent meeting. Mauderly wrote the chapter on outstanding needs in health effects research, which he says does not fully capture the true social health burden created by air pollution.

Increased scientific understanding about the toxicity of pollutants like ozone and the costly health burden of the disease and premature mortality associated with it has led to strict standards. In March 2008, former EPA Administrator Stephen Johnson strengthened the ozone standard from 84 parts per billion (ppb) to 75 ppb, despite industry objections.

But EPA is now reconsidering the standard after environmentalists challenged it in court for not being at least as strict as CASAC’s call for a maximum level of 70 ppb. The case is similar to one the U.S. Court of Appeals for the D.C. Circuit recently decided on the PM NAAQS, where it ruled against the 2006 standard because EPA did not sufficiently explain why it set a weaker standard than CASAC said was justified by the science.

Now, scientists are seeking to fill key gaps in their knowledge by extending research into analyzing each constituent of the emissions that react to form complex pollutants like ozone and PM. The hope is that standards can become more targeted on the specific constituents that do the most damage to human health and the environment.

Scientists have far to go to figure out how to undertake such research, however. Mauderly praised a recent call for proposals on multi-pollutant research from the Health Effects Institute (HEI), but the call underscores the difficulty in developing methods to address remaining knowledge gaps. HEI notes that current statistical models do not effectively estimate health outcomes related to pollutant mixtures. It calls the development of advanced methods and new statistical approaches “important and difficult.”

The NARSTO report calls for measurements in proximity to certain major sources of pollution, such as roadways within urban areas, to aid exposure modeling. Experts say they need a few detailed, targeted monitoring and sampling efforts in key areas that can serve as examples of multi-pollutant effects.

But barriers also exist there, as monitoring for the ongoing review of the PM standard shows. Dmerjian says in recent comments on the ongoing PM NAAQS review that monitors in EPA’s NCore system are not sufficiently located to be able to inform evaluation of exposures to individual components of coarse PM from a roadway.

“The majority (if not all) of urban NCore monitoring sites are not deployed in locations to adequately sample [coarse PM] exposures. The likely source regions impacting [coarse PM] exposures in urban

areas are traffic related and associated with populations situate within 500 [meters] of major highways," Dmerjian says in Feb. 11 comments. -- *Jenny Johnson*

CLIMATE CHANGE/GLOBAL WARMING

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Obama Not Seeking Quick Climate Action Under Ozone Treaty (*New York Times*)

By John M. Broder

May 4, 2009, *3:12 pm*

WASHINGTON - After a brief but lively internal debate, the Obama administration has decided not to seek an immediate phase-out of hydrofluorocarbons (HFC's), a potent group of climate-warming gases, under a treaty aimed at protecting the ozone layer.

A number of lawmakers, foreign governments and environmental advocates had urged the administration to offer an amendment to the Montreal Protocol, the international treaty on ozone-depleting substances, calling for the rapid elimination of HFC's. Some officials at the State Department and the Environmental Protection Agency had pushed for such a course, but the White House decided on a more moderate approach to give it negotiating room in upcoming rounds of climate and environmental talks.

HFC's are used as refrigerants in air conditioners, refrigerators and freezers, as well as in some fire-fighting foams. They are sometimes referred to as "super-greenhouse gases" because they are hundreds or even thousands of times more powerful than carbon dioxide, molecule for molecule, in heating the atmosphere. HFC's are cousins to chlorofluorocarbons (CFC's) and hydrochlorofluorocarbons (HCFC's), two other classes of refrigerants which are being eliminated under the Montreal Protocol, a 21-year old treaty signed by 195 nations to control the gases that opened up a hole in the earth-protecting ozone layer of the atmosphere.

The treaty is considered a model of international comity and scientific success. Some within the administration, as well as several Democratic committee chairs on Capitol Hill, urged that the United States take the lead in calling for the elimination of HFC's under the treaty. But White

House officials blocked the move, saying they needed more time to study the issue and instructing the State Department to stall.

A White House official said that the climate and energy bill now before the House of Representatives provides for a phase-out of HFC's. In addition, the chemical is among the six greenhouse gases that the E.P.A. is proposing to regulate under its recent finding that carbon dioxide and other substances pose a risk to human health and the environment.

In a letter to the United Nations body overseeing the Montreal Protocol, Daniel A. Reifsnyder, a senior environmental official at the State Department, said the administration believed the chemicals were not a direct threat to the ozone layer but "pose a very significant further threat to the climate system because of their high global warming potential." Mr. Reifsynder noted that most of the same nations that belong to the Montreal Protocol will also be meeting later this year in Copenhagen under United Nations auspices to discuss climate change. He said the administration was studying whether that might be the more proper venue for addressing HFC's.

He also noted that the island nations of Mauritius and Micronesia had already proposed an amendment to the ozone treaty calling for a phase-out of HFC's and that the United States was deciding whether to support it. He said that the E.P.A. was analyzing an HFC phase-out on a slightly different timetable than that proposed by Mauritius and Micronesia.

Advocates for tackling the issue under the Montreal treaty expressed disappointment that the Obama administration was taking such a cautious approach to a chemical that could, by some estimates, account for as much as 30 percent of all atmospheric warming by 2040.

"This should be an easy lay-up," said Alexander von Bismarck, executive director of the Environmental Investigation Agency, a non-governmental group that has monitored the ozone treaty for years. "We have unprecedented consensus between industry, government and environmental groups and a chance to solve a third of the near-term climate problem. Now we need U.S. leadership." [**UPDATE, 8:15 p.m.**: Some details from David Sassoon at SolveClimate.com, who's been following this closely.]

EXCLUSIVE: Lobbyists help Dems draft climate change bill (*Washington Times*)

Tom LoBianco **(**Contact**)**

EXCLUSIVE:

Democratic lawmakers who spent much of the Bush administration blasting officials for letting energy lobbyists write national policy have turned to a coalition of business and environmental groups to help draft their own sweeping climate bill.

And one little-noticed provision of the draft bill would give one of the coalition's co-founders a lucrative exemption on a coal-fired project it is building.

House Speaker Nancy Pelosi and House Energy and Commerce Committee Chairman Henry A. Waxman, both of California, were among the Democrats -- then in the minority -- who slammed Vice President Dick Cheney for holding closed-door meetings to draft energy policy early in the Bush administration.

Republicans "invited energy lobbyists to write the energy bill that gouges consumers with big payoffs to Big Gas and Big Oil," Mrs. Pelosi said in 2005. "They have turned Washington, D.C., into an oil and gas town when it is supposed to be the city of innovation, of new, of fresh ideas about our energy policy."

But the sweeping climate bill Mr. Waxman and Rep. Edward J. Markey, Massachusetts Democrat and chairman of the panel's key environmental subcommittee, introduced at the end of March includes a provision that benefits Duke Energy Corp., a founding member of the U.S. Climate Action Partnership (USCAP), whose climate plan released in January the lawmakers have frequently called a "blueprint" for their climate legislation.

The exemption would save Duke Energy -- along with other firms now building new coal power plants -- from having to spend millions of dollars outfitting its Cliffside, N.C., power plant currently under construction with "clean coal" technology.

"The USCAP companies must be delirious over the freebies that they've received after writing the blueprint for [the House draft bill]," said Larry Neal, deputy Republican staff director for the House Energy and Commerce Committee.

At the kickoff to hearings last week on the massive climate bill, Myron Ebell, climate and energy policy director for the Competitive Enterprise Institute, told lawmakers, "The authors of the draft bill have invited the beneficiaries of what could turn out to be the biggest transfer of wealth from consumers to special interests in American history to write the rules for this legalized plunder."

A spokeswoman for Mr. Waxman rejected any parallel with the previous administration.

"It's just not a fair comparison," said Karen Lightfoot, spokeswoman for Mr. Waxman, saying the process for the climate bill had been far more transparent.

Members of the Cheney energy task force crafted energy policy in secret in 2001, and Democratic lawmakers spent months battling the Bush administration to release records of the meetings, she said.

By contrast, Mr. Waxman's committee has held dozens of hearings on the topic of climate change, and USCAP's blueprint has been publicly touted since its January release, Ms. Lightfoot said.

It was USCAP that provided language to the Waxman-Market draft that effectively bars construction of new coal-fired projects for 10 to 15 years, until "clean coal" technology is developed. The draft bill has language that effectively shields Duke and few other energy companies from the restrictions for unfinished plants already well along in the permitting process.

Mr. Waxman and Mr. Markey have said they used USCAP's climate-change proposal as a "blueprint" for the broad-based legislation they outlined in late March and are starting to put into final form.

At a January hearing, Mr. Waxman promised the USCAP ideas would be written into climate legislation.

USCAP's members include environmental advocacy groups such as the Natural Resources Defense Council and the Environmental Defense Fund and corporate

giants such as PepsiCo Inc. and Ford Motor Co., in addition to many of the nation's top energy providers.

Critics say the little-noticed provision affecting the Duke Energy coal plant is a prime illustration of the close links between industry and environmental lobbies and the bill's authors.

Supporters of the exemption say it would protect energy companies from having to scrap coal projects well under way. Critics say the provision amounts to the same type of handout Democrats accused Republicans of approving eight years ago.

Duke Energy spokesman Tom Williams would not disclose whether his company requested the language, but said an exemption makes sense.

"When you're building a plant, it's not good practice to have legislation that somehow retroactively hinders the permit," Mr. Williams said. "You can't operate a business that way."

The House draft bill says any coal plant that obtains final construction approval after Jan. 1, 2009, must meet the stringent pollution control rules. Duke Energy has two new coal projects under way, both of which obtained their permits in January 2008.

Duke Energy Chief Executive Officer Jim Rogers has been an influential voice in the Hill debate over climate change. When he testified last month on a panel of USCAP members, he did not mention the provision, which directly affects the Cliffside plant.

The exemption would benefit 45 other coal facilities that are under construction or have received permits (including a second Duke Energy project in Indiana), but Duke Energy is the only affected company that belongs to USCAP.

Many environmentalists have chafed at new coal plant construction, calling the term "clean coal" a "dirty lie." More than 40 environmental activists were arrested outside the Cliffside plant protesting the coal project late last month.

"It is just the most blatant hypocrisy," Jim Warren, executive director of North Carolina Waste Awareness and Reduction Network and one of the 44 protesters arrested, said of Mr. Rogers' environmental proclamations.

Mr. Rogers told North Carolina public officials in 2007 that he would actively lobby to exempt the Cliffside plant from stricter pollution standards.

"So you're going to be lobbying in Congress essentially to have Cliffside be grandfathered?" Gudrun Thompson, a lawyer for the Southern Environmental Law Center, asked during a January 2007 hearing on the project.

Mr. Rogers said he thought the plant would be grandfathered "because it's perceived by the government as we perceive it, as a clean coal plant."

Committee staff confirmed that the provision exempting the Duke coal project was drawn from the USCAP blueprint.

"We've been very clear that we do not advocate for any provision or recommendation, we advocate for the document as a whole," USCAP spokeswoman Katie Mandes said.

"USCAP felt it was important to include a proposal for emissions standards going forward, that's why it was included in the blueprint," Ms. Mandes said.

Mr. Williams said it is not certain that the Cliffside plant would be exempted from the new requirement, because of a question whether a pending legal challenge to the project would affect its permit status.

The provision in the Waxman-Markey bill would effectively ban construction of new coal plants for the next decade by requiring them to install "clean coal" technology that captures and stores carbon emissions to limit greenhouse gas emissions.

The climate bill introduced in the previous Congress by House Energy and Commerce Committee Chairman John D. Dingell, Michigan Democrat, and

energy and air quality subcommittee Chairman Rick Boucher, Virginia Democrat in October included a similar exemption for coal-fired plants.

Duke Energy donated $11,000 to Mr. Dingell and $10,000 to Mr. Boucher during the 2008 election cycle. Mr. Dingell and Mr. Boucher still held their respective chairmanships at that time.

Duke's North Carolina project would face major hurdles without the exemption. Although the company could retrofit the plant to capture carbon emissions, it would have to pipe the carbon dioxide out of the state because no good geological storage sites are nearby.

The second Duke Energy coal-powered project under construction, a coal gasification plant in Indiana, also would be exempted by the provision, but would have less trouble retrofitting with "clean coal" technology.

Members of the House Energy and Commerce Committee will take up the climate bill again this week in subcommittee. Mr. Waxman and Mr. Markey have said they want the full bill to be reported to the House floor by Memorial Day.

As deadline looms, Interior mulls Bush's polar bear rule *(Greenwire)*

Allison Winter, E&E reporter

05/04/2009

Prominent House Democrats and environmental groups are pressuring the Obama administration to overturn a special rule on polar bears from the Bush administration -- part of an effort to provide another federal tool for addressing climate change and curbing greenhouse gas emissions.

The Interior Department has until Saturday to throw out the contested polar bear rule, a move that could open the door to scrutinizing the potential emissions of greenhouse gases of a wide range of projects -- from power plant proposals to new housing developments and interstate highway expansions -- as threats to polar-bear habitat.

The special rule in question limits the use of the Endangered Species Act to regulate greenhouse gas emissions. The Bush administration finalized the rule in December, six months after it listed the polar bear as a threatened species due to the melting of its sea-ice habitat.

With the departure of President George W. Bush and the strengthening of Democratic majorities on Capitol Hill, Congress this year passed a provision to the massive omnibus spending bill allowing the Obama administration to swiftly reverse the polar bear rule and another of Bush's Endangered Species Act revisions, which eliminated a need that agencies consult with federal biologists on projects that might affect endangered species.

Last week, the administration reversed the consultation rule. But Interior officials say they are still considering the polar bear rule.

"The [consultation rule] repeal was a huge victory in favor of sound science and common sense, but it's only half the pie," said Bill Snape, an attorney with the Center for Biological Diversity. "We need to get rid of that bad Bush rule on polar bears and global warming to allow a fresh start for all wildlife under the Obama administration."

Industry groups are fighting to make sure that reversal of the "4(d) rule" for the polar bear does not happen. The National Association of Home Builders is among the groups arguing that the narrowed requirements in both of the Bush rule revisions gave some certainty about what would be required of them as more species gain protection against habitat damage linked to climate change.

"The only comfort, if any, we would get is from the 4(d) rule," said Mike Mittelholzer, who works in NAHB's environmental policy department.

Political pressure

An intense lobbying effort preceded the overthrow of the consultation rule, which the Bush administration pushed through in its final months of office to a chorus of criticism from scientists, conservation groups and Capitol Hill Democrats.

President Obama himself cited that rule as one of the last-minute regulatory changes he would like to reverse and issued a memorandum in March that directed federal agencies to continue to require wildlife consultations.

But there has been less pressure on the polar bear rule, and some advocates for its reversal say there may not be enough momentum to reverse it.

Interior has yet to send a proposal on the polar bear to the White House Office of Management and Budget, as was done four days before the consultation rule reversal was announced.

But the department did ask a federal judge in U.S. Circuit Court for the District of Columbia to delay a scheduled court conference on lawsuits over the polar bear rule until after the Saturday, May 9, deadline -- indicating changes are at least under consideration.

In an effort to turn up the heat on the issue, members of Congress and California's state legislators sent letters to Salazar last week asking him to revoke the rule. Environmentalists donned polar bear costumes at a recent press conference on Capitol Hill to bring attention to the issue.

Reps. Edward Markey (D-Mass.) and Jay Inslee (D-Wash.) and 39 other House members signed the congressional letter, which says the polar bear rule ignores the Endangered Species Act's mandate to "adopt all measures necessary for the conservation of threatened species." The separate letter from 35 members of the California Legislature calls for reversal of both the endangered species rules.

Over 130 environmental groups, more than 1,000 scientists and 31 law professors have each signed letters protesting the Bush rule. Environmental groups have also gathered hundreds of thousands of citizen petitions calling for repeal of the rules.

Meanwhile, the option for Interior to overturn the rules has generated heat from Republicans.

Sen. Lisa Murkowski (R-Alaska) cited the endangered species rules when she put a "hold" last week on the confirmation of Obama's pick for No. 2 at Interior, David Hayes. Murkowski's main objection was the department's decision to overturn the consultation rule, but she is concerned that the polar bear rule would "be another step down that path," said Murkowski spokesman Robert Dillon.

"We are concerned about the polar bear and the Arctic, but it is not the proper way to go about dealing with climate change -- it is a very blunt instrument," Dillon said.

What is a polar bear's reach?

The Endangered Species Act allows special "4(d)" rules for threatened species that can exempt some management restrictions that might otherwise be required for endangered species.

The polar bear's special rule prohibits federal officials from considering indirect, adverse effects on the bear from activities outside of its habitat: for example, carbon dioxide emissions that are linked to climate change and the loss of the bear's sea ice. The rule also gives leeway for restrictions on harming or killing a bear and waives some requirements for habitat protection. The greatest concern for environmentalists is the greenhouse gas exemption.

"What ESA is designed to do is identify the threat for the species and do something about it," said Kassie Siegel of the Center for Biological Diversity. "What Bush has done is said greenhouse gas emissions, which are the primary threat to the polar bear, are exempt -- it cuts the heart out of the actions the act should provide, and there is no basis for it in the law."

Siegel and other environmentalists want federal agencies to consider how power plants or development projects might affect the bear before approving permits -- even if those projects are in the lower 48 states and far removed from polar bear habitat.

If the administration overturned the special rule, it could potentially open the matter up to more lawsuits. Siegel, whose group has filed hundreds of lawsuits to force more stringent protections under ESA, said the center would "definitely" consider lawsuits over power plants, were the rule not in place.

The potential for those lawsuits is of some concern to industry groups that favor the special rule as it stands.

"That is part of the issue with the rule -- without it, it is fairly unpredictable what could or could not happen," said Lakeisha Harrison, a spokeswoman for the American Petroleum Institute.

API and other industry groups sued the administration over its original proposal for the special 4(d) rule but dropped the suit after the final rule narrowed restrictions to focus only on the polar bear's habitat.

The special rule could also play out with projects closer to the polar bear's habitat, such as industrial activity in the Arctic. Environmental groups want the administration to throw out the special rule, so wildlife biologists could require projects to consider alternatives to diesel generators, for instance, a major source of black carbon that can melt polar ice.

'They shouldn't close that door'

The Obama administration has pledged to address climate change. But even Obama's Interior Department has indicated it does not intend to use the Endangered Species Act to address carbon dioxide emissions.

Hayes, Salazar's pick to be his second-in-command, told senators during his confirmation hearing that the endangered species law was ill-suited to addressing climate change. Tom Strickland, the assistant secretary for fish, wildlife and parks, said the same at his hearing.

While the administration readily admits climate change is hurting wildlife, it says it may be too hard to draw a direct link from a power plant in Arizona to a polar bear.

"While it may be difficult to make that link -- and they would have to -- they shouldn't close that door," said Bob Irvin of Defenders of Wildlife.

When environmentalists sued to force a listing of the polar bear under the Bush administration, they presented the potential to force a hesitant administration to take action on climate change. But now Congress is working on climate legislation and U.S. EPA has issued a proposed "endangerment finding," which could lead to regulation of greenhouse gases under the Clean Air Act.

But environmentalists have not relinquished their insistence that ESA should still be available to assess the effects of greenhouse gases on polar bears.

"It's not like they have to choose 'either/or,'" said John Kostyack of the National Wildlife Federation. "They can be strong on the science of ESA and promote the climate bill."

Lawsuits await

Regardless of what the administration decides, it will still be spending plenty of time on the issue in court.

Interior is facing a half-dozen lawsuits on the polar bear listing.

Environmental groups sued to overturn the 4(d) rule and to upgrade protections for the bear from "threatened" to "endangered." And the state of Alaska and the Pacific Legal Foundation filed two separate lawsuits that attempt to block protection of the bear.

The administration also faces lawsuits from hunting groups that want their members to be able to bring back polar bear trophies from Canada.

The lawsuits are consolidated into one case before U.S. District Court Judge Emmet Sullivan in the District of Columbia. Sullivan scheduled a conference for later this month, where the parties will likely work out a briefing schedule.

EDITORIAL/COMMENTARY/OP ED/LETTERS

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Higher fees to clean storm-water runoff are necessary (*Los Angeles Times*)

The City Council delayed a vote on the increase, but the public has to be educated on the need for pollution abatement.

By Mark Gold

May 5, 2009

Last week, the city of Los Angeles decided to postpone asking voters to pay higher fees to clean storm-water runoff. Given the economy -- and the recent failure of Measure B, a solar energy

initiative -- the decision to not rush the vote was probably wise. But we can't put off raising fees forever.

Five years ago, Los Angeles voters passed Proposition 0, which allotted $500 million in bond money to improve water quality in the county. When these projects are completed, major sources of pollution will have been eliminated and the L.A. River, Santa Monica Bay and local watersheds will be far cleaner.

But Proposition 0 wasn't a panacea. It left some serious water-quality problems that need to be addressed. And it put in place systems that will have to be maintained. That can't be done on the current assessment of $23 a household each year for storm-water pollution cleanup.

L.A. is at a crucial place in its environmental history. The city has long been in violation of federal summer beach bacteria regulations. And we are coming up against regulatory deadlines for cleaning up winter beach bacteria, as well as nutrients and pesticides in Machado and Echo Park lakes and toxic metals in the L.A. River and Ballona Creek.

The good news is that, two weeks ago, the Board of Public Works approved an L.A. water-quality plan that moves us in the right direction -- if we come up with a way to pay for it.

The mayor's initial plan was to send out a mail-in ballot to all homeowners in the city asking them to approve fee hikes that would raise the annual water-quality assessment from $23 to $99 by 2014. That plan was scrapped after the City Council decided the move was too abrupt. The council cited the defeat of Measure B in March as evidence that voters needed to be educated on an issue before they would agree to spend money -- even on an environmental measure they supported in principle.

Fair enough. So let's start the education.

We've come a long way in cleaning up Southland water. The beaches are safer for swimmers in summer. Santa Monica Bay no longer has a dead zone, and locally caught fish no longer have tumors. These major environmental successes were because of improvements in sewage treatment plants; now we need to be as rigorous in reducing storm-water pollution.

But the current storm-water assessment of $23 a household -- a fee that has not been raised in 16 years -- is just not enough to clean up and maintain our long-neglected rivers, lakes and beaches.

The proposed $76 fee hike would be phased in over five years. Despite the sizable increase, the $99 annual household fee would still be far less than those paid by residents of Santa Monica, Sacramento and other cities.

The Jarvis anti-tax folks are already squawking about the idea -- although their point that the measure shouldn't be rushed through without public comment is a good one.

But now that the ballot measure has been slowed down for public education and comment, I would challenge those who say we shouldn't raise fees to explain how we can attain the high

standards needed to protect the environment and public health -- and required by law -- without additional funding.

In the end, the city will have to decide whether to put the measure to voters as a fee hike, in which case a simple majority of homeowners would have to support it, or as a ballot measure that would require the approval of two-thirds of the voters citywide. Whichever approach is chosen, it will need to be carefully explained that the funds will be used exclusively to protect public health and the environment.

As they did to overhaul the faulty Hyperion Sewage Treatment Plant, voters need to dig deep and provide the resources to clean up local waters. These funds will create and maintain for the long haul a green infrastructure that will cut pollution, augment local groundwater supplies, reduce flood risk and improve the quality of life for millions of residents.

Without a steady stream of funding, the public health of swimmers and surfers will remain at risk and the aquatic environment will remain degraded. Violations of water-quality requirements will continue to grow along with the city's liability under the federal Clean Water Act.

Passing a fee increase is always difficult, but enacting an increase in this dire economy leaves no margin for error. Given the missteps on Measure B, strong leadership and communication from Mayor Antonio Villaraigosa and the City Council are essential to reach the mayor's goal of making L.A. the cleanest, greenest major city in America.

Mark Gold is president of Heal the Bay, a Santa Monica-based environmental organization.

Climate Change Solutions (*New York Times*)

May 5, 2009

To the Editor:

Re “On Climate Issue, Industry Ignored Its Scientists” (front page, April 24):
Regarding the American Petroleum Institute’s views on climate change, we believe that it’s a serious matter, and as the nation debates addressing it, A.P.I. and its members have been constructively involved.

We prefer solutions that value equity and transparency, national and global approaches above local and regional ones, reliance on technology, and respect for the interests of American consumers and workers.

The commitment of our members to responsible action on climate change is not new. For years, they've been advancing alternative energy, energy efficiency and carbon storage technology while also creating state-of-the-art tools for measuring and tracking greenhouse gas emissions.

Kyle Isakower
Director, Policy Analysis
American Petroleum Institute
Washington, April 24, 2009

Let's clear the air: The lung association's pollution spin is bogus (*Pittsburgh Post-Gazette*)

Monday, May 04, 2009
Pittsburgh Post-Gazette
Pennsylvania

The American Lung Association should know better. For the 10th year, it has released the State of the Air report, which claims to identify the most polluted metro regions in the country.

It does nothing of the sort.

What the report really does is find each region's dirtiest air monitor, then it uses that monitor's readings to represent the multicounty area in a national ranking. The ALA thinks this is fair, calling it an "apples-to-apples" comparison. It's actually rotten-apple-to-rotten-apple, and that's no way to judge an orchard.

The lung association's press releases don't explain this to the public, however. The ALA says only that "the Pittsburgh-New Castle metro area again ranked worst in the nation" for short-term particle pollution and second worst for year-round particle pollution.

That's an eight-county region -- Allegheny, Armstrong, Beaver, Butler, Fayette, Lawrence, Washington and Westmoreland -- and the city of Pittsburgh all tarred by the lung association with data collected from the Liberty monitor downwind from U.S. Steel's Clairton works. What the association's press releases don't tell you is there are seven other monitors for small particulate in Allegheny County and five in three neighboring counties. None of those monitors have pollution readings that match Liberty's.

The lung association report doesn't tell you that either. Nor does it try to do an average or composite of each metro's complete pollution records to give a true picture of the state of the air. Because for the ALA, ranking only the worst monitors is what's best. We say that based on the common marketing strategy that a group stands to raise millions more dollars through fear than facts. Politicians do it and advocacy groups do it, manipulating the public and distorting their view of reality. Talk about fouling the air.

This is not to say that the pollution measured at Liberty isn't harmful, according to federal health standards. The monitor records emissions from the largest coke plant in the country and the largest pollutant source in Allegheny County. That air, although improving, has made Liberty and its neighbors Glassport, Clairton, Lincoln and Port Vue -- a community of almost 25,000 people -- a federal non-attainment area.

There is no denying that the Liberty numbers are the worst from a single monitoring station in the United States for short-term particle pollution and the second-worst for the same pollution year-round. But that's all that the numbers signify.

It's like a student in Pittsburgh who has the worst reading score in his school's fifth grade, while a student in Los Angeles has the worst reading score in hers. His score is lower than hers, but that doesn't mean that all other fifth-graders in his school read as poorly as he does, or even that his Pittsburgh school reads more poorly than hers in LA. The numbers only compare his individual score to her individual score.

Frankly, we don't know how Pittsburgh or the metro region that bears its name would rank nationally if the readings from all of its other monitors became part of the analysis. Painting an accurate picture, however, is not the goal of the lung association's report.

It prefers to take the Liberty numbers and project them not only across the lungs of 1.2 million people in Allegheny County, but also across the residents of seven other counties, four of which don't even have particulate monitors. How fair, let alone scientific, is that?

Using such a gross and disingenuous method for representing regional air quality is a discredit to the American Lung Association. It makes you wonder about the credibility of its other reports.

While the Post-Gazette has appreciated the association's work on other health issues, like curbing cigarette smoking, its claims here are more than dubious -- they are dishonest. The next time its supporters sit down to write a check, they should think carefully about whether they want to be contributing to this kind of pollution.

ENERGY

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ENERGY STAR Program Recognizes Record Number of California Energy-Efficient Building Designs (*Imperial Valley News*)

Written by Green Liver

Monday, 04 May 2009
California

San Francisco, California - The United States Environmental Protection Agency unveiled the latest group of commercial building design projects that have been recognized as Designed to Earn the ENERGY STAR. Together with representatives from the American Institute of Architects (AIA), EPA will recognize 75 new commercial building design projects for their energy efficiency, representing a 60 percent increase in the number of qualifying projects over the last year.

“By designing buildings to be energy efficient, these architectural and engineering firms are leading the way in the fight against global warming,” said Deborah Jordan, the EPA’s Air Division director for the Pacific Southwest. “We congratulate this year’s Designed to Earn the ENERGY STAR recipients for their commitment to energy reductions in the built environment.”

EPA’s Designed to Earn the ENERGY STAR connects the energy design intent of a building with its operating performance, ensuring energy efficiency throughout the building’s life cycle. Projects that qualify for this designation are designed to create fewer greenhouse gas emissions and save money on energy bills over the lifetime of the building. Once built, this year’s 75 new projects are estimated to save nearly 100,000 metric tons of greenhouse gas emissions and more than $6 million in energy costs annually across more than 14 million square feet. On average, these projects are estimated to reduce carbon emissions by 50 percent, which meets AIA’s goal for a 50 percent CO2 reduction on newly constructed buildings by 2010.

An architecture firm can receive EPA’s Designed to Earn the ENERGY STAR by comparing the project’s intended energy use against the energy use of comparable operating buildings by using EPA’s no-cost online tool, Target Finder. Once built, building owners are then able to benchmark the actual performance of completed projects using another online EPA tool, Portfolio Manager. In this way, they can verify that the building is operating as intended.

Since the program’s inception in 2004, nearly 170 building design projects submitted by 84 firms

have achieved EPA's Designed to Earn the ENERGY STAR. These projects—totaling nearly 28 million square feet of space—were designed to prevent more than 180,000 metric tons of CO 2 emissions per year, a 46% reduction over average similar buildings, and save more than $12 million in annual energy costs.

ENERGY STAR was introduced by EPA in 1992 as a voluntary, market-based partnership to reduce greenhouse gas emissions through energy efficiency. In 2008, Americans, with the help of ENERGY STAR, saved about $19 billion on their energy bills while reducing greenhouse gas emissions equivalent to those of 29 million vehicles.

FUEL

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White House to Step Up Ethanol Efforts (*Wall Street Journal*)

MAY 5, 2009

By STEPHEN POWER

WASHINGTON -- The Obama administration on Tuesday will step up efforts to increase the availability of ethanol at filling stations and to speed up subsidies to struggling biofuel producers. But the trade-off is that the administration is also expected to propose a rule that could make certain biofuels look less climate-friendly.

At a news conference led by the heads of the Agriculture Department, Energy Department and Environmental Protection Agency, the administration is expected to announce the creation of an interagency group that will be charged with forging a plan to encourage the production of more automobiles that can run on high-level ethanol blends, and increase the availability of high-level ethanol blends at gasoline stations.

President Barack Obama is also expected to direct the Agriculture Department to expedite the awarding of loan guarantees to support the development and construction of more biofuel refineries.

But at the same time, the EPA is expected to propose measuring the greenhouse-gas emissions associated with biofuel production -- including emissions that result overseas when farmers world-wide respond to higher food prices by converting forest and grassland to cropland. The EPA decision could undercut the environmental rationale the ethanol industry has used to sustain support for its government subsidies.

In an effort to ease the sting of Tuesday's announcement, the administration scheduled a news conference to discuss not only the EPA rulemaking but also what it called Mr. Obama's "commitment to advance biofuels research and commercialization."

The question of whether biofuels help or harm the climate has been heating up for months in scientific, corporate and environmental circles. A study published last year in the journal Science found that U.S. production of corn-based ethanol increases emissions by 93% compared with using gasoline, when expected world-wide land-use changes are taken into account.

Some scientists and many biofuel proponents have challenged the Science study, saying it relied on unrealistic assumptions. There is also disagreement among scientists and economists over how to measure the impact of land-use changes in one country on land-use changes in another.

"We're ready to begin the debate" over how to measure ethanol's environmental impact, said Matt Hartwig, a spokesman for the Renewable Fuels Association. "But let's get it out there, so we can talk about it."

The efforts by environmental regulators to assess biofuels' impact on the environment comes at a difficult time for the ethanol industry. Demand for the corn-based fuel has been falling, as consumers have cut back on driving amid the economic crisis.

The plunge in oil prices from last summer's record high, meanwhile, has pushed down ethanol prices and cut producers' profits. Last month, an ethanol trade group petitioned the EPA to allow the ethanol levels in gasoline blends to be as high as 15%, up from the current 10%. Without the increase, the group said the U.S. won't be able to meet a congressional mandate requiring some 36 billion gallons of renewable fuel to be blended into the domestic fuel supply by 2022.

Write to Stephen Power at stephen.power@wsj.com

HAZARDOUS WASTES

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For Old Drugs, New Tricks (*Washington Post*)

Advice Veers Away From Flushing Unused Pills

By Susan Q. Stranahan
Special to The Washington Post
Tuesday, May 5, 2009

At the Leesburg Pharmacy, located in a Loudoun County strip mall, a big, round fish tank sits atop the prescription counter. There are no fish inside, not even any water: The tank is a repository for unused medications. People can drop off the Vicodin that didn't get used once the pain of a root canal subsided. Or the heart pills remaining after a grandmother's death. Or an asthma inhaler that had passed its expiration date. Or an antidepressant that turned out to have unpleasant side effects.

Once a week, the tank is emptied; the drugs are packed in cartons by pharmacy personnel and ultimately incinerated by a commercial waste firm.

"Our customers are thrilled because they had no idea what else to do with this stuff," said Cheri Garvin, chief executive of the employee-owned pharmacy.

These are customers who are trying to do the responsible thing. Over the years, Americans have been alerted to the dangers of a lot of problematic waste materials -- paint thinner, batteries, air conditioners. But leftover pills can seem so small, so easily disposable, that many people routinely flush them down toilets, wash them down sinks or throw them in trash that goes to a landfill.

And then they often end up in places where they shouldn't be, like the public water supply.

The average American takes more than 12 prescription drugs annually, with more than 3.8 billion prescriptions purchased each year, according to the Kaiser Family Foundation. The most commonly cited estimates from Environmental Protection Agency researchers say that about 19 million tons of active pharmaceutical ingredients are dumped into the nation's waste stream every year.

The EPA has identified small quantities of more than 100 pharmaceuticals and personal-care products in samples of the nation's drinking water. Among the drugs detected are antibiotics, steroids, hormones and antidepressants. Last year, the Associated Press reported that trace amounts of drugs had been found in the water supplies of 24 major metropolitan areas; water piped to more than a milllion people in the Washington area had tested positive for six pharmaceuticals.

The EPA does not require testing for drugs in drinking water and has not set safety limits on allowable levels. While the minute quantities now being detected appear not to pose an immediate health risk, according to federal authorities, "there is still uncertainty about their

potential effects on public health and aquatic life" over the long term, the EPA's water chief, Benjamin Grumbles, told a Senate committee last year. But the impact of long-term exposure of drugs on humans as well as on other species is less clear. Hormone-disrupting pharmaceuticals, for example, are one possible cause of a high incidence of "intersex" fish in the Potomac River basin: male smallmouth bass producing eggs, females exhibiting male characteristics.

Until recently, federal guidelines recommended that surpluses of highly toxic medications be flushed down the toilet; the same advice applied to drugs with a high potential for abuse or "diversion" -- the industry's word for what happens, for example, when kids help themselves to the OxyContin or Percocet in their parents' medicine cabinet. For other drugs, consumers have been directed to adulterate the medication by mixing it with an unpalatable substance -- such as cat litter or coffee grounds -- and put it out with the household trash.

But this spring, concerns about pharmaceuticals in the water supply led the Office of National Drug Control Policy to amend its advisory, telling consumers to avoid flushing unless the label or patient information specifies that method of disposal. The new guidelines still describe the cat-litter method of putting drugs in the trash, but they also encourage consumers to make use of community drug take-back programs.

And that's the problem: In much of the country, including the Washington area, drug take-back sites like the Leesburg Pharmacy are almost impossible to find. An informal survey of the District and 10 surrounding jurisdictions turned up no city- or county-organized drug disposal programs.

"We are farther ahead with recycling our garbage than we are with recycling drugs," said Babs Buchheister, the nursing director of Calvert County.

Fairfax and Prince William counties have prepared safe-disposal information for residents, available on county Web sites. Their advice echoes the new federal recommendations. "Like a lot of jurisdictions, we're keeping an eye on chemicals and drugs that may be in our water," said Brian Worthy, a Fairfax County spokesman. "That's the reason we're encouraging people not to flush their medications."

The Washington Metropolitan Council of Governments has studied a regional drug take-back program, according to Steve Bieber, a staff water resources manager. "It is a complicated issue, and there are a lot of potential hurdles," Bieber said. "It's just not something that's gotten to the point that we have any ideas ripe for regional consideration."

A major hurdle in any take-back program is what to do with controlled substances -- for example, morphine -- which constitute about 10 percent of all prescription medications in this country. Under Drug Enforcement Administration rules, a third party -- beyond the patient and pharmacist -- may not legally have possession of such drugs. Thus, a family member or caregiver cannot return an unused portion of a controlled substance to a take-back program on the patient's behalf. And any take-back program must have a DEA-registered representative -- a pharmacist or a law enforcement officer -- present to accept the drug.

The problem of disposal becomes especially acute for hospice providers, who often are confronted with a medicine cabinet full of painkillers after a patient dies or when a drug regimen is changed.

"There is a very delicate balance with an immediate need to avoid abuse potential versus the long-term need to protect the environment," said Catherine J. Woods of ExcelleRx, a Philadelphia medication management company that serves 800 hospices nationally. "They are both legitimate needs." Woods said hospice workers often feel forced to flush the drugs simply because there is no other convenient alternative.

Clarifying the chain-of-custody rules is one of the key changes in the Safe Drug Disposal Act, introduced in February by Rep. James P. Moran Jr. (D-Va.). The bill, co-sponsored by Rep. Jay Inslee (D-Wash.), is intended to foster state take-back programs. The bill would allow caregivers as well as the patient to turn over regulated medications for disposal in DEA-approved, government-run programs. The bill also would bar pharmaceutical companies from independently recommending flushing as a disposal method.

The goal of the bill is to eliminate obstacles to getting unwanted medication out of circulation. The growing problem of drug diversion to illicit users "makes the issue all the more compelling," said Julie Simpson, an aide to Moran. The measure would require the DEA to create five take-back models from which states may choose.

For now, instituting a take-back program requires determination and persistence. When environmental concerns led Cheri Garvin of Leesburg Pharmacy to see what she could set up, she found bureaucratic roadblocks everywhere.

"The problem with this whole take-back issue, the minute you want to do it, there are all these agencies telling you why you can't," Garvin said. "I got indignant. I said I'd find a way."

Garvin struck a deal with a company known in the industry as a reverse distributor, which already collected unsold and expired medications from her drugstore and returned them to the manufacturer for credit. Under the deal, the company would also collect medications returned by customers (which, unlike unsold drugs, cannot be returned to the manufacturer) and incinerate them at a waste-to-energy facility. (She had to scramble to find a new reverse distributor after discovering that a company she first used was putting the waste in a landfill.)

At least for now, the reverse distributor is making enough money from the credit to cover the cost of incineration. But the cost of collection and disposal is a commonly cited obstacle to setting up take-back programs. In Washington state, pending legislation would have the costs borne by the pharmaceutical industry. In Maine, which began a groundbreaking mail-back program this year, the costs are borne by a federal grant, supplemented with state funds.

Meanwhile, Garvin's fish tank stays on the counter, and customers fill it up; she believes the chain-of-custody registry she maintains complies with DEA regulations. She estimates that for every three cartons of unsold medications from her pharmacy, there are 10 from customers, which are hauled away every two months.

The program has been running for a year and a half. "People come in with grocery bags full [of drugs]," Garvin said. "They've been saving them for years, not knowing what to do. And to think, we're just a small pharmacy in Northern Virginia."

SUPERFUND

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Supreme Court rules Shell not at fault in cleanup *(Greenwire)*

05/04/2009

Shell Oil Co. cannot be held responsible for cleanup of a contaminated site simply because it delivered chemicals to a now-defunct company on the site, the Supreme Court ruled today.

In an 8-1 decision, the court also decided that railroad companies that leased the defunct company's part of the land would have to pay for a small part of the cleanup.

Brown & Bryant used a California site to store and sell agricultural chemicals, some of which were delivered there by Shell, before going out of business in 1988.

The government was forced to clean up the company's 47 acres of land after Brown & Bryant went out of business, and wanted Shell and the railroad to help pay for the cleanup. A trial court ruled that Shell was responsible for part of the cleanup costs as an "arranger," since it arranged for the sale and transfer of the chemicals.

The 9th U.S. Circuit upheld Shell's liability, but the Supreme Court reversed the decision. Shell took steps to encourage Brown & Bryant to stop leaks of the chemicals it was delivering, the court noted. "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 Shell 'arranged for' the disposal," Justice John Paul Stevens wrote (Associated Press, May 4). **-- TL**

TOXICS

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Paints industry to explore voluntary phase-out of lead paint production (*Chemical Watch*)

05-May-2009

The International Paint and Printing Ink Council has has said it is willing to assess "the feasibility of the voluntary phase-out of the production of lead paints in cooperation with business and industry, including on a (sub)regional level". The offer was included in a letter sent on 1 May to the Intergovernmental Forum on Chemical Safety and US Environmental Protection Agency, which jointly facilitated the lead paints working group of the Strategic Approach to International Chemicals Management (SAICM).

Lead paints is one of four "emerging issues" that will discussed in detail at the second International Conference on Chemicals Management (ICCM2) in Geneva next week (CW Briefing March 2009).

The IPPIC offers asistance in providing information on a range of issues, such as lead levels in paint, the availability of substitutes and developing guidelines for establishing national standards. It also says the initiative should be limited to paints where lead has been intentionally added - excluding paints where lead is present as a trace contaminant.

Meanwhile, support for action to "promote rapid phase out of lead in paint" was mentioned in the conclusions of a meeting of G8 environment ministers in Syracuse, Italy on 22-24 April. The meeting discussed the issue as part of a wider discussion on children's health and the environment. Another "appropriate action" to protect children's health, it agreed, was to "collaborate on research studies and research related to children’s health and the environment including impacts of chemicals and heavy metals".

Special Report: Thousands of kids exposed to dangerous liquid mercury in schools, homes. Contamination can last years, and cleanups are costly (*Environmental Health News*)

When children encounter long-forgotten stashes of liquid mercury, schools have to shut down for days or weeks and the toxic trail left in classrooms, buses, homes and communities costs hundreds of thousands of dollars to clean up. Found in many old science labs and used in some cultural ceremonies, mercury triggered more than 37,000 calls to U.S. poison control centers in a five-year period. One specialist found traces in 40% of schools tested.

By Jessica A. Knoblauch
Environmental Health News
May 5, 2009

One night in February, high school principal Matthew Smith got a frightening wake-up call.

The local fire department alerted him that the home of a student at Agua Fria High School was contaminated with liquid mercury that apparently had been taken from a science classroom. The next day, emergency crews descended on the school in haz-mat suits, discovering a toxic trail of mercury vapors in classrooms, locker rooms, and buses.

The high school, in Avondale, Ariz., was shut down for a week so it could be decontaminated. The homes of six students were tainted with mercury, two so severely that the families had to be relocated for 11 days, according to the Environmental Protection Agency. The total cleanup is expected to reach hundreds of thousands of dollars.

The mercury mess in Arizona was only the latest in thousands of incidents where children are exposed to elemental mercury, a poison that can damage the brain, trigger respiratory failure and cause other serious health problems.

Power plants are typically cast as the usual suspects of mercury contamination, since they emit mercury into the air, where it spreads globally. But many children are exposed to toxic levels of mercury much closer to home. Mercury spills inside schools and houses, often unreported, can release vapors into the air for weeks, even years.

Elemental mercury, or quicksilver, is a shiny, silvery liquid metal found in thermometers, thermostats, light bulbs, barometers and LCD screens. Though mercury inside these items poses little risk, once broken, they release mercury that vaporizes as an invisible, odorless gas.

Children are most frequently exposed to mercury when it is mishandled or improperly cleaned up after a spill. Broken thermometers, filled with tiny blobs of mercury, are the most common culprits.

From 2002 to 2006, more than 37,000 calls were made to U.S. poison control centers about children exposed to mercury. Of those, 30,891 concerned broken thermometers and 6,396 were caused by other sources, such as old science laboratories and religious or cultural ceremonies, according to a new report by the Agency for Toxic Substances and Disease Registry, part of the U.S. Centers for Disease Control and Prevention.

The report, released in February, was prompted by a number of high-profile incidents of children exposed to mercury, in particular, a 2004 case involving as many as 100 children in a thermometer-factory-turned-daycare center in New Jersey. U.S. Rep. Frank J. LoBiondo (R-New Jersey) commissioned the report.

“Basically there was concern that other types of events such as the one in New Jersey might be occurring throughout the U.S., so Congress directed ATSDR to do a review to look for events of elemental mercury exposures,” said Robin Lee, an epidemiologist with ATSDR's Division of Health Studies and co-chair of the study.

Many science labs at schools, especially older ones, unknowingly house long-forgotten toxic chemicals such as mercury, chlorine gas and formaldehyde.

These chemical stockpiles are just accidents waiting to happen, which administrators at Agua Fria High found out the hard way on February 12. According to a police investigation, the source of the spill was five pounds of mercury stored in a medical bottle that a student took from an unlocked shelf in a science classroom.

“It was our understanding that there was no mercury available on campus to students at all,” said principal Smith. “It was a learning experience for us and now we are really dotting our ‘i’s and crossing our ‘t’s to make sure that there are no unsafe chemicals on this campus.”

Other schools also have been forced to evacuate and shut down for days, sometimes even weeks, while emergency crews conduct expensive cleanups to remove dangerous levels of mercury.

At Ballou High School in Washington, D.C., in 2003, a student took liquid mercury from a science laboratory and sold some to other students. Mercury was found in the classrooms, gymnasium and cafeteria, and the school had to be shut down for 35 days to clean it up.

In addition, the students unknowingly carried mercury on shoes and clothing through the streets, onto buses, and into their homes. Eleven homes were contaminated and about 16 families were displaced for a month.

The total cleanup cost: $1.5 million, according to the EPA.

Earlier that same year, a student at Pau-Wa-Lu Middle School in Gardnerville, Nevada, brought a vial of mercury to school that he had found in his grandfather's garage. The student shared the mercury with children on the bus and in the locker room. Liquid mercury was visible on the gym floor and in several classrooms, exposing 61 students. The school was shut down for four days and the decontamination cost more than $100,000.

Then, in 2004, a 17-year-old in Las Vegas had to be rushed to the hospital and spent a week in intensive care after playing with mercury over a period of several months.

The house was so badly contaminated that it had to be stripped to bare concrete, according to the EPA. The excavated materials were all removed and treated like hazardous waste. Even the family dog had to be decontaminated. The cleanup cost nearly $132,000, and that didn't include renovating the house.

Few people become immediately ill when liquid mercury is spilled. But health experts say it is a potent neurotoxin that can have lasting health effects. It is particularly dangerous to children's developing brains because it can cause learning problems. Health problems can be more immediate and extreme than exposure to the other common form of mercury, methylmercury, which comes mostly from eating fish.

Symptoms of mercury poisoning--often called the mad hatter syndrome because of compounds used on felt in the 18th and 19th centuries--can start within a few hours and include tremors, chills, vomiting, abdominal pain, headache and anxiety.

Even a miniscule amount of liquid mercury, equivalent to the couple grams found in a thermometer, can be dangerous.

"Children have higher respiratory rates and metabolic rates than adults, so that would provide some evidence for erring on the conservative side when determining acceptable levels of mercury exposure," explained John Risher, an environmental health scientist with ATSDR's Division of Toxicology and Environmental Medicine and a member of the report's work group.

Exposures to high levels of metallic mercury can lead to a rare condition in children called acrodynia, characterized by neurological symptoms including tremors, irritability and light sensitivity, in addition to joint pain, rashes and painful, swollen hands and feet, according to Maida Galvez, an assistant professor at the Mount Sinai School of Medicine.

Anthony Carpi, an environmental toxicologist at the John Jay College of Criminal Justice in New York City, said mercury spills are difficult to clean up because of the element's "stickiness," which allows it to latch on and embed itself into porous surfaces like carpet.

He recalls an incident a few years back involving a house with significant levels of mercury in a bathroom that came from a mercury thermometer broken there two decades earlier.

"We were able to see traces of that mercury spill 20 years after it happened," said Carpi. "It's sticky so it's hard to clean up and what's left behind can persist for very long periods of time."

Mercury thermometer use in schools is declining, in part because many national retailers have stopped selling them and manufacturers have stopped producing them. At least nine states have laws limiting the use of mercury-containing devices in schools, according to the EPA.

“It just seemed foolish to endanger children and foolish to waste that kind of money trying to clean up what was sometimes very small amounts of mercury,” said Steven Kratzer, a mercury reduction and policy specialist at the Department of Environmental Quality in Michigan, which has banned mercury devices in schools.

But many schools still harbor the element inside rusty chemical cabinets or sink drains.

As a senior health and environmental investigator in King County, Wash., Dave Waddell has uncovered many forgotten mercury stashes during school inspections. Between 1998 and 2002, the county’s Rehab the Lab project, which helps K-12 schools manage their hazardous chemicals, removed 664 pounds of mercury from schools in King County alone.

Small spills can quickly escalate into full-blown hazards when people are unaware of proper clean-up procedures.

“We’ve had schools that have had a mercury spill try to clean it up with a vacuum and then blew the mercury vapors out the back of the vacuum,” he said. “I find broken mercury thermometers in almost every school I’ve been in. Teachers have collected the pieces and done their best to clean things up, so there’s still residual micro droplets left around that are vaporizing.”

Once airborne, mercury can easily spread, contaminating everything in its path.

“The average beginning cost for a mercury cleanup is around $14,000,” said Waddell. “You think you’re saving money by keeping your mercury thermometers, but think of how many nice digital thermometers you can buy for $14,000.”

Traces of long-forgotten or unknown mercury spills are found so often in schools that the Minnesota Pollution Control Agency decided in 2001 to bring in the big dogs, literally.

Clancy, a 70-pound chocolate and black laboratory retriever mix, is the only mercury-detecting dog in the U.S. that’s been professionally trained to find spilled or “hidden” mercury in schools.

“Kids will break lab thermometers and try to wash it down the drain, which doesn’t work because mercury is heavier than water,” said Carol Hubber, a mercury specialist and Clancy’s handler. “When he was younger, Clancy would put his head in the sink to tell us that it was contaminated.”

Of the 300 schools that Carol and Clancy have inspected in the last eight years, about 40 percent of them had mercury spills, usually in the plumbing. Though mercury-detecting instruments can do the same job as Clancy, he’s faster, completing an assignment in a quarter of the time that the instrument takes.

Of the 300 schools that Carol and Clancy have inspected in the last eight years, about 40 percent of them had mercury spills.

“He can find a broken fever thermometer in a 5,000 sq. ft. warehouse in less than 10 minutes, but usually under a minute,” said Hubbard. “It’s amazing to watch him work.”

Between 2002 and 2006, 75 percent of mercury-related events that potentially exposed children occurred in private households, according to the ATSDR report.

Some Caribbean religions and folk healers use mercury because they believe its supernatural powers bring good luck and drive away evil spirits. Practitioners apply mercury to the skin, add it to candles or sprinkle it around the home.

About 38 percent of 900 people mostly with Latino or Caribbean backgrounds reported that they used or knew someone who used mercury for religious, spiritual, or health purposes, according to a survey by John Snow, Inc., a Boston health consulting company. The ATSDR report warns that “such use may lead to chronic mercury exposure among those who use it in this manner and for subsequent occupants of the contaminated homes.”

“Imagine if you suspected that your apartment might have had a prior occupant that sprinkled mercury on the carpet a decade ago,” said Arnold Wendroff, founder of the Mercury Poisoning Project, a website dedicated to the issue. “That’s not something you want to live with.”

Wendroff has tracked religious mercury use since 1989 after a young boy in a class he was teaching told him his mother sprinkled mercury on the floor of their home to keep away witches. These liquid good luck charms, which can be purchased at medicine shops called botanicas, are often found in 10-gram bottles. Mercury fever thermometers, in comparison, contain only a few grams (.5 to 3.0 g) of mercury.

The report cites a handful of religious mercury use studies in Chicago and New York, including a 2008 study that found mercury levels were higher in residential common areas in communities likely to use mercury for cultural practices. However, Wendroff said that further studies are needed to determine mercury levels in the practitioners’ homes.

“We have mercury sold, we know how it’s being used and we have indoor air elevated levels of mercury,” Wendroff said.

Nevertheless, he said, “since there could be a lot of money involved to clean this up, the government’s stance is to let sleeping dogs lie.”

The EPA’s Office of Inspector General disagrees, maintaining in a 2006 report that the environmental agency is properly addressing the risks of ritual mercury use by sponsoring research and environmental monitoring, among other things.

To reduce mercury exposures, the ATSDR recommends increasing education on mercury’s health effects and proper clean-up methods, especially when sales of mercury-containing compact fluorescent bulbs (CFLs) are lighting up.

“Given the potential cumulative hazard from breaking a large number of CFLs, or the disposal of large numbers of CFLs in landfills, the public must learn about the need for proper disposal and have easy access to appropriate disposal facilities,” the report says.

Though there is no data on exposure incidents from light bulbs, the EPA estimates that more than 670 million mercury-containing bulbs are discarded each year. Currently, there is no national infrastructure for recycling them.

The authors also recommended decreasing the availability of mercury items altogether. Several states have implemented bans on mercury thermometers. In addition, the Mercury Ban Export Act of 2008 aims to prohibit U.S. exports of elemental mercury by 2013.

“The long term goal is to get mercury out of all consumer products,” said Ned Groth, a science consultant at the Mercury Policy Project, an advocacy organization. “Mercury is an equal opportunity poison. It’s toxic to everybody.”

Tina Toy, whose two daughters attended the contaminated day care center in New Jersey, hopes that the new federal report will help keep awareness of the issue alive.

“I worry about my children’s health every day, but at least something good is going to come out of this,” she said.

The ATSDR report [PDF] is available at:
http://www.atsdr.cdc.gov/mercury/docs/MercuryRTCFinal2013345.pdf

EPA taking defective drywall issue seriously, feds say (*Bizjournals.com*)

Tampa Bay Business Journal - by Michael Hinman Staff Writer

Monday, May 4, 2009, 11:08am EDT
North Carolina

The **U.S. Environmental Protection Agency** has outlined to Gov. Charlie Crist its plans to investigate defective drywall, including ongoing analysis of drywall samples sent from Florida and work to develop an indoor sampling plan.

“I share your concerns and can assure you that EPA is working with our federal and state partners to address the challenges posed by imported Chinese drywall,” said EPA administrator Lisa Jackson in an April 30 letter to Crist. The letter was in response to one sent by Crist earlier in the month asking for federal intervention in the defective drywall investigation.

The Consumer Product Safety Commission is taking the lead on federal efforts, Jackson said, working with a group of federal and state agencies including the EPA, the **Agency for Toxic Substances and Disease Registry**, and the **Florida Department of Health**. The CPSC has been working on the drywall issue since last December by conducting meetings with wallboard manufacturers, tracking the drywall import stream and consulting with the U.S. Geological Survey on gypsum geology in China. The CPSC also is working with the **National Institute for Occupational Safety and Health** on deconstruction safety and the development of further study plans.

The EPA’s environmental response team in Edison, N.J., is now analyzing samples of defective drywall found in Florida homes and comparing it to product samples of domestically manufactured drywall, Jackson said. Results of those studies should be available within the next couple weeks.

A work group also has been established to develop an indoor sampling plan to find out what homes are victims of defective drywall contamination and is expected to have a sampling plan in place by the end of June.

The state Department of Health’s toxicologist and indoor air programs coordinator performed a preliminary assessment of 12 homes in South Florida last January, finding that the drywall in those homes contained strontium sulfide and elemental sulfur. Further tests determined that high relative humidity or heat produced hydrogen sulfide, carbonyl sulfide and carbon disulfide in what had been determined to be defective drywall, all of which can cause copper corrosion in homes and possibly post a health hazard, Crist said last month.

At least two class action lawsuits have been filed against foreign drywall manufacturers including The **Knauf Group** of Germany, which manufactured drywall from a pair of Chinese plants during the housing boom. The Knauf Group has denied responsibility, claiming its toxicologists could find no link between copper corrosion and health problems in homes and the 67.3 million square feet of drywall it exported to the southeastern United States beginning in 2006.

Also in April, State Sen. Dave Aronberg, D-Greenacres, asked Crist to set up a statewide task force to address defective imported drywall in homes and create laws in a proposed emergency session this summer that can be taken to the Legislature.

WATER

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County officials in D.C. to fight for PCS jobs (*Washington Daily News*)

They tell officials mine should be allowed to grow

By TED STRONG

Staff Writer

TUESDAY, MAY 5, 2009

In Washington, D.C., congressional staff and one congressman met with a delegation from Beaufort County Monday that included three county commissioners and the county manager.

The mostly closed-door meetings took place ahead of a decision expected Wednesday on PCS Phosphate's proposed expansion in Aurora. Commissioners Robert Cayton, Al Klemm and Hood Richardson made the trip with County Manager Paul Spruill.

Beaufort County Board of Commissioners Chairman Jay McRoy missed the trip because he was in Greenville presenting a resolution favoring PCS Phosphate before the Pitt County Board of Commissioners. The Pitt board unanimously adopted the resolution.

Other Beaufort County commissioners missed the trip for personal reasons.

In D.C. on Monday, several officials expressed backing for the county's position. Congressman Walter B. Jones, a republican who represents part of Beaufort County, said the company is key to the economy.

"You lose one job, you lose 1,000 jobs," he said. "We cannot afford it in this country today."

The U.S. Army Corps of Engineers' Washington, D.C., office is expected to announce a decision by Wednesday on whether PCS can begin a large expansion of its Aurora mine. Controversy had swirled around the proposed expansion, because it would damage wetlands.

Environmentalists have long said that the company must exclude more wetlands from the proposed expansion area.

In recent weeks, the federal Environmental Protection Agency has also begun making that argument. It forced a review by the Corps of Engineers' Washington, D.C., office, and some county officials worry that it will veto the permit if the Corps of Engineers grants it.

PCS and some local officials have called the EPA's objections unfair primarily because they came more than eight years into the permitting process.

Lee Lilley, of Rep. G.K. Butterfield's office, said Butterfield can push for a resolution, but not a specific outcome. Butterfield, a democrat, represents part of Beaufort County,

"He's not going to tell these federal agencies how to do their jobs, but we certainly hope that some compromise can be reached to preserve jobs," he said.

He added later, "It's time to pick one (set of rules for the expansion) that is appropriate for both sides."

James S. McCleskey, director of the state of North Carolina office in Washington, D.C., said he's keeping in touch with federal agencies and monitoring the situation.

He said the Aurora jobs are important in their own right and through a multiplier effect, by which employees and the company spend money and fuel other employers.

He also said the company is critical to the port at Morehead City.

The commissioners also spoke with officials from the office of Sen. Kay Hagan. Hagan, a democrat, is the newest member of the area's congressional delegation, and so the newest member to grapple with the issue.

Her press secretary didn't comment on the Aurora situation, but he did point out that Hagan signed — along with the rest of the delegation — a letter urging the EPA to speed up the PCS Phosphate decision.

"Every office today, regardless of party affiliation or otherwise, gave the Beaufort County commissioners their full attention and a sympathetic ear, given the significance of the economic consequences for a Beaufort County without a PCS Phosphate," said County Manager Paul Spruill.

Spruill helped organize the trip along with a consultant from the Ferguson Group, a lobbying firm the county hired to bolster the effort.

The commissioners divided the lobbying work as they presented their arguments to officials.

Robert Cayton led off.

Cayton, who is from Edward precinct, told officials he had known Beaufort County since before

PCS Phosphate arrived and talked about the importance of PCS Phosphate as a good neighbor. He said the jobs the company brings allow people from the south side of the Pamlico River to stay near home rather than move away.

Al Klemm told officials PCS Phosphate's departure would be catastrophic for the county.

Hood Richardson covered the permitting process and praised PCS for not suing anyone over the issue.

No one knows, or at least no one is saying, what the Corps of Engineers will decide about PCS Phosphate's permit Wednesday. The commissioners will try to speak to Sen. Richard Burr today in one last lobbying effort before the decision. But Jones seemed optimistic.

"They (the Corps of Engineers) feel like PCS Phosphate has done everything asked for and required by the federal government," he said.

Town faces pet waste perils (*Hampton Union*)

Conservation Commission's Foote educates public

By nancy rineman
hamptonunion@seacoastonline.com
May 05, 2009 6:00 AM

SEABROOK — Conservation Commission Chairman Susan Foote had a few things to say about the responsibilities of canine owners recently, including distributing a pamphlet on the subject to fellow commission members.

Using a grant from the state Department of Environmental Services (DES) and funding from the Environmental Protection Agency (EPA) under the Clean Water Act, residents will be able to see in black and white what happens when dog waste is not disposed of properly.

Pet owners and, indeed, all residents, may be surprised to learn that left-behind dog deposits do not just go away. Falling rain may make it seem to disappear, but the problem is that the waste is washed into storm drains leading to brooks, ponds, streams and the harbor.

As a result, Seabrook's drinking water supply is subject to the possible contamination as are the waters in which people swim. Shellfish beds can also be contaminated.

Beyond the risks of water contamination, hazards on land are at issue, too. Imagine the parasites in pet waste coming into contact with playing children or gardening adults, and ironically, even

other pets? A host of diseases can arise from that transmission, including campylobacteriosis, cryptosporidium, toxocariasis and toxoplasmosis.

Symptoms vary from intestinal distress to rashes to fevers and coughs, along with muscle aches, headaches and lymph node enlargement. Individuals with depressed immune systems are at an even greater risk from pet waste parasites.

Cleaning up after the family pooch is just the first step in avoiding the risk of spreading disease.

"Whatever you do, don't take a plastic bag of waste and just toss it into the woods," Foote advised.

Proper disposal calls for bagging the waste and throwing it in a trash can, or emptying the contents of the bag into a toilet and then disposing of the plastic bag.

Pollution occurs when people toss the waste down a storm drain or into the woods, Foote said.

If the thought of contamination and potential illness doesn't do the trick, pet owners should be aware that failure to pick up after their dogs is against the law and subject to a fine, the commission chairman said.

Sewer, water projects top priorities in request for Appalachian grant funding (*Chillicothe Gazette*)

BY MATT BRUNING
Gazette correspondent

May 5, 2009

Two major projects in Richmond Dale and Frankfort are being submitted to the Appalachian Regional Commission as top priorities for funding.

The Ross County Caucus of the Ohio Valley Regional Development Commission met Monday to rank several projects ahead of the deadline for submission. They chose the Richmond Dale sewer project as the top priority.

"That's going to give us a pretty good shot of getting the ARC money that we need," said Gary Silcott, district engineer for the Richmond Dale Sewer District. "Traditionally, if you're ranked No. 1 in the county, that kind of almost guarantees that you'll get funded as long as you have your EPA approval and the other things that go with it."

Silcott says they've been patiently waiting to get the project off the ground since 2002. Money from the Appalachian Regional Commission is just one piece of the funding pie the district needs to move forward. Applications have also been submitted for funds from the Ohio Department of Development Water and Sewer Competitive Grant and the USDA Rural Development Grant.

"Once those three come together, then the money will be available, but they all kind of go in the same time frame," Silcott said.

Silcott hopes construction on the $2.2 million project can start late this year or early next year. He says it should take about nine months to complete.

The EPA has been pressing for a new sewer system in the Richmond Dale area after they found fecal coliform counts up to 90,000 in area streams and ditches. The action limit is 5,000.

"They have some pretty severe health risks down there," Silcott said.

The other major project to make the list is the replacement of the entire Frankfort water system.

"Our lines mainly are pre- and post-World War I, starting to deteriorate a little bit and have a lot of residual on the insides, so we're trying to get those replaced to the homes with new meters so that we operate more efficiently and have proper pressure for residents in the village," said Frankfort Mayor Leigh Thompson.

The project is estimated to cost more than $3.775 million. It would see more than 27,000 linear feet of the village's water lines replaced. Thompson said they also want to build a much larger water tank to improve pressure to some of the outlying areas.

The Ohio Public Works Commission already has committed $700,000 to the project, and Thompson says they're pursuing funding from Community Development Block Grants and the USDA Rural Development Grant program.

"We are ready to go and just looking to get the funding to move forward," Thompson said.

A committee will meet July 30 to review projects in the 12 counties that make up the Ohio Valley Regional Development Commission. The final list will be submitted to the Appalachian Regional Commission in October. Funding will be awarded in November.

EPA Fines Searcy Oil Company For Violations (*ArkansasSports360.com*)

By Arkansas Business Staff
5/4/2009 3:01:00 PM

Arkansas

The Environmental Protection Agency has fined an Arkansas oil company for violating the federal Clean Water Act.

The EPA announced Monday that it has fined Stephenson Oil Co. Inc. of Searcy $20,906 for discharging about 1,970 gallons of oil into Sulphur Creek near the company's Heber Springs (Cleburne County) oil storage facility. The announcement settles violations of the Spill Prevention, Control & Countermeasure Rule, according to an EPA release.

"A federal inspection of the facility revealed that the company had failed to prepare an adequate SPCC plan for the facility, and had failed to provide adequate secondary containment for bulk storage tanks and storage units which contributed to the spill," the release states.

The company sells fuel and oil at four locations in Arkansas. A company official declined to comment.

EPA Working From Grandview Dumpsite Outward to Determine Scope of Contamination (*KNDO/KNDU*)

Posted: May 4, 2009 08:54 PM EDT
Updated: May 4, 2009 09:31 PM EDT
Washington

GRANDVIEW, Wash-- So far the only confirmed contamination has been on the Grandview dump site, in several seven to eight feet deep pits. The Environmental Protection Agency will now be testing nearby wells and water sources to figure out the scope of contamination.

"I do have a well and it's just right by the side of the house here, it's about 60 ft deep," said Roger Davis, homeowner.

Davis is one of several homeowners who can see the Grandview dumpsite from his yard. Soon the EPA will be testing water outside of the dump site, to determine how far the contamination has spread or if it's even spread at all.

Several streams and canals flow downhill from the Grandview dumpsite. This has neighbors concerned, could their well water be contaminated?

Now that the EPA has identified the chemicals at the site they know what to test for. A pesticide, herbicide and insecticide were all indentified at elevated levels. There are a lot of factors involved in determining contamination.

The Department of Ecology certifies companies that build or dig wells, but this area of expertise has only been regulated for the last couple of decades.

"One of the things about the Lower Valley is there are a lot of wells that are old and they've been there for a long time and they are maybe shallow wells," said Joye Redfield-Wilder, Department of Ecology.

Older, shallow wells are more susceptible to contamination. Not just from illegal dumping, but also safe farming practices. It's recommended well owners routinely test their wells.

The EPA is working with surrounding homeowners. They will be testing water closest to the site first, then working outward, ruling out contamination as they go.

EPA Eyes New Urban Stream Plan, Shelved SSO Rule To Limit Stormwater (*Inside EPA*)

Monday, May 04, 2009

EPA staff are reconsidering options to help limit harmful discharges from urban stormwater runoff, including a new focus on previously unregulated urban streams and a possible new effort to finalize the agency's long-contentious sanitary sewer overflow (SSO) policy, which was proposed during the waning days of the Clinton administration but which was shelved by the Bush administration.

Environmentalists and agriculture industry officials say urban stormwater runoff is an increasingly harmful source of nutrients and other pollutants and are calling for EPA to take a more holistic approach to addressing stormwater pollution.

EPA's water permits division Director Linda Boornazian told an American Bar Association conference April 23, "Our latest thinking is that we're going to start focusing on an urban rivers

initiative," in terms of the agency's stormwater program. The plan is still in a very early stage, Boornazian told *Inside EPA*.

Environmentalists have long been pushing for a focus on urban stormwater runoff, and some in the agriculture industry see stormwater from impervious surfaces as a greater problem than agricultural runoff, and one that is growing.

At the same time, sources say that EPA wastewater chief Jim Hanlon recently told stakeholders at a meeting of municipal representatives that staff are "dusting off" the SSO policy for another look under the new administration.

SSOs occur when untreated sewage spills from a collection system or treatment facility, often during extreme wet weather events when stormwater infiltrates a sewer system and overloads the system's capacity.

Officials from publicly-owned treatment works (POTWs) have long argued that a national policy is needed to establish national compliance standards for treatment facilities and avoid a piecemeal approach that could result in confusion over what wastewater plants are required to do.

EPA previously proposed an SSO rule during the Clinton administration, with then-EPA Administrator Carol Browner signing the proposed regulation in January 2001. But the Bush administration withheld the Clinton proposal from publication in the *Federal Register.*

While promulgation of a rule has long been a priority for POTWs, the policy stalled as environmentalists resisted industry efforts to ensure EPA's rule included an affirmative defense that would shield them from enforcement action if a sewer overflow occurred despite the system's best efforts.

Industry sought the liability defense because while the agency's combined sewer overflow policy -- which addresses sewage and stormwater together -- allows a certain number of unintended spills, SSOs are not permitted any overflows.

Industry sources say that EPA staff may be taking another look at SSO policy. An EPA Office of Water source says that the policy is definitely on the table. The agency is "looking at all these types of things that were put on a shelf or lost in a queue somewhere," another POTW source says.

An EPA spokeswoman, however, said in an e-mail, "We don't have any new direction on this issue." The spokeswoman did not respond to questions about Hanlon's comments.

Industry officials also hope that revival of the SSO policy could also help revive EPA's long-stalled policy on when POTWs are able to "blend" treated and partially treated wastewater during wet weather events. Industry sources say the guidance is necessary to help prevent overflows of raw sewage into nearby waters.

EPA's policy, which is based on an agreement between POTWs and environmentalists, was stalled at OMB for years during the Bush administration but was recently sent back to the agency when the new administration took over.

EPA headquarters has recently begun pushing regions to implement the draft policy in enforcement actions, with agency officials confirming late last year that EPA regions are developing methods for

determining whether there are any “feasible alternatives” to POTWs blending treated and partially treated wastewater during extreme storm events.

The agency’s efforts come as agriculture industry officials and environmentalists are increasingly focusing on the harmful effects of urban runoff. “Agriculture is making progress and reaching their goals,” one poultry industry source says, while those in the “urban-suburban category are going backwards” due to increased sprawl. “The progress we’re making is offset by others,” the agriculture industry source says.

A Delmarva Poultry Industry, Inc. report says that using EPA data tracking progress since 1985, agriculture rates for nitrogen and phosphorus reduction are between 40 and 60 percent, while “there has been a negative 90 [percent rate] in achieving the 2010 nitrogen goal in urban/suburban areas and a negative 67 [percent rate] for phosphorus. Agriculture is moving in the right direction while urban/suburban is dragging us backwards.”

One environmentalist says that “municipal stormwater permits tend to be vague and unenforceable” and that “SSOs continue to be a problem,” and encourages the agency to look at stormwater in a “bigger picture” sense, eying blending, SSOs, urban runoff and construction effluent limits in a wider lens view.

“We’ve been asking for them to do something on SSOs” for more than a decade, a NACWA source says. The group is “open to discussing anything.” Mainly, “our utilities would like to have a standard to which they can manage their collection systems other than prohibition.” As the policy stands realistically, the source says, “If you have an SSO, you’re not managing your collection system right.”

New runoff rules considered for utilities *(Greenwire)*

05/04/2009

U.S. EPA is moving to impose new restrictions on the level of contaminants power plants can discharge as evidence emerges that utilities nationwide are dumping toxic sludge into waterways.

According to data the agency has collected over the past few years, plants in Florida, Pennsylvania and several other states have flushed wastewater that contains levels of selenium and other toxins that far exceed EPA freshwater and saltwater standards aimed at protecting aquatic life. Elevated selenium levels damage fish and birds, as well as people who consume contaminated fish.

The elevated contaminant levels in U.S. waterways are the result of federal government pressure on utilities to install pollution-control "scrubbing" technology that captures pollutants headed for smokestacks and stores them as coal ash or sludge. The residue is often kept in outdoor pools or flushed into nearby rivers or streams.

"Scrubbers will help clean our air, but let's make sure that the toxic metals stripped out of coal-plant smokestacks don't end up in our water," said Eric Schaeffer, former chief of the EPA enforcement office and now the head of the Environmental Integrity Project, an advocacy group. "It's crazy not to have limits on toxic discharges this big."

Mary Smith, director of the engineering analysis division of the EPA's water office, said that in an initial assessment of the toxic emissions of 56 industries, the agency found the utility industry "was at the high end of the range." When it comes to selenium in power plant effluent, she said, "We're looking at how low it can go and what is economically achievable (Juliet Eilperin, *Washington Post*, May 3). **-- TL**

TVA ash spill cleanup cost rises to $975M *(Greenwire)*

05/04/2009

The estimated cost to cleanup Tennessee Valley Authority's massive December fly-ash spill at a Tennessee coal plant has risen to $975 million and could take several years, the agency disclosed in a second-quarter financial filing.

The revised cleanup estimate for the Kingston Fossil Plant is $150 million higher than earlier estimates and lifts TVA's cost range to $675 million to $975 million.

The filing showed the agency's earnings were flat at $133 million for the first three months of 2009, while electricity sales dipped 9.4 percent due to the economic recession.

The Dec. 22, 2008, spill in Kingston released 5.4 million cubic yards of toxic fly-ash and sludge onto about 300 acres, contaminating the Emory River and ruining some two dozen homes. TVA said it still does not know what went wrong or the extent of the environmental damage and has hired outside consultants to investigate the spill.

Another big unknown is how the cleanup costs will trickle down to TVA's 8.7 million customers in Tennessee, Georgia, Mississippi, Alabama, Kentucky, North Carolina and Viginia (Duncan Mansfield, AP/Macon [Ga.] *Telegraph*, May 1).

2001 Dominion internal report warned of fly-ash toxicity

Dominion Virginia Power knew as early as 2001 that the fly-ash it provided to a Chesapeake, Va., golf course could contaminate local drinking water, according to Dominion's internal reports posted on the Internet in early April.

The company was advised by consultants to either extend city water to nearby homes or drill deeper wells to avoid possible fly-ash contamination, but decided instead to fund a new report

that would yield safer projections, which it cited in 2008 to defend the environmental safety of the project.

The Battlfield Golf Club, which opened in 2007, was paid to take 1.5 million tons of fly-ash Dominion was storing from its Deep Creek power station for use in sculpting the course's fairways and greens. About 400 residents sued Dominion in late March claiming the company's fly ash was poisoning their drinking water, devaluing their properties and threatening their health.

Dominion gave a copy of the reports to the city of Chesapeake and the Virginia Department of Environmental Quality in September (Robert McCabe, Norfolk *Virginian-Pilot*, May 3). **-- PT**

Dow dioxin study draws fire from Mich. regulators *(Greenwire)*

05/04/2009

Michigan regulators who are negotiating with Dow Chemical Co. over a long-delayed cleanup are criticizing a study that measures human exposure to dioxins in a Lake Huron watershed polluted by the company.

A Department of Environmental Quality statistician recently advised regulators not to use the Dow-funded study to make decisions about the cleanup project -- at least until the problems he identified were fixed.

The study -- done by the University of Michigan's School of Public Health -- did not assess the health of the people it examined, regulators said. The study also may have included too few subjects from groups with the highest exposures to the dioxin contamination and too little information about the dioxin levels for people who regularly eat bottom-feeding fish.

David Garabrant, the lead researcher for the project, said his team had done the additional data analysis requested by DEQ. But the study's methodology and conclusions were sound, he said, and the study should play a role as the cleanup is designed (John Flesher, AP/Michigan Live, May 3). **-- TL**

Obama kills review of cleanup goals *(Greenwire)*

05/04/2009

The Obama administration has canceled a review of whether current cleanup goals set for the Chesapeake Bay are realistic to shift focus onto working toward those goals.

Officials have spent recent weeks gathering data on whether it is possible to restore the bay to its former health, a goal that some have said is impossible after federal, state and local governments have spent 25 years and billions of dollars on cleanup with limited success.

J. Charles Fox, Obama's pick to oversee the cleanup effort and a senior adviser to U.S. EPA Administrator Lisa Jackson, said the review was subtracting effort and resources from the cleanup process.

"A number of us had some pretty serious questions about ... yet another evaluation of whether the goal posts should be moved," he said.

The review was prompted by a new evaluation of local pollution-reduction plans that found that even if all the plans were executed, far too much pollution would still enter the bay. The plans aim to cleanse runoff of nutrients that create algae blooms that deprive the bay of oxygen.

But officials insist a restored bay is possible. "We're not there yet. We still hold great promise for bay restoration," said L. Preston Bryant Jr., Virginia's secretary of natural resources. "It's way too early to be cutting back to half-speed" (David A. Fahrenthold, *Washington Post*, May 4). **-- PR**

Study clears Army Corps of fault for water loss *(Greenwire)*

05/04/2009

A new study led by an Army Corps of Engineers employee has found that a corps dredging project is not at fault for the permanent and growing water losses on Lakes Michigan and Huron.

The $3.6 million study, funded by the U.S. and Canadian governments, examined the theory that the corps effectively unplugged the drain on the lakes by scraping away an erosion-proof layer of riverbed while dredging the St. Clair River in the early 1960s. The river is the main outflow for Michigan and Huron.

The corps has long acknowledged a permanent loss of about 16 inches from previous St. Clair dredging and riverbed mining.

The study found that the channel has in fact become deeper since the 1960s dredging, causing an additional loss of about 4 inches of water on the two lakes. But the scientists say nature is to blame for that 4 inches, not the corps. An ice jam in the mid-1980s channeled flows toward the river bottom in a manner that carved a deeper channel, the study theorizes.

But the matter is far from resolved. The influential Canadian property owners who discovered the water loss are demanding that the U.S. and Canadian governments build a dam-like structure in the St. Clair to recapture the lost water, and conservationists and regional leaders also want the scientists to recommend to government leaders that they explore options for slowing flow on the river (Dan Egan, *Milwaukee Journal Sentinel*, May 2). **-- TL**

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