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Environmental Protection: From the 103rd to the 104th Congress

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SUMMARY

The 103rd Congress considered several major environmental bills, and enacted very few, but developed new legislative remedies and oversaw implementation of environmental programs. Early indications are that the 104th Congress will consider broad legislation on private property rights, risk analysis and unfunded mandates - a regulatory reform agenda meaningful to environmental protection and other Federal programs. At the same time, concern over particular environmental statutes and programs may lead to congressional efforts to reauthorize or modify those statutes, and perhaps consider regulatory items in the course of such deliberations. There will be continued concern over funding also.

The 103rd Congress considered numerous bills concerning private property rights, passed one law and completed major actions on nine bills concerning risk analysis, and approved two bills at committee levels pertaining to unfunded mandates. The 104th Congress will accelerate the debate on these three priorities generally seeking to limit expanded environmental regulation; the House Republican Contract with America and early statements by congressional leaders point to serious consideration early in the First Session. This discussion will profoundly influence any upcoming consideration of environmental statues and programs.

In regard to cleaning up toxic waste sites, both houses reported bills to reauthorize the Comprehensive Environmental Response Compensation and Liability Act, or Superfund during the 103rd Congress. The 104th Congress may consider Superfund, whose taxing authority expires December 31, 1994, with a special focus on the issues of retroactive liability and flexible cleanup standards. As for managing the Nation's waste stream under the Resource Conservation and Recovery Act (RCRA), the 103rd Congress did enact limited legislation; the 104th Congress may revisit interstate waste and flow control issues.

Drinking water was high on the agenda of the 103rd Congress: two House committees reported bills to capitalize State drinking water revolving funds, and both bodies passed drinking water legislation. Continued concern over risk analysis and unfunded mandates put drinking water on the 104th Congress agenda. Regarding surface waters, the Senate Environment and Public Works approved a comprehensive Clean Water Act bill in the 103rd Congress. In the 104th Congress, narrower clean water bills may concentrate on funding and program flexibility.

The 103rd Congress oversaw the implementation schedule of the Clean Air Act Amendments of 1990 and considered provisions on reformulated gasoline and Venezuelan gasoline. The 104th Congress will continue this and perhaps legislatively address issues of State flexibility especially in regard to provisions of the law affecting motor vehicles.

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Environmental Protection: From the 103rd to the 104th Congress

INTRODUCTION

The 103rd Congress considered numerous environmental issues, developed many legislative proposals, and enacted some statutes. The 104th Congress faces a large environmental agenda, some issues hinging on actions of the 103rd Congress, others unresolved and newly emerging, and expirations of authorization for several major environmental statutes. Clearly, the change in majority party in the House and Senate, the appointment of new full- and sub-committee chairs, committee reorganizations, and related changes in congressional priorities will profoundly affect environmental protection and many other policies.

This report analyzes environmental issues at a pivotal period, between the Democratic-controlled 103rd Congress and the Republican-led 104th Congresses. In each of the following issue areas, it highlights the actions of the 103rd Congress, offers a brief analysis of issues, and a projection of the kind of congressional action that might be anticipated in the 104th Congress. In most instances, however, it is premature and imprudent to forecast other than in the broadest terms the likely course of congressional actions. In regular future updates, a CRS Issue Brief, *Environmental Protection Legislation in the 104th Congress* (IB95004), will monitor the actions of the 104th Congress. CRS Report 95-59 ENR, *Summaries of Environmental Laws Administered by the Environmental Protection Agency)* offers some background on current environmental protection statutory responsibilities.

Congress acts on environmental matters at many formal and informal levels, not only in environmental statutes but also in other broad legislation impacting environmental and other Federal programs. It regularly oversees the executive branch's implementation of laws. During the 103rd Congress, major oversight activities were conducted on the implementation of new provisions of the Clean Air Act Amendments of 1990, and continued overseeing implementation of provisions of many amendments passed in the mid 1980s, among them the Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. Congress also focused on developing and considering legislative ideas and proposals to address environmental problems, including major reauthorization proposals for the Clean Water Act, Safe Drinking Water Act, and Superfund. Major legislative actions that did not culminate in enactments occurred on all these environmental fronts, but they also incorporated provisions on private property rights, risk analysis and unfunded mandates. There was broad bipartisan support for these provisions.

In the 104th Congress, there are indications from both House and Senate leaders that initial changes in environmental policy may evolve from broad legislation concerned with private property rights, risk assessment and analysis, and unfunded mandates. Such cross-cutting measures would have implications for many areas of national policy and special significance for environmental protection. The House Republican Contract With America suggests that the House of Representatives will seriously consider these legislative proposals early in the Congress. The Senate majority leader has also designated these as legislative priorities.

Though Congress may initially focus on such broad legislation, action on current environmental statutes will also be on the agenda. The authorizations of appropriations for most environmental programs have expired as Table 1 indicates. While floor procedures have allowed funding such programs, some propose limiting such procedures, a limitation having the potential to stop funding and curtail most environmental programs. Such a scenario could result in legislative efforts to reauthorize all, except the Clean Air Act which does not expire until 1998, environmental programs in the 104th Congress. Some dissatisfaction with some current environmental provisions is evident and may manifest itself in reauthorization provisions repealing or modifying particular requirements, or appropriations measures prohibiting EPA from funding specified activities.

While congressional leaders have announced a regulatory reform agenda, some argue that the appropriate legislative vehicles for environmental protection-related provisions on private property rights and unfunded environmental mandates is in environmental reauthorization legislation itself rather than in cross-cutting regulatory legislation. The potential forums where these issues may be addressed include both statutory approaches.

Schedule of Expiration of Appropriation Authority for Major Environment Laws
(as of January 1995)[1]

Statute	Expiration of Authorization
Pollution Prevention Act	September 30, 1993
Clean Air Act	September 30, 1998
Clean Water Act	
(a) Wastewater Treatment Aid	September 30, 1994
(b) Other Programs	September 30, 1990
Ocean Dumping Act	September 30, 1991
Safe Drinking Water Act	September 30, 1992
Resource Conservation and Recovery Act	September 30, 1988
Superfund (collection of taxes)	September 30, 1995
Environmental Planning and Community-Right-To-Know Act	Permanent
Federal Insecticide, Fungicide, and Rodenticide Act	September 30, 1991
Toxic Substances Control Act	September 30, 1983
Environmental Research, Development, and Demonstration Authorization	September 30, 1982
National Environmental Policy Act	Permanent

[1] House rules require enactment of an authorization before an appropriation bill can be considered; but this requirement can be waived and frequently has been. Thus, while appropriation authorizations in environmental statutes have expired from time to time, programs have continued and have been funded. These dates **do not** indicate termination of program authority.

THE REGULATORY REFORM AGENDA AND ENVIRONMENTAL PROTECTION

Environmental legislation has emerged as one battleground for regulatory relief interests urging incorporation of private property rights, risk analysis, and unfunded mandates provisions. For instance, in the 103rd Congress, dispute over greater EPA risk assessment responsibilities had the effect of blocking consideration of legislation elevating EPA to Cabinet status and amendments favoring regulatory relief were offered to other environmental reauthorization proposals.[2] During the 103rd Congress the discussion involved broad regulatory reform legislation and environmental legislation; in the 104th, there may be a similar activity. Clearly, any changes in environmental statutes will be affected by the ongoing regulatory reform debate.[3]

Environmental Regulations and Private Property Rights

In the 103rd Congress there was considerable interest in the effects of environmental regulations on private property rights and values; the 104th Congress is expected to place private property issues high on its legislative agenda. Much of the proposed legislation in the 103rd Congress focused on the Endangered Species Act and section 404 of the Clean Water Act. Bills proposed requiring all Federal agencies, including EPA, to assess the effects of proposed actions on the rights of private property owners. The Senate-passed amendments to the Safe Drinking Water Act, S. 2019, contained such provisions. Other bills sought to establish compensation provisions for private property owners affected by Federal actions, such as denial of a permit for certain uses of a property. Early indications are that the 104th Congress will continue this debate and that the effect of environmental protection regulations on private property will be part of that debate. Private property considerations may also be part of deliberations to reauthorize environmental statutes.

Environmental Protection and the Unfunded Mandates Debate

The 103rd Congress was concerned over the impacts of Federal requirements, including environmental, on States and localities. Expectations are high that the 104th Congress will place the issue of "unfunded mandates" on the legislative agenda. A threshold issue for the 104th Congress will continue to be whether to consider unfunded environmental requirements in general mandate relief legislation, in specific environmental statutes, or, perhaps, both.

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[2] For further discussion of the risk assessment amendment, see CRS Issue Brief IB94036, THE ROLE OF RISK ANALYSIS AND RISK MANAGEMENT IN ENVIRONMENTAL PROTECTION.

[3] See: Congressional Research Service. Environmental Reauthorizations and Regulatory Reform: Recent Developments. CRS Report 95-3 ENR. December 19, 1994. 11 p.

General Mandate Proposals in the 103rd Congress

During the 103rd Congress, the Senate Governmental Affairs Committee approved S.993 and the Subcommittee on Human Resources and Intergovernmental Relations of the House Committee on Government Operations approved H.R. 4771 for full committee consideration. Both would have barred Congress from imposing any new Federal mandates with costs exceeding $50 million on State and local governments unless the necessary funds were authorized; the bills would allow floor procedures under which, subject to a point of order, the House and Senate would have had to vote to override the funding requirements. The bills also would have required the Congressional Budget Office (CBO) to estimate the costs of Federal mandates to State, local, and tribal governments, and compel agencies to analyze the costs and benefits to those same governments of major regulations that include new Federal mandates.

Other 103rd Congress proposals ranged from those that would permit only funded Federal mandates (S. 993, S. 1606, and H.R. 4771) or remove State or local obligation to comply with mandates unless funding is provided (S. 648, S. 1188) to those requiring estimates or analyses of costs to States and localities of proposed or existing mandates (S. 563, S. 648, S. 1592, S. 1604, and S. 1606). Senate bill 480 would have required Congress and Federal agencies to state if legislation and regulations would preempt State and local laws and require an annual report on Federal preemption of such laws. Senate bill 1604 proposed creating a Small Governments Advisory Council that would make proposals for eliminating excessive regulatory burdens. Senate bill 1606 would have provided for a Federal Mandate Assistance Fund supported by appropriations.

The "no money, no mandates" approach supported by some State and local officials may be unworkable, some maintained. Opponents of such measures include a politically active coalition composed of approximately 80 organizations, ranging from labor unions to environmental groups, that view such proposals as an attempt to roll back environmental and civil rights protections that they value, including requirements imposed under the Americans with Disabilities Act.

Some were also disconcerted by measures calling for cost estimation or economic analyses of mandates by the Congressional Budget Office (CBO) (S. 563, S. 648, S. 993, S. 1592, and S. 1606, as well as H.R. 4771). The Director of CBO, Robert Reischauer, concluded that several of the measures would increase CBO's workload to a significant degree, slow the legislative process, or result in the production of flawed information.[4] Proponents, including many local and State governments, argue that it is simply unfair to impose new requirements on them, citizens and business, without a clear understanding of their costs and sufficient funding to meet those costs.

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[4] Testimony of Robert D. Reischauer, Director of the Congressional Budget Office before the Senate Governmental Affairs Committee. April 28, 1994.

Specific Environmental Reauthorizations and Unfunded Mandates

The issue of unfunded environmental mandates influenced the 103rd Congress' consideration of several major environmental reauthorization proposals. The Senate passed S. 2019, reauthorizing the Safe Drinking Water Act, and the Senate Committee on Environment and Public Works reported S. 2093, to reauthorize the Clean Water Act. To reauthorize the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund), three House committees - Energy and Commerce, Public Works and Transportation, Ways and Means- approved H.R. 3800 (H.R.4916) and the Senate Committee on Environment and Public Works approved S. 1834.

All contained provisions seeking to address problems of flexibility and costs identified by State and localities in current legislation. The impact of meeting requirements arising from the 1986 Safe Drinking Water Amendments was alluded to repeatedly in the debate over revised legislation in the 103rd Congress. Senate-passed S. 2019 would have reduced the number of contaminants that EPA is required to address in the future and require EPA to determine if the contaminant may have adverse health human health effects. The clean water legislation, S. 2093, approved by the Senate Environment and Public Works Committee contained numerous amendments, including changes involving combined sewer overflows and municipal stormwater permits, two costly mandates often cited during the debate. The Superfund proposals approved in the House and Senate, H.R. 3800 and S. 1834, contained provisions to allow a greater role of State and local governments in the entire Superfund remedy process.

Unfunded Environmental Mandates, and the 104th Congress

Early statements by congressional leaders indicate that unfunded mandates will be a major legislative priority early in the 104th Congress. The House Republican Contract With America includes it while initial versions of early draft bills -- to be introduced early in the Congress -- have incorporated unfunded provisions.

Assessing Risk in Environmental Regulations

Environmental risk was a major congressional issue during the 103rd Congress, and there is every indication it will be high on the agenda for the 104th Congress. More than a dozen bills and amendments on environmental risk analysis were introduced in the 103rd Congress. One was enacted, but it applied to the Department of Agriculture, not EPA. Nine other bills were passed by one chamber or reported by the committees of jurisdiction. The risk assessment requirement proposals generally proceed from a supposition that regulatory measures are being pressed forward to treat or control risks too small to justify their expense and interference in the lives of citizens.

Risk Proposals in the 103rd Congress

Arguably, the most influential risk proposals in the 103rd Congress were offered by Senator Johnston. The two "Johnston amendments" would have required EPA to analyze risks, costs, and benefits for proposed and final regulations. The original "Johnston amendment" was the first risk legislation debated on the Senate floor, and it was adopted on April 29, 1993, by a vote of 95 to 3. The amendment was incorporated as section 123 in S. 171, a bill to raise the U.S. Environmental Protection Agency (EPA) to department (cabinet) status. A similar proposal that would have amended a House bill to elevate EPA to the cabinet (H.R. 3425) was unsuccessful, however. The rule for consideration of the reported bill was defeated on the House floor, reportedly in part because the rule would have prevented introduction of non-germane amendments, such as that on risk and cost-benefit analysis.

During the second session of the 103rd Congress, Senator Johnston addressed some of the key concerns of House Members when he introduced a revised version of his amendment. It was adopted by the Senate during the May 18, 1994 floor debate on Senate-passed S. 2019, a bill to amend and reauthorize the Safe Drinking Water Act.

In passing S. 2019, the Senate included a revised version of a bill originally introduced by Senator Moynihan (S. 110) that would have required EPA to rank pollution sources based on risk. The Senate also adopted House-passed H.R. 820, the National Competitiveness Act of 1993, after amending it to require all Federal agencies to prepare and publish an economic and employment impact statement for each rule and notice published in the *Federal Register*. The House passed H.R. 1994 reauthorizing EPA's environmental research program and establishing a core research program on risk reduction, and H.R. 3870 promoting research, development and deployment of environmental technologies and requiring the Office of Science and Technology Policy to establish a protocol for conducting and reporting the results of risk assessments in order to inform efforts to prioritize research projects. The House Committee on Science, Space and Technology reported H.R. 4306, amended, Oct. 7, 1994 (H.Rept. 103-857). It would have established a program in EPA to develop risk assessment guidelines, oversee their implementation, provide for scientific peer review, identify and conduct research on risk assessment methods, and develop risk characterization guidance and oversee its implementation. A pilot program on comparative risk analysis and an interagency coordinating process in OSTP also would have been established by H.R. 4306. For more detailed information on these and other proposals in the 103rd Congress, see CRS Report 94-716, *Comparison of Environmental Risk Provisions in the 103rd Congress.*

Risk in the 104th Congress

The House Republican Contract with America promises that within the first 100 days of the 104th Congress risk legislation will be introduced, debated, and voted upon in the House. Title III of the "Job Creation and Wage Enhancement Act of 1995" (JCWEA), one of the draft bills distributed with the

House Republican contract, appears to integrate several of the proposals that saw action in the 103rd Congress. For example, the JCWEA title III contains a slightly modified version of the original Johnston amendment, with coverage expanded beyond EPA to include all Federal agencies that promulgate regulations concerning human health and safety or the environment.

Some proposals that did not advance in the 103rd Congress may have more vigor in the 104th; for example, almost all the provisions of H.R. 2910, the Risk Communication Act of 1993, are found in the JCWEA title III. It would require Federal agencies to distinguish explicitly between scientific findings and other considerations in risk assessments, to consider negative as well as positive experimental data, and to explain underlying assumptions and models. It also specifies the contents of all public risk characterizations and requires each agency to establish guidance for risk assessment and risk characterization. A modified version of H.R. 3695, which also was contained in the Republican Budget Initiative for Fiscal Year 1995, appears in title VII of the draft JCWEA. It would codify most of President Reagan's Executive Order 12291, but would significantly expand the requirements for Regulatory Impact Analysis and would define a "major rule" as any proposed regulatory action that would affect more than 100 persons or for which any one person would be required to expend more than $1 million to comply.

For more information on these or other proposals in the 104th Congress, see the CRS Issue Brief *The Role of Risk Analysis and Risk Management in Environmental Protection* (IB 94036).

CLEANING UP TOXIC WASTE SITES UNDER SUPERFUND

During the 103rd Congress, proposals to reauthorize Superfund were reported; it is uncertain how the 104th Congress will approach Superfund reauthorization issues. Authority for Superfund taxation expires December 31, 1995.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, or the Superfund Act, P.L. 96-510) authorizes the Federal Government to clean up the Nation's worst hazardous waste dumps and to respond to hazardous substance spills. Congress renewed and strengthened the law with the Superfund Amendments and Reauthorization Act of 1986 (SARA, P.L. 99-499), which authorized a five-fold increase, to $8.5 billion over 5 years, in the amount available to the program. It also set strict cleanup standards, emphasized permanent solutions, and established a timetable for EPA to initiate cleanup at waste sites. The 101st Congress extended the program authorization for 3 years (through FY1994), and the taxes for 4 years (through December 31, 1995). Thus, authorization of appropriations for the program continues at its preexisting $1.7 billion annual level. The program continues in effect, but the taxing sunset provision requires the 104th Congress to take some kind of action to keep the program running without interruption.

Superfund Actions in the 103rd Congress

In the 103rd Congress, Superfund reauthorization bills were reported in both houses, but neither got to the floor. Based on the revised Administration proposal of May 2, 1994, H.R. 3800 and S. 1834[5] were alike in their major features. Superfund's liability scheme is very broad, encompassing the generators and transporters of hazardous waste, as well as the owners and operators of waste disposal facilities (past and present). The result has been a large amount of litigation. To help avoid that, the reported bills would have had an independent outside party allocate cost shares among the responsible parties, with incentives and disincentives employed to discourage law suits. *De minimis* parties, municipalities, and small businesses were eligible for early settlements that considered their ability to pay, and lenders were exempt from liability unless they caused or contributed to the contamination.

Also aimed at reducing transaction costs was the Environmental Insurance Resolution Fund (EIRF). This new fund was intended to eliminate litigation between polluters and their insurance companies over who should pay cleanup costs. However, there were sharp divisions within the insurance industry over which companies should pay the new taxes.

Another controversial area the bills addressed related to the cleanup process and remedy selection. The bills attempted to provide consistent and equivalent protection of health and the environment to all communities by establishing a single national goal for chemical contaminants (not a range as under current regulations), although site-specific factors including future land use could be considered when selecting the remedy.

Also under the proposal, States could take over many new activities on a site-by-site basis. To select remedial actions or to use the new allocation procedures, the State must have a demonstrated record of performing similar actions. However, the bills did not authorize the complete delegation of authority that some States want.

The bills would have given citizens a greater voice in remedy selection, and "Community Working Groups" could recommend future land use at sites. The situation of minority and low-income communities were taken into account in ranking sites for inclusion on the National Priorities List. Health-related authorities were broadened, although the Senate bill would have given the duties of the Agency for Toxic Substances and Disease Registry to another entity.

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5 H.R. 3800 was reported, amended, by the Energy and Commerce Committee on June 30, 1994, by the Public Works and Transportation Committee on August 8, 1994, and by the Committee on Ways and Means on August 26, 1994 (H.Repts. 103-582, Parts I, II, III). The first two reported versions were merged and introduced as H.R. 4916 on August 8, 1994. The Senate Committee on Environment and Public Works reported S. 1834, amended, on August 19, 1994 (S.Rept. 103-349), and the Senate Finance Committee reported it on September 30 (S. Rept. 103-389). No further action occurred.

The "brownfields" cleanup issue was also addressed, although it differed from S. 773, which was reported earlier by the Senate Environment and Public Works Committee. That bill, the Voluntary Environmental Cleanup and Economic Redevelopment Act, would have provided grants to States and localities for voluntary non-Superfund hazardous site cleanups, and provided cleanup loans to owners or prospective purchasers of eligible sites. No further action occurred on S.773.

Superfund in the 104th Congress

In the 104th Congress the retroactive liability issue is certain to be raised. Senator Robert Smith, reportedly the likely new chair of the Senate Superfund reauthorizing subcommittee, led the fight against retroactive liability in the Senate last year. He and other opponents say it is unfair to punish businesses for actions that were legal when carried out. They go on to say it would eliminate a great deal of the litigation. But if past polluters do not pay, additional taxes might be required, and many new Members of Congress are pledged against them. Some industry spokesmen say that eliminating retroactive liability will just change the litigation to a dispute over whether dumping occurred before or after 1980, when CERCLA was first passed.

The political outlook is anything but clear. The incoming Republican majority is expected to favor a bill with more flexible cleanup standards, and that is generally more pro-business. Environmentalists believe they will be able to resist any weakening of liability or cleanup standards by enlisting grass-roots support; about 25 percent of Americans live near a Superfund site. Industry groups are divided; many were prepared to live with the compromise bill that was reported last Congress. Others, including some major insurance companies and large corporations, think this is the time to completely rewrite CERCLA's liability provisions. Small businesses and municipalities facing protracted costly lawsuits are pressing for relief at the earliest possible time. Many States want more authority over cleanup sites within their borders, but without significant additional costs to them.

The law's taxing authority expires on December 31, 1995, but analysts say there is enough surplus in the fund to keep the program going through mid-1997. A simple extension is always possible, but would be unsatisfactory to virtually all parties. And while the Superfund program has become a target for some ridicule among the public, the public demand that something be done remains. At some point the Presidential politics of 1996 may become a factor, as well.

REAUTHORIZING THE CLEAN WATER ACT

In the 103rd Congress both houses considered comprehensive amendments to the Clean Water Act, which was last amended in 1987, with the Senate Committee on Environment and Public Works reporting legislation. In the

104th, legislation may be more narrow, focusing on funding and program flexibility, instead.

The Clean Water Act (CWA) is the principal law governing pollution in the Nation's streams, lakes, estuaries, and coastal waters. It consists of two major parts: regulatory provisions that impose progressively more stringent requirements on industries and cities to abate pollution and meet the statutory goal of zero discharge of pollutants; and provisions that authorize Federal financial assistance for municipal wastewater treatment construction. Both are supported by research activities, plus permit and penalty provisions for enforcement. Congressional efforts to amend the Act have dealt with all of these aspects, with the objective of strengthening water quality programs.

Senate and House committees considered reauthorization legislation during the 103rd Congress, but efforts to enact comprehensive amendments failed. In the Senate, S. 2093 was reported by the Environment and Public Works Committee in May 1994 (S. Rept. 103-257). Similar legislation, H.R. 3948, was introduced in the House in March 1994. Both bills included provisions on wastewater infrastructure funding, programs to manage nonpoint source pollution, standard setting and enforcement, and regulation of activities in wetlands areas. Controversies arose in connection with issues specific to the Act and a trio of regulatory relief issues (unfunded mandates, private property "takings," and risk assessment) that became barriers to a number of bills in the 103rd Congress. In September, sponsors of the bills abandoned efforts to seek a broad reauthorization of the Clean Water Act.

Legislative prospects in the 104th Congress are uncertain, in part because the issues and controversies which were unresolved in the 103rd Congress are likely to recur. Further, how Republican assumption of congressional leadership positions will affect consideration of the CWA is not fully known. Most observers believe it unlikely that the comprehensive proposals that were pending at the end of 1994, viewed by many as reflecting an environmentalist agenda, will be the basis for new legislation. Some expect Congress to pursue a smaller CWA agenda limited to funding and noncontroversial statutory modifications, while others believe that major amendments focusing on a more flexible, less prescriptive CWA could be enacted. It also is not yet clear whether the 104th Congress will consider regulatory relief issues (unfunded mandates and others) in legislation separate from the CWA, integral to it, or both.

Despite these legislative uncertainties, reauthorization of the CWA may, nonetheless, be a priority, since the Act was last amended in 1987 and authorizations for most programs expired on Sept. 30, 1990. One likely focus of congressional attention is programs concerning municipal wastewater treatment. The 1987 amendments created a program of Federal grants to capitalize State Water Pollution Control Revolving Funds, or State loan programs (SRFs). Authorizations expired at the end of FY 1994. Because estimates of remaining funding needs are large ($137 billion, according to EPA), policy makers have recently focused on extending SRF assistance to address those needs and modifying the SRF program to aid priority projects. Problems

of small towns and hardship communities are likely to receive special attention in the 104th Congress, as they did in the 103rd Congress.

The 1987 amendments required States to develop programs to manage nonpoint source pollution (runoff from farm and urban areas and construction sites, as well as forestry and mining activities), which is estimated to cause more than 50 percent of remaining water quality impairments in this country. The amendments also authorized $400 million in State grants to control such pollution. Review by the 103rd Congress focused on the adequacy of State activities to implement nonpoint pollution control programs, the need for additional funding, and the possible need for additional Federal guidance on managing runoff pollution. A key issue was the degree to which landowners should be required to install runoff controls or should be encouraged to do so through incentive programs, not mandates; possible legislation in the 104th Congress is likely to favor voluntary measures over mandates.

How best to protect the Nation's remaining wetlands and regulate activities taking place in wetlands has become one of the most contentious environmental policy issues, especially in the context of the CWA which contains a key wetlands regulatory tool, the permit program in section 404. A number of legislative proposals in recent Congresses addressed topics such as activities and areas subject to regulation, changes in the permit process, differential classification of wetlands, and enhanced role for States. These are likely to be reintroduced in the 104th Congress, along with others previously introduced which are viewed by some as more controversial (such as providing financial compensation to landowners if a wetlands permit it denied).

Several bills in the 103rd Congress contained provisions concerning two key sources of urban water pollution, overflows from combined stormwater and sanitary sewers (CSOs) and municipal separate stormwater discharges. The legislative proposals were intended to modify current law and provide regulatory relief in two program areas cited by municipalities in connection with unfunded Federal mandates. Attention to these issues is likely to be a priority in the 104th Congress. For more information, see CRS Report 94-825 ENR, *Clean Water Issues in the 104th Congress*, and CRS Issue Brief 93013, *Clean Water Act Reauthorization*, which will be updated regularly during the 104th Congress.

Environmental Protection and the Farm Bill

The 104th Congress will likely consider major legislation to reauthorize agricultural programs, the 1995 Farm Bill. There is continued national concern over the effect of agricultural practices and runoff on drinking water sources and surface water quality. The last two farm bills, in 1985 and 1990, expanded agriculture-related environmental provisions to encourage conservation, reduce erosion and runoff, and improve water quality. In the 104th Congress, these concerns continue and the extent to which environmental provisions will be incorporated in the Farm Bill remains to be seen.

ASSURING SAFE DRINKING WATER

Safe Drinking Water was high on the agenda of the 103rd and it is likely to be considered in the 104th Congress.

The Safe Drinking Water Act of 1974 (P.L. 93-523), substantially amended by P.L. 99-339 in 1986, provides for the protection of public drinking water supplies from harmful contaminants. The Act required the Environmental Protection Agency (EPA) to establish (1) national primary drinking water regulations that incorporate enforceable maximum contaminant levels or treatment techniques, (2) underground injection control regulations to protect underground sources of drinking water, and (3) groundwater protection grant programs for the administration of State wellhead protection area programs. The law permits each of these activities to be implemented by the States. Authorizations for appropriations expired in 1991.

The 1986 amendments sought to address several issues, including the view that EPA had been too slow in developing drinking water standards and that underground drinking water sources were not being adequately protected. A key provision in the amendments was the requirement that EPA promulgate final regulations for 83 drinking water contaminants by June 1989, and for 25 additional contaminants every 3 years thereafter. To date, EPA has promulgated regulations for 84 contaminants. While increasing protection of public health, several of these rules (e.g., surface water treatment, lead, and the pending radionuclides and disinfectant/disinfection byproduct rules) and general monitoring requirements will be costly for many communities.

Since 1986, a number of implementation issues have emerged. Key issues involve: 1) the standard-setting schedule (i.e., 25 new drinking water regulations every 3 years); 2) the standard-setting process and the extent to which the law permits EPA to consider costs when setting standards; 3) public water systems' ability to comply with the growing set of drinking water

regulations (especially small systems' compliance capacity); 4) the degree of flexibility allowed States and public water systems in meeting Federal requirements; 4) the Federal role in financing State and local drinking water mandates; 5) compliance with, and enforcement of, SDWA regulations; and 6) the Act's consideration of pollution prevention and source water protection.

Several reauthorization bills were introduced in the 103rd Congress to address issues such as funding, State and local flexibility, and the standard setting schedule and process. On May 19, 1994, the Senate passed a comprehensive bill, S. 2019, after adopting amendments on risk assessment, takings, elevating EPA to a department, and other matters. A popular House bill, H.R. 3392, proposed to give States considerably more authority and flexibility and to require EPA to consider risk reduction benefits and costs in setting standards. After being substantially amended in committee, a more restrained H.R. 3392 was passed by the House on September 27, 1994.

Although the House and Senate bills contained important differences (particularly the S. 2019 provisions on risk assessment/cost-benefit analysis (the "Johnston amendment"), private property takings, and EPA elevation), they also shared many similar elements. Both bills included provisions to: 1) authorize a State revolving loan fund (SRF) program to provide assistance to public water systems for projects needed to comply with Federal drinking water mandates; 2) eliminate the 1986 requirement that EPA regulate 25 more contaminants every 3 years, and instead direct EPA to select contaminants for regulation based on health risk and occurrence; 3) increase EPA's authority to consider costs when setting standards; 4) lengthen compliance timeframes; 5) reduce the regulatory burden on small systems; 6) promote consolidation and discourage formation of nonviable systems; 7) increase funding for State administration grants and technical assistance; 8) authorize State source water protection programs; and 9) streamline enforcement functions. S. 2019 also directed EPA to rank pollution sources based on risk and to assess environmental priorities and costs and benefits of regulations.

Two narrower bills (H.R. 1701, reported by the House Committee on Energy and Commerce, and H.R. 1865, reported by the House Committee on Public Works and Transportation) proposed only to authorize grants to States to capitalize drinking water SRFs. The 103rd Congress adjourned without completing action on any drinking water legislation.

In EPA's FY 1995 appropriation law, Congress included $700 million for grants to States to capitalize State drinking water SRFs, patterned after the sewage treatment SRF program under the Clean Water Act and consistent with the President's budget request. The funds would be used to provide assistance to public water systems for financing projects that facilitate compliance with SDWA regulations and would be made available to States provided Congress enacts legislation authorizing the new program. EPA's FY 1994 appropriations included $599 million for the SRF program, again contingent upon enactment of legislation; consequently, none of the appropriated funds have been made

available. In addition, Congress has twice directed EPA not to use funds (for FY 1994 and FY 1995) to issue a radon rule.

In the 103rd Congress, proposals to amend the Safe Drinking Water Act garnered broad bipartisan support, particularly as these proposals were seen to address concerns about unfunded Federal mandates and risk/cost-benefit balancing in rulemaking. However, a conference committee was not convened, and the session ended without key negotiators reaching agreement, particularly on the issue of risk assessment. Although it is uncertain what attention the 104th Congress might give drinking water issues, the ongoing concern about unfunded mandates and risk/cost-benefit analyses is likely to make this statute attractive for consideration.

MANAGING WASTE

Reauthorization of the Resource Conservation and Recovery Act (RCRA), the principal Federal law governing solid and hazardous waste management, was not on the agenda of the 103rd Congress, as the committees of jurisdiction focused on the Safe Drinking Water Act, Superfund, Clean Water Act, and other legislation. In the 104th Congress, RCRA-related issues similarly may not place high on the legislative agenda.

During the 103rd Congress, both Congress and the Administration did act on RCRA-related issues, however. In October 1993, the President issued an executive order directing Federal agencies to set goals for waste reduction and recycling and setting specific standards for recycled content in printing and writing paper purchased by the Government. Congress, on the other hand, acted to delay implementation of requirements to use rubber from scrap tires in Federal highway construction (P.L. 103-331), enacted legislation to clean up open dumps on Indian lands (P.L. 103-399), and considered legislation to allow cities and States to direct the flow of solid waste to designated facilities and to restrict interstate shipment of municipal solid waste.

In the 104th Congress, RCRA-related issues are expected to out of the limelight, although some of the broader regulatory reform initiatives that may be considered could affect implementation of future RCRA regulations. Two solid waste questions, interstate shipment and flow control of municipal solid waste, may be on the agenda, however.

Interstate shipment of solid waste has prompted congressional interest for a number of years. The decline in the number of landfills (from 20,000 in 1979 to fewer than 5,000 today) and the increased cost of disposal in some areas have helped to create a flourishing market in long-haul transportation of waste over the last decade. Waste shipments are generally considered to be protected under the interstate commerce clause of the Constitution: since 1978, the Supreme Court has affirmed this position four times, overturning State laws in New Jersey, Alabama, Michigan, and Oregon that would have restricted waste imports from other States. Nevertheless, such imports can pose problems for

receiving areas. As a result, many States have attempted to find constitutional ways of reducing or banning out-of-State waste, including moratoria on the construction of new landfills, fees on the disposal of out-of-State waste, and various planning and capacity-assurance requirements.

While constitutional considerations may invalidate many of these State restrictions, they do not prevent Congress from acting to regulate such commerce or from granting authority to States and local governments to do so. On Sept. 30, 1994, the Senate passed S. 2345, which would have allowed Governors, at the request of an affected local government, to prohibit imports of municipal solid waste to landfills and incinerators that had not received out-of-State waste in 1993. Governors could also have limited imports at facilities that *did* receive waste in 1993.

The House passed a somewhat different version, H.R. 4779, on Sept. 28, 1994. The House bill placed authority to restrict new shipments of out-of-State waste in the hands of local governments, with States allowed to freeze existing shipments at 1993 levels and gradually reduce shipments beginning in 1996.

Despite last-minute progress toward a compromise, no bill was enacted. Thus, the issue remains for consideration in the new Congress.

A related issue, the authority of State and local governments to require that waste be disposed of at a specific facility ("flow control") has also been the subject of court challenges. On May 16, 1994, the Supreme Court concluded that flow control, too, places an unconstitutional burden on interstate commerce, a decision that, local governments argue, places the financing of both existing and future solid waste management facilities in jeopardy.

Like restrictions on interstate waste shipment, flow control could be authorized by congressional action. H.R. 4683, which passed the House Sept. 29, 1994, would have done so, authorizing all flow control arrangements that pre-dated the Supreme Court decision and allowing new flow control arrangements in some cases for 5 years after the date of enactment. Despite broad support for some type of flow control authorization, the bill was not enacted. Thus, flow control, too, may be on the agenda of the 104th Congress.

The broader RCRA debate, which is unlikely to be considered in the 104th Congress, has involved other issues, including whether Federal measures are needed to stimulate waste reduction and recycling, whether to further regulate incinerators, whether to exempt municipal waste incinerator ash from the hazardous waste regulatory system, how to reduce the use of toxic substances in industrial processes and consumer products, whether to expand the universe of wastes covered by Federal regulation, and whether to strengthen controls on the international movement of waste. (For more specific information regarding RCRA, see CRS Issue Brief 93022, *Solid Waste: RCRA Reauthorization Issues.*

Federal Environmental Cleanup and Compliance

To clean up Federal sites, primarily under the Departments of Energy and Defense, and to comply with many Federal, State and local environmental requirements, Congress has been appropriating over $11 billion per year. Roughly one-half this amount is for DOE programs; one-half for DOD programs, but nearly every Federal agency now has an environmental compliance budget. Approximately one-half is for cleanup and one-half for complying with relatively new environmental requirements. The sheer size of the costs of these programs and their complexity make them prime environmental issues for the 104th Congress. There are early indications that the DOE cleanup program may be slowed to achieve budget savings.

IMPLEMENTING THE CLEAN AIR ACT

During the 103rd Congress, there was continued oversight of implementation of the 1990 Amendments, and some legislative activity on reformulated gasoline and Venezuelan gasoline; in the 104th, there is the possibility of Congress revising Clean Air Act provisions concerning vehicle inspection and maintenance, and trip reductions.

Comprehensive amendments to the Clean Air Act (CAA) were enacted November 15, 1990 (P.L. 101-549). The 1990 amendments required new programs and made major changes to the way that air pollution is controlled in the United States. The amendments require EPA to undertake many rulemaking activities during the first few years of implementation. The amendments also require State and local air quality agencies to help implement the CAA. They must develop or revise existing State Implementation Plans (SIPs) showing how the new programs will help achieve air quality goals. Many of the programs required by the 1990 CAA amendments were staggered so that they commenced at various times. Some of the requirements have yet to be fully implemented.

Since its passage in 1990, the main congressional role with respect to the CAA has been overseeing implementation of the Act by EPA and States. The Senate Committee on Environment and Public Works held its first CAA oversight hearing on September 23, 1993 (S. Hrg. 103-453). The House Committee on Energy and Commerce Subcommittee on Oversight and Investigations held its third annual CAA implementation hearing on October 29, 1993 (Serial No. 103-97). These hearings focused on reasons for the delays that are hampering implementation of the Act.

During the 103rd Congress, only two CAA issues were voted on by Congress. Both votes were related to the reformulated gasoline (RFG) program. The first vote involved an EPA rulemaking under the RFG program that would ultimately require that 30 percent of the oxygen content in RFG come from renewable sources, such as ethanol. The rulemaking was intended to increase ethanol's share of the RFG market relative to other oxygenates such as MTBE, a methanol-derived ether. After several hours of debate on August 3, 1994, the Senate did not pass an amendment that would have blocked implementation and enforcement of the renewable oxygenate standard (ROS). Since the vote, a Federal circuit court judge has granted a stay of the rule until a lawsuit challenging the ROS is decided. A legal decision is expected in the spring of 1995. The remainder of the RFG program will begin in January 1995, as scheduled.

The other CAA vote during the 103rd Congress dealt with a rule that would allow gasoline imports from Venezuela to be more competitive with U.S. fuels by allowing foreign refiners to set their own baselines for determining improvements in the cleanliness of gasoline. P.L. 103-327 contains a provision that prohibits EPA from using its funds during FY 1995 to establish a foreign refiner baseline. The action effectively excludes Venezuela and others from the RFG market in the U.S.

The 103rd Congress also saw some action on other CAA-related issues. P.L. 103-124 included a provision exempting Alaska from requirements to use MTBE as a fuel additive in CO nonattainment areas due to potential adverse health effects. P.L. 103-172, the Federal Employees Clean Air Incentives Act, encourages Federal employees to commute by means other than single-occupancy vehicles.

Other legislation introduced during the 103rd Congress that was not acted on includes dozens of bills that were intended to relax CAA standards, particularly in the areas of stratospheric ozone, acid rain, vehicle inspection and maintenance, and trip reduction programs. One bill in the 103rd Congress would have repealed the Clean Air Act Amendments of 1990, leaving only the 1977 law in place. Despite the introduction of such legislation, the 103rd Congress remained hesitant to reopen the act in any way.

It now seems unlikely that the 104th Congress will pursue major revisions to the CAA. However, with new Republican-controlled leadership, the possibility of selected CAA revisions increases. Areas that have generated the most opposition are the most likely targets of legislation, especially the vehicle inspection and maintenance program and the trip reduction program. Although EPA has recently announced more flexible approaches for State to meet the requirements of these programs, Congress may pursue legislative changes.

Some Members may also be interested in blocking implementation of the controversial clean air plan for California that was drafted by Federal EPA officials. They believe that the court-ordered Federal Implementation Plan (FIP) is too stringent and does not allow California to determine its own solutions to

its local air problems. Congressional action could prevent the FIP from being implemented.

Committees will continue to hold hearings on the implementation of the CAA during the 104th Congress. In addition, the two CAA issues that were voted on during the 103rd Congress remain unsettled. Although P.L. 103-327 prevents EPA from enforcing a foreign refiner baseline for RFG, the measure passed as part of an appropriations bill, and therefore lasts only one year. If no further action is taken during FY 1995, the foreign refiner baseline can be implemented beginning in FY 1996. Also, after the court decides whether the ROS rule can be implemented, Congress may consider legislative action.

PROTECTING INDOOR AIR QUALITY

The quality of air indoors and in particular the problem of radon gas attracted congressional attention in the 103rd Congress; it is unclear how involved the 104th Congress will be with this issue. Since there is no central Federal coordinator for indoor air research, House-passed H.R. 2919 and Senate-passed S. 656 sought to make EPA the lead agency for research, demonstration, and educational projects. S. 657, reported by the Senate Environment and Public Works Committee on Nov. 10, 1993 (S.Rept. 103-176), would have required EPA to designate geographic areas with high risks for radon exposure and radon testing of schools in those areas, to set standards for radon tests, and to require disclosure of radon hazards by sellers of homes. The bill also proposed to authorize loans and grants for radon control in schools. Other provisions addressed Federal housing and buildings, radon in the workplace, information for prospective home buyers, and training for radon control workers. The House-passed H.R. 2448 would have regulated radon detection products and services, identified areas with high levels of radon, and conducted educational programs. H.R. 881, reported Oct. 15, 1993, by the House Committee on Public Works and Transportation (H.Rept. 103-298), would have prohibited smoking in Federal buildings. One bill that was enacted was P.L. 103-123 (H.R. 2403), the FY1994 Treasury appropriations, authorizing EPA to end smoking in Federal buildings.

CONCERNS ABOUT LEAD

Although acute lead poisoning is a rare event today, chronic exposure to small amounts of lead also can be harmful, especially to the developing nervous system of a fetus or young child. In the 103rd Congress there were proposals to increase funding for abatement of lead-based paint in the Nation's housing stock and to reduce exposure to lead in consumer products. The Senate passed the Lead Exposure Reduction Act of 1993 (S. 729) on May 25, 1994. A similar proposal, H.R. 4882, was introduced in the House Aug. 1, 1994. It would have restricted certain uses of lead, required the EPA to maintain an inventory of lead uses, established a premanufacture notification program for new products, required recycling of lead acid batteries, established research programs and a

national center for the prevention of lead poisoning, and mandated training and certification of lead abatement workers. A bill reauthorizing research programs in EPA (H.R. 1994) passed the House Nov. 20, 1993. It would have established a program to conduct lead research at EPA and required the National Institute for Standards and Technology to establish standards for lead detection technologies.

ADDRESSING GLOBAL CLIMATE CHANGE

Scientific findings have grown stronger over the past several years that atmospheric concentrations of trace gases such as carbon dioxide, methane, nitrous oxides, and CFCs are rapidly increasing and may soon affect the Earth's heat balance. Such gases are heat absorbers and as such may cause global temperatures to increase at rates much faster than those naturally occurring in geologic cycles and to levels exceeding those of past cycles (the "greenhouse effect"). Proposals for policy response include increased diplomatic and scientific programs, along with limitations on emissions of greenhouse gases through greater emphasis on energy efficiency and switches to less carbon-intensive and renewable fuels.

The 101st Congress acted on the diplomatic and scientific dimensions, but did not agree to policy decisions on the other aspects. P.L. 102-486, enacted in the 102nd Congress, increases the emphasis on energy efficiency, renewable energy, and alternative fuels for motor vehicles; it sets up a process for developing a least-cost strategy for meeting emission reduction goals under international agreements on global warming and for developing a national inventory of and voluntary reporting system for emissions of greenhouse gases. Meanwhile the United States and other nations negotiated a framework convention within which future reductions of emissions of greenhouse gases can be agreed upon. The Convention was agreed to in June 1992 at the UN Conference on Environment and Development.

In the 103rd Congress, the major initiative relevant to global climate change was President Clinton's proposed Btu tax, which would have added a tax of 25.7 cents per million Btu to natural gas and coal and of 59.9 cents per million Btu to petroleum-derived fuels. The proposed tax was designed primarily as a source of increased revenue and would have stimulated improved energy efficiency, but by much less than proposals aimed at greenhouse gas emissions. The final proposal accepted by Congress, a $0.04 per gallon gasoline tax, is anticipated to have little if any impact on greenhouse emissions.

In September, 1994, the Clinton Administration released its "Climate Action Report" that will constitute the Nation's submission under the U.N. Framework Convention on Climate Change. Based on the Climate Change Plan released in 1993, the plan aims to reduce net U.S. emissions of all greenhouse gases to 1990 levels by 2000. It is anticipated that since the plan relies primarily on voluntary measures, and it is expected that there will be little need for implementation legislation. (See CRS Issue Brief 89005, *Global Climate Change*.)

REGULATING PESTICIDES

There was no major legislative activity related to pesticides programs in the 103rd Congress, and reauthorization legislation is not an initial priority for the 104th Congress.

The toxic nature of most pesticides has resulted in their being subject to intense scrutiny and regulation. Chemical pesticides provide substantial benefits to the public in terms of improved quantity, quality, and variety of foods as well as human disease prevention, but they also are suspected of causing health problems. EPA regulates the use of pesticides under authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The regulatory framework created by FIFRA includes: evaluating the risks of each pesticide during a process of registration and reregistration; classifying and approving pesticides for only specific uses to control exposure; restricting or canceling the use of pesticides that pose high risks; and enforcing regulations through labeling of products, recordkeeping and inspection of facilities, and applicator certification. In addition to regulating pesticide use, EPA sets allowable pesticide residue levels in food and animal feed (tolerances) under authority of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In spite of past regulatory efforts of EPA, and the food sampling and enforcement efforts of the Food and Drug Administration and the Department of Agriculture, policy issues continue to confront Congress. Behind these issues are concerns about program administration and a continuing uncertainty, and sometimes fear, about the risks to consumers and the environment created by pesticides. Congress, in the face of some scientific uncertainty and changing public values and perceptions, is placed in the position of determining the official balance of acceptable risk and safety that Federal pesticide regulators must observe. There is considerable focus on the Delaney clause and its prohibition on cancer-causing substances being added to processed goods; Delaney brought the issue to a head in Congress because it has the most protective health risk provision. Urgency on the part of agriculture and industry, environmental and consumer interests, and EPA to resolve several pesticide policy problems elevated proposed amendments to FIFRA and FFDCA onto the congressional agenda. On Apr. 26, 1994, the Clinton Administration presented its comprehensive pesticide proposal to Congress. The recommended changes to FIFRA were introduced in S. 2050/H.R. 4329, while the changes to FFDCA were introduced in S. 2084/H.R. 4362. With these measures, the Administration sought to strike a compromise between certain consumer and environmental groups who are very concerned about the health risks of pesticides, and farmers and food processing representatives who believe that they cannot produce food economically without the benefits of pesticides. Other introduced legislation included H.R. 1626 and H.R. 4091. See CRS Rept. 94-760, *Food Safety: Congressional Options for Revising the Pesticide Residue System*, Sept. 30, 1994.

A list of pesticide and/or FIFRA-related issues considered by the 103rd Congress includes: a shortage of funds to reregister pesticides; accelerated

cancellation of problem pesticides; uniform national pesticide residue tolerances; modification of the Delaney clause in the FFDCA dealing with carcinogenic residues to establish a negligible risk standard; adequate protection of children from pesticide residues in food; limitations on the export of certain pesticides; Federal preemption of local pesticide use regulations; and, registration of pesticides for minor uses. Congress enacted and the President signed legislation that postponed from Apr. 15, 1994, to Jan. 1, 1995, implementation of some farmworker protection standards related to pesticide safety (P.L. 103-231, Apr. 6, 1994). (See CRS Issue Briefs 93082, *Pesticide Policy Issues in the 103rd Congress,* and 90096, *Food Safety: Issues and Concerns in the 103rd Congress.*)

EPA ISSUES

Funding the EPA

Funding of EPA competes with many other national programs for increasingly limited Federal dollars. How EPA will address its many legislative mandates in the current budget climate has been a major congressional concern of the 103rd Congress and previous Congresses.

For the 104th Congress, proposed changes in the way Congress budgets and appropriates funds may affect EPA. There is continued concern over the deficit and mounting congressional efforts to adopt a balanced budget amendment - efforts which could ultimately affect EPA's future funding. As mentioned earlier and indicate in Table 1, there is special concern over most EPA programs, the authorizations of which have expired. Some proposed changes in congressional procedures have the potential to block funding for most EPA programs since their authorizations for appropriations have expired.

Directing Environmental Research and Development

Under current law, environmental research and development (R&D) conducted by EPA is to be annually authorized separately from the Agency's other authorities. However, authorization bills have been enacted only irregularly, the last for FY1981 (P.L. 96-569). Nevertheless, R&D funds have been appropriated every year. Three issues have dominated environmental R&D: (1) the adequacy of funding; (2) the quality of program management; and, (3) congressional specification of particular research initiatives, for example, research on indoor air pollution.

While EPA's statutorily mandated regulatory requirements have grown substantially over the past decade, its R&D budget has shrunk. Some have proposed that EPA's R&D program be expanded if its environmental protection strategy is to be refocused to anticipate pollution problems. A 1988 Science Advisory Board report to the Administrator recommended that the Agency's R&D budget double over the next 5 years, and that the research focus shift to pollution prevention, ecological systems, the greatest opportunities for risk reduction, and long-term research.

In the 103rd Congress, there were bills authorizing environmental R&D for specific topics ranging from ecosystem studies to lead abatement. One area receiving particular attention was environmental technology. The Senate passed S. 978 to create a National Environmental Technology Panel and an EPA environmental technology bureau on May 11, 1994. The House passed H.R. 3870, to promote research, development, and export of environmental technologies, on July 26, 1994. It would have required fundamental research programs in ecology, health, and risk reduction. The 104th Congress may revisit the issue of encouraging environmental technology exports.

Making EPA a Cabinet-Level Department

Currently, EPA is an independent agency; President Clinton, some Members of Congress, and most environmental groups favor elevating it to a Cabinet-level department. Proponents argue that by giving EPA Cabinet-level status, the head of EPA would have direct access to the President and participate in cabinet meetings. Others argue that EPA and environmental programs already have high public and Presidential visibility and support, and that the costs of converting EPA to Cabinet-level status, although small, would not be worth the change. Others oppose elevating EPA without significantly reorganizing the Agency, and possibly merging certain other Federal environmental programs as well, such as those in the National Oceanic and Atmospheric Administration.

On May 4, 1993, the Senate passed S. 171 establishing a Department of Environmental Protection (DEP), terminating the Council on Environmental Quality, and transferring those functions to the new department. Amendments adopted concerned an Assistant Secretary for Indian Lands, a Small Business Ombudsmen Office, enhanced State and local assistance/environmental compliance assistance to small governmental jurisdictions, risk assessment, cost-benefit assessments, permit coordination, an Office of Environmental Justice, and agricultural wetlands. During consideration of Senate-passed S. 2019 amending the Safe Drinking Water Act, the Senate accepted the passed version of S. 171 (excluding Section 123 on cost-benefit analysis, which was revised and adopted as a new Section 18 in S. 2019) as an amendment. On Nov. 10, 1993, the House Committee on Government Operations reported H.R. 3425, which would establish a Department of Environmental Protection. On Feb. 2, 1994, the House defeated the rule governing floor debate on H.R. 3425. The full House passed H.R. 3512, which would abolish the Council on Environmental Quality and establish a White House Office of National Environmental Policy Act Compliance. In a related action, the Senate Committee on Environment and Public Works approved S. 978, creating a National Environmental Technology Panel and an EPA environmental technology bureau. The House Committee on Merchant Marine and Fisheries approved H.R. 2112 to promote environmental technology. None of these bills was enacted, however.

For the 104th Congress, legislation to establish an environmental department is not on the opening agenda. Rather, the Administration and some Members are considering possible reorganization of the Executive Branch,

including abolishing some agencies. So far, EPA has not been named in proposed reorganization plans.

ENVIRONMENTAL JUSTICE

Several recent studies suggest racial and ethnic minorities and low-income groups are exposed to more pollution and may bear greater environmental health risks than whites. Urban air pollution, lead contamination, hazardous and solid waste management facilities, and abandoned waste sites are some of the environmental hazards believed to disproportionately affect minority and low-income communities.

At least 12 bills were introduced in the 103rd Congress to attempt to ensure equal environmental protection for all demographic groups. The most notable of these were amendments to the EPA Cabinet bill and the Superfund legislation. The former, an amendment to the Senate-passed S. 171 and S. 2019 and a provision in the House bill (H.R. 3425) to elevate EPA to a department would have required institution of an Office of Environmental Justice within the department. The latter, H.R. 3800, as amended by the House Committee on Public Works and Transportation, reauthorizing and amending CERCLA, would have required EPA to identify five facilities in each EPA Region in major urban areas or "other areas where environmental justice concerns may warrant special attention that should be or already are listed as hazardous waste sites by States and are likely to warrant inclusion on the National Priorities List for cleanup." The bill would have accorded a priority to these sites through the Hazard Ranking System and required their evaluation for listing within 2 years. Neither bill was enacted.

It is unclear how involved the 104th Congress will be in the area of environmental justice.