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Environmental Protection Issues in the 106th Congress

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CONTENTS

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SUMMARY

Reforming Superfund, defense cleanup-compliance, funding measures, beach assessment, air-related risk management plans, and research received congressional attention in the 106th Congress, first session.

Superfund. The House Transportation Committee and Infrastructure Committee approved H.R. 1300, and the House Committee on Commerce approved H.R. 2580, comprehensive Superfund amendments. An amendment to S. 4 reinstating the tax fell on a point of order in the Senate. A vetoed tax bill, H.R. 2488, would have combined the Superfund and Leaking Underground Storage Tank Fund. Measures enacted were a 1-year extension of the brownfields tax incentive (in the Tax Extenders bill, H.R. 1180, H.Rept. 106-478) and a provision relieving recyclers of CERCLA liability if they meet certain conditions (in the Omnibus Appropriations bill, H.R. 3194, H.Rept. 106-479).

Defense Cleanup. P.L. 106-65 (S.1059) includes FY2000 and FY2001 authorizations for the multi-billion defense effort to remediate contamination and meet current environmental regulations. Congress also enacted the three appropriations bills funding DOD's environmental programs in FY2000.

Solid/Hazardous Wastes. Solid waste issues that may be reviewed by the 106th Congress include interstate shipment, "flow control," and the management of wastes from remedial actions at hazardous waste cleanup sites. International waste trade is also a concern.

Clean Water Act. Key issues associated with reauthorizing the Clean Water Act include funding wastewater capital needs, regulatory reform within the Act, wetlands regulation, animal wastes, and management of nonpoint source pollution. On April 22, 1999, the House passed H.R. 999, the Beaches Environmental Assessment, Cleanup, and Health Act.

Clean Air. The gasoline additive MTBE, regulation of sulphur, automobile inspection and maintenance, and ozone transport, are some current air quality issues Congress may consider. The President signed P.L. 106-40 (S. 880) to modify risk management plans. On August 4, the Senate adopted an amendment to an appropriations bill (S. 1233) expressing the sense of the Senate that use of MTBE in gasoline should be phased out.

Global Climate Change. On November 11, 1998, the United States signed the U.N. (Kyoto) Protocol on Climate Change to reduce greenhouse gases; congressional interest in the many facets of this treaty is expected to remain high.

Toxics Release Inventory. Another issue involves expanding EPA reporting requirements to include new industries and chemicals.

Overseeing New Requirements. Congress continues to oversee implementation of recent provisions on drinking water, pesticides, and transportation-environmental programs.

Research. On May 26, 1999, the House Science Committee approved H.R. 1742 authorizing EPA R&D programs and H.R. 1743 authorizing EPA's Office of Air and Radiation.

EPA Budget. P.L. 106-74 included $7.6 billion, roughly $400 million more than requested, adding on more funds for wastewater construction needs.

The 106th Congress, first session acted on several environmental bills. The House Committee on Transportation and Infrastructure reported H.R. 1300 (H.Rept. 106-353, Part I), a comprehensive Superfund reauthorization bill on August 5, 1999. The House Commerce Committee approved another Superfund bill, H.R. 2580, on October 13, 1999. On February 24, 1999, S.Amdt. 29 to S. 4, proposing reinstatement of the Superfund tax, fell on a point of order during Senate consideration. The vetoed tax cut bill, H.R. 2488, would have combined the Superfund Trust Fund with the Leaking Underground Storage Tank (LUST) Trust Fund, using the combined resources to carry out both programs. Measures enacted were a 1-year extension of the brownfields tax incentive (in the Tax Extenders bill, H.R. 1180, H.Rept. 106-478) and a provision relieving recyclers of CERCLA liability if they meet certain conditions (in the Omnibus Appropriations bill, H.R. 3194, H.Rept. 106-479). P.L. 106-65 (S. 1059), the National Defense Authorization Act for FY2000, includes defense environmental cleanup and compliance provisions. On April 22, 1999, the House passed H.R. 999, the Beaches Environmental Assessment, Cleanup, and Health Act. On May 26, 1999, the House Science Committee ordered two bills to be reported: H.R. 1742 authorizing EPA's research and development programs and H.R. 1743 authorizing programs of the Office of Air and Radiation. The President has signed P.L. 106-40 (S. 880) which modifies Clean Air Act mandated risk management plans. On February 10, 1999, the House defeated an amendment, H.Amdt. 4. to H.R. 350 that would have established a point of order against any bill that would eliminate or weaken provisions protecting the public health, safety or environment. On August 4, the Senate adopted by voice vote Senator Boxer's amendment to the FY2000 Agriculture appropriations bill (S. 1233) expressing the sense of the Senate that use of MTBE should be phased out. P.L. 106-74 includes EPA's FY2000 funding of $7.6 billion.

BACKGROUND AND ANALYSIS

The 106th Congress has acted on several environmental protection bills. It may continue to be concerned with the costs of environmental regulation and cleanup and with making environmental programs more efficient through regulatory reform measures. Whether Congress decides to pursue comprehensive regulatory reform legislation or to draft specific environmental statutes remains to be seen. (For more on risk reform legislation, see CRS Issue Brief 94036, *The Role of Risk Analysis and Risk Management in Environmental Protection.* For more on regulatory reform legislation, see CRS Issue Brief 95035, *Federal Regulatory Reform: An Overview*.)

Many conclude that continued dissatisfaction with the nation's hazardous waste cleanup law, or Superfund, especially its liability provisions, remedy selection and natural resource damage assessment make it a logical issue for the 106th Congress as it was in the 105th Congress. Unresolved solid waste management issues under the Solid Waste Disposal Act involve remediation waste, the interstate shipment of wastes and flow control as well as the status of underground storage tanks. As it has done in recent years, Congress may again return to the many programs aimed at cleaning up defense-related waste and federal agency compliance with environmental laws.

Water quality issues may also garner congressional attention. Among them are major wastewater infrastructure funding needs, nonpoint source programs, and wetlands issues. The authorization authority for the Clean Air Act expired September 30, 1998, and among the continuing issues are the use of the gasoline additive MTBE, sulphur in gasoline, auto emissions and inspections, and emissions controls. Oversight of new air quality related provisions of the Transportation Equity Act (TEA 21) is likely. The 106th Congress may continue to oversee implementation of the drinking water and pesticides programs also. How the Environmental Protection Agency (EPA) collects data from industry and manages it is another continuing issue.

The Administration and Congress have been examining various alternative approaches to the traditional foundations of the nation's environmental protection policy. The 106th Congress may continue to review ways to incorporate alternative compliance and enforcement strategies, environmental audits, voluntary programs and corporate environmental management into the fabric of traditional environmental protection policy.

Reauthorizing Superfund (by Mark Reisch)

In the first session of the 106th Congress, two Superfund provisions were enacted, and two bills to reauthorize the Superfund program were reported, amended, to the House. Formally known as the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, the Superfund Act is the principal federal law for cleaning up spills and other discharges of hazardous substances. The

Regarding reauthorization of CERCLA, the Transportation and Infrastructure Committee reported H.R. 1300, (H.Rept. 106-353, Part I) on September 30, 1999, and the Commerce Committee ordered H.R. 2580 reported on October 13. The two committees are "mini-conferencing" to produce a single bill to go to the Ways and Means Committee for consideration of renewing the Superfund taxes. H.R. 1300 contains a "sense of the committee" provision recommending reinstatement of the taxes to a level sufficient to fund the bill's authorization; H.R. 2580 is silent on taxes. Ways and Means Chairman Bill Archer opposes reinstating the taxes, but has proposed earmarking a portion of existing corporate taxes for the Superfund program instead. House Speaker Dennis Hastert had wanted to bring a Superfund reform bill to the floor before the end of first session. There is no indication yet whether that high priority will continue when the second session convenes.

Both House bills would authorize grant programs for brownfield assessments and remediation, but would preserve EPA's authority to respond to a hazardous substance release to prevent or address an emergency. Both bills would make more information available to local communities about Superfund sites, and H.R. 1300 would enhance citizen participation in decision-making. They have the same provisions to improve public health authorities. The bills have different liability provisions, but both would provide relief to small businesses, recyclers, municipalities, and innocent landowners; and funding to pay for the liability exemptions and for orphan shares would also be provided for. The bills also differ on remedy selection. H.R. 1300 authorizes the program for 8 years — at a level of $1.5 billion for the first 4 years, then gradually declining to $975 million in FY2007. H.R. 2580 authorizes the

program for 5 years — at $1.5 billion for the first 3 years, then declining to $1.35 billion in FY2004.

In the Senate, the Environment and Public Works Committee agreed on August 4 to end further consideration of S. 1090 after extensive negotiations did not produce a bipartisan compromise. Senators Chafee and Smith then introduced S. 1537 on August 5, 1999. Based on S. 1090, it also contains provisions on cleanup remedies and natural resource damages. Senator Baucus has introduced a broad Superfund reauthorization bill as well, S. 1105. It shares many of the features of S. 1090, but more closely reflects EPA's viewpoint. It reinstates the taxes and places no limits on the National Priorities List. The new chairman of the committee, Senator Bob Smith, has not announced plans for the 2nd Session.

Renewing Superfund's taxes, which expired in 1995, is both a key issue and a practical concern as the trust fund balance diminishes, and the President's FY2000 budget request asked for a renewal of the taxes. The Superfund trust fund's available balance at the end of FY1998 was $2.1 billion. Preliminary analysis by the Congressional Budget Office indicates that it will be sufficient (with interest, cost recoveries, etc.) to fund the program at present levels well into FY2001, but funding beyond then is uncertain. Congress, if it chose, could fund the program entirely through general revenues, but critics contend this type of funding would violate the "polluter pays principle" and result in cleanups being paid for by taxpayers, rather than by those responsible.

The brownfields program, which was created administratively by EPA to address less seriously contaminated sites, is addressed in 19 bills in the 106th Congress. The House Commerce Subcommittee on Finance and Hazardous Materials held a hearing on brownfields on August 4, 1999. In the last Congress, the Taxpayer Relief Act of 1997 (H.R. 2014/P.L. 105-34, August 5, 1997) provided a $417 million tax break for cleaning up designated brownfields and certain other distressed areas. This law permits cleanup costs to be deducted from current income rather than capitalized over a period of years. The tax break, scheduled to end on December 31, 2000, was extended to the end of 2001 by H.R. 1180, as noted above.

The Superfund appropriation for FY2000 is $1.4 billion (H.R. 2684, H.Rept. 106-379); EPA had requested $1.5 billion, the level at which it was funded for the last 2 years. Half of the appropriation comes from the Superfund Trust Fund, and half from general revenues. The bill provides that $100 million will not become available for obligation until September 1, 2000. The full request for the brownfields program was provided: $91.7 million, the same as in FY1999. No restrictions were placed on the Brownfields Revolving Loan Fund program. The report also directs EPA to contract with Resources for the Future to perform an independent analysis of anticipated costs of administering CERCLA activities at Superfund sites for the next 10 years. (For further discussion, see CRS Issue Brief IB10011, *Superfund Reauthorization Issues in the 106th Congress*.)

Defense Cleanup and Environmental Programs (by David Bearden)

While the Environmental Protection Agency is the primary federal agency responsible for the control of pollution and the cleanup of civilian environmental contamination, the Department of Defense (DOD) is responsible for remediating contamination and controlling pollution at military facilities. Although Congress authorizes most federal programs for multiple years, it annually authorizes programs for national defense as well as appropriating funding for them each fiscal year. Of the activities traditionally authorized and funded, DOD administers the following six environmental programs: environmental restoration at currently operational and formerly used military facilities, environmental cleanup at military bases designated for closure, environmental compliance, pollution prevention, environmental technology, and natural resource conservation. In addition to these programs, the Department of Energy (DOE) is responsible for managing defense nuclear waste generated from the past production of atomic materials used to construct nuclear weapons and for remediating contaminated sites. The first session of the 106th Congress completed consideration of legislation to authorize and appropriate funding for these activities in FY2000, and the President has signed each bill into law.

The President signed the National Defense Authorization Act for FY2000 (S. 1059) into law (P.L. 106-65) on October 5, 1999. It authorizes $1.30 billion for environmental restoration at currently operational and formerly used military facilities and authorizes another $5.72 billion for DOE's management of defense nuclear waste and remediation of contaminated sites. As in past years, it does not specify the total amounts authorized for compliance, pollution prevention, environmental technology, conservation, and cleanup at base closure sites. Rather, these programs receive the majority of their funding under larger accounts for operation and maintenance and base realignment and closure respectively. The law also includes numerous provisions related to DOD and DOE's defense cleanup and environmental activities.

Consideration of all three bills that appropriate funding for defense cleanup and environmental programs in FY2000 is also complete. First, the President signed H.R. 2465 into law (P.L. 106-52) on August 17, 1999. P.L. 106-52 appropriates funding for military construction and reserves $346.4 million for cleanup at base closure sites, about $13.7 million less than the Administration's request of $360.1 million. Second, the President signed H.R. 2605 into law (P.L. 106-60) on September 30, 1999. P.L. 106-60 appropriates funding for energy and water development and allocates a total of $5.74 billion for DOE's management of defense nuclear waste and remediation of contaminated sites, about $60 million less than the Administration's request of nearly $5.80 billion. Third, the President signed H.R. 2561 into law (P.L. 106-79) on October 25, 1999. P.L. 106-79 appropriates funding for DOD and reserves $1.30 billion for environmental restoration at currently operational and formerly used military facilities, roughly $40 million more than the requested level of $1.26 billion.

Other legislation under consideration in the 106th Congress also could affect environmental cleanup at military facilities. H.R. 1300 and H.R. 2580, as reported, and S. 1537, as introduced, would amend the remedy selection process at Superfund sites, which could lower DOD's cleanup costs. As introduced, H.R. 617 would clarify requirements for federal compliance with all hazardous waste cleanup laws. Another bill, S. 258, as

introduced, would authorize new rounds of base closings in 2001 and 2003. The amount of funding that would be necessary to accelerate cleanup at additional base closure sites would depend on the type and extent of contamination present at such facilities. Accelerated cleanup costs could be high if the bases selected for closure contain sites that are on the National Priorities List under the Superfund program.

(CRS Report RL30111, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2000*, provides background information on DOD and DOE's defense cleanup and environmental programs and discusses each of the bills mentioned above.)

Solid Waste and Underground Storage Tanks (by James McCarthy)

The 106th Congress inherited three solid waste issues from the 105th and earlier Congresses: interstate shipment of waste, the management of what are called "remediation wastes" from old hazardous waste sites, and implementation of the Basel Convention on Transboundary Movement of Waste. The 105th Congress adjourned without passing bills on these issues, although each was the subject of discussion.

The first set of issues, whether state and local governments should be given authority to restrict the growing volume of out-of-state solid waste (the "interstate waste" issue) has been on the congressional agenda for many years. A related issue, whether state or local jurisdictions may designate where locally generated waste must be disposed ("flow control") has more recently joined it. The Constitution's interstate commerce clause generally prohibits both actions absent congressional authorization. Since the 101st Congress, both the House and Senate have passed legislation providing some such authority, but lack of agreement on specific provisions has prevented enactment. Continued growth in interstate waste shipments, the financial troubles faced by local governments in the absence of flow control, and the impending closure of New York City's Fresh Kills landfill (which handles more than 3 million tons of waste per year) have combined to spur congressional interest this year. As of late October, seven bills had been submitted to allow states and local governments authority to restrict interstate shipments of municipal solid waste. The Senate Environment and Public Works Committee held a hearing on the subject June 17.

A second solid waste issue that may receive attention is a proposal to exempt from hazardous waste management requirements certain low-risk wastes generated by remediation of old waste sites. Doing so would reduce the cost and increase the speed of site cleanups, without necessarily endangering the environment. There has been general support for such legislation from industry, environmental groups, states, the Administration, and several key Senators, but reaching agreement on the specifics of draft legislation has proven difficult. In the meantime, EPA has taken steps to lessen some of the most onerous regulatory requirements, reducing the need for legislation.

A third issue that may arise in the 106th Congress concerns implementation of the Basel Convention on Transboundary Movement of Waste. More than 120 countries have ratified this convention, which is intended to protect countries from receiving unwanted shipments

of waste. The United States played a major role in the negotiation of the convention a decade ago, but has not passed legislation to implement it. Both the Administration and the committees of jurisdiction have expressed interest in moving such legislation in the 106th Congress, but a number of issues are likely to arise once legislation is drafted. (For additional information on solid waste issues, see IB10002, *Solid Waste Issues in the 106th Congress*.)

Basel Convention on Transboundary Waste (by Mary Tiemann)

The 1989 *Basel Convention on the Control of the Transboundary Movement of Hazardous Wastes and Their Disposal* is intended to ensure that waste trade occurs in an environmentally sound manner. It entered into force in 1992, and has been ratified by more than 120 countries. The United States played a key role in developing the treaty and signed it in 1990, but has not ratified it. In 1992, the Senate consented to ratification, but needed implementing legislation has not been enacted.

The Basel Convention obliges parties not to engage in hazardous waste trade with non-parties unless a compatible bilateral or regional agreement is in place. The United States shares such an agreement with Organization for Economic Cooperation and Development (OECD) countries and separate agreements with Canada and Mexico (traditionally our main waste trading partners), and that trade continues. The State Department has sought ratification, noting that failure to ratify Basel weakens the U.S. bargaining position in ongoing Basel and other environmental negotiations. (Basel parties currently are drafting a liability protocol to the treaty.)

Several issues slowed U.S. action on this treaty. An early issue was that Basel parties had not decided which recyclable wastes would be covered by the Convention and which would be exempt. Then, in 1995, the parties adopted an amendment to ban the export of hazardous wastes (even for recycling purposes) from OECD countries to all other countries. The pending ban (which must be ratified by 63 countries to become effective), combined with uncertainty about which recyclable wastes would be covered by it, eroded U.S. interest in the treaty. In early 1998, the Basel parties resolved the issue of which recyclable wastes are under the Convention, and the 105th Congress expressed new interest in Basel but waited to hear the Administration's position on the matter. The Administration said it would provide legislative principles in the first session of the 106th Congress, and the Senate Environment and Public Works and House Commerce Committees have expressed interested in taking up Basel legislation. EPA drafted legislation for inter-agency comment, but the Administration had not offered a proposal as of the end of October. A key issue is whether Congress should consider the original Convention or also ratify and implement the ban amendment. In 1994, the Administration submitted Basel principles to Congress that were more restrictive than the ban amendment, essentially banning all exports of covered wastes for treatment, disposal and recycling to all countries except Canada and Mexico. (For more information, see CRS Report 98-638, *Waste Trade and the Basel Convention: Background and Update*.)

Reauthorizing the Clean Water Act (by Claudia Copeland)

Prospects for reauthorization of the Clean Water Act (CWA) in the 106th Congress remain uncertain, as they have been for several years. The Act was last amended in 1987, and authorizations expired on September 30, 1990. No major Clean Water Act reauthorization legislation was introduced in the 105th Congress, and no major House or Senate committee activity occurred. Congressional committees with jurisdiction over the Act gave priority attention to other environmental issues. No committee activity on water quality issues has been scheduled yet in the 106th Congress.

Originally enacted in 1948 and significantly revised in 1972 (P.L. 92-500), the Clean Water Act is the principal law governing pollution in the nation's lakes, rivers, and coastal waters and authorizing funds to aid construction of municipal wastewater treatment plants. Since 1972, implementation of the law and application of pollution control technology by industries and cities have led to significant water quality improvements: about 60% of waters surveyed by states are clean enough to support basic uses such as fishing and swimming. However, these same survey data indicate that about 40% of surface waters fail to meet standards. Nevertheless, the CWA has been viewed as one of the nation's most successful environmental laws in terms of achieving the statutory goals, which have been widely supported by interest groups and the public, but lately has been criticized over whether further benefits are worth the costs.

Legislative prospects for reauthorizing the CWA have recently been at an impasse over whether and exactly how to change the law. Issues that might be addressed during reauthorization are not, for the most part, easily amenable to straight-forward, consensus solutions. Many involve making difficult tradeoffs between impacts on different sectors of the economy, taking action when there is technical or scientific uncertainty, and allocating governmental responsibilities for implementing the law.

If clean water issues receive attention in the 106th Congress, topics that are likely to be of interest include managing animal wastes to minimize water quality and public health impacts, implementation of programs in current law to restore impaired waters, measures to address polluted runoff from farms and city streets, and funding. Impacts of the Act's wetlands permit program, a pivotal and contentious issue in the recent past, also remain on the legislative agenda for many.

On April 22, 1999, the House passed H.R. 999, the Beaches Environmental Assessment, Cleanup, and Health Act of 1999. It amends the Federal Water Pollution Control Act to require states having recreational waters to adopt water quality criteria and standards for pathogens.

(For further information, see CRS Report 98-946, *Clean Water Issues in the 106th Congress*, and CRS Issue Brief IB10001, Clean Water Act Reauthorization.)

Clean Air Act (by James McCarthy)

On August 5, the President signed S. 880 (P.L. 106-40), a bill to modify the risk management planning requirements of Section 112(r) of the Clean Air Act. Final passage of the bill occurred in the House July 21; the Senate acceded to the House version August 2. Under Section 112(r), operators of facilities that produce, process, handle, or store any of 77 acutely toxic substances or 63 flammable gases were required to prepare risk management plans. The plans had to be submitted to EPA by June 21, 1999, and the Act requires that they be made available to the public. Responding to concerns that propane users were subject to excessive regulation and that posting of data on the Internet might provide information to terrorists, the legislation exempts flammable fuels such as propane that are not acutely toxic from the risk management planning requirement and modifies the deadline for EPA to release information to the public regarding the potential off-site consequences of chemical accidents.

Since mid-April, there have been several important developments related to implementation of the Clean Air Act. Potentially the most significant was the May 14 decision of the U.S. Court of Appeals for the D.C. Circuit, which overturned EPA's 1997 promulgation of new air quality standards for ozone and particulate matter. If upheld on appeal, the decision could have effects on a broad range of air pollution and other environmental regulations. On May 25, the same court placed an indefinite stay on EPA's ozone transport rule, which would have required 22 states to submit State Implementation Plans limiting emissions of nitrogen oxides September 30.

Other developments have strengthened air quality regulations. On May 1, President Clinton announced that EPA would impose strict new standards on emissions from cars and light trucks, using the authority in Section 202(i) of the Clean Air Act. If promulgated as proposed, these "Tier 2" standards would be phased in between 2004 and 2007 for cars and some trucks, with the heaviest vehicles being given until 2009 to fully comply. Included in the proposal are standards to reduce the average sulfur content of gasoline by more than 90%. The Senate Environment Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety held hearings on the sulfur standard, May 18 and 20 and July 29; the House Science Subcommittee on Energy and Environment did so July 21.

The Tier 2 standards were the second major Clean Air Act regulation announced in two weeks. On April 22, Vice President Gore announced a final rule regarding the regional haze program. Under the rule (which appeared in the July 1 Federal Register), states must develop plans to improve visibility in national parks and wilderness areas. States will have until 2064 to return visibility to pristine levels.

Pressure continues to mount for Congress and EPA to address issues raised by use of the oxygenate MTBE in gasoline. Refiners use MTBE to meet Clean Air Act requirements that reformulated gasoline, sold in most ozone nonattainment areas, contain oxygenates. While improving air quality, MTBE has contaminated ground and surface waters in numerous states. On July 27, a panel appointed by the EPA Administrator completed an eight-month study and recommended that Congress remove the oxygenate requirement. Action has also occurred in California, which uses 30% of the reformulated gasoline sold nationwide. On March 26, California's Governor Davis issued an executive order directing state agencies to develop a timetable for banning use of MTBE in the state by December 2002. He also requested a waiver of the federal requirement to use oxygenates in reformulated gasoline sold

in the state. The House Commerce Subcommittee on Health and Environment held a hearing on these issues May 6 and approved H.R. 11, a bill to exempt California from the oxygenate requirements, September 30. The Senate Environment Committee held a hearing on the same issue October 5, but, as of the end of October, had not taken further action. On August 4, the Senate adopted by voice vote Senator Boxer's amendment to the FY 2000 Agriculture appropriations bill (S. 1233) expressing the sense of the Senate that use of MTBE should be phased out.

Congress last enacted major amendments to the Clean Air Act in 1990, and EPA is in the midst of implementing numerous provisions of those amendments. In addition to those mentioned above, current efforts include preparation for Phase 2 of the acid precipitation program, implementation of controls on sources of 188 air toxics, approval of state implementation plans for the ozone air quality standards, and consideration of new controls on emissions of mercury by electric utilities. EPA actions to implement Clean Air Act programs will provide numerous opportunities for oversight in the 106th Congress. A Senate Environment subcommittee began hearings regarding future reauthorization of the Clean Air Act October 14. (For additional information, see CRS Issue Brief IB10004, *Clean Air Act Issues in the 106th Congress*.)

Global Climate Change (by Martin Lee)

Congress' interest in the many dimensions of global climate change will probably be high during the 106th Congress, particularly since a final international agreement has been negotiated. The United States signed the U.N. (Kyoto) Protocol on Climate Change, which would limit greenhouse gas emissions, on November 11, 1998. It is unclear when the Administration will forward the agreement to the Senate for its advice and consent.

There are numerous associated policy issues as well as scientific controversies about the time, rate, magnitude and regional consequences of potential climate change. Among the policy questions are the appropriate international and national policy responses, and the effects of a reduction of greenhouse gases on taxes, jobs, energy costs and other aspects of the economy. (Several CRS products address these various aspects of the debate. A CRS electronic briefing book on global climate change is available at: [http://www.congress.gov/brbk/html/ebgcctop.html]. CRS Issue Brief 89005, *Global Climate Change*, discusses the scientific background of the greenhouse effect as well as the international context of the issue. CRS Issue Brief 97057, *Global Climate Change: Market-Based Strategies to Reduce Greenhouse Gases*, focuses on national programs to reduce contributing emissions, particularly tradeable permits and carbon taxes. For the energy conservation aspects of global climate change, see CRS Issue Brief IB10020, *Energy Efficiency: Budget, Climate Change, and Electricity Restructuring* and CRS Issue Brief IB10041, *Renewable Energy: Tax Credit, Budget, and Electricity Restructuring*.)

Toxic Release Inventory Expansion (by Linda Schierow)

The 106th Congress may consider amending the Emergency Planning and Community Right to Know Act (EPCRA) to clarify EPA authority to expand reporting requirements to

include new industries, new chemicals, or information about how chemicals are used. Congress enacted EPCRA in 1986 as Title III of the Superfund Amendments and Reauthorization Act, P.L. 99-499 . EPCRA, Section 313, directed EPA to establish a national inventory of toxic releases to the environment by manufacturing facilities. The Toxics Release Inventory (TRI) is EPA's computerized compilation of the submitted data. Its purpose is to make information available to the public about chemicals released in their communities.

EPA has expanded and plans to further expand chemical reporting requirements under the authority of EPCRA Section 313. On November 30, 1994, EPA added 286 chemicals to the TRI list for which releases must be reported (59 *Federal Register* 61432-61485). EPA added reporting requirements for seven industries April 22, 1997. On May 7, 1997, EPA proposed adding dioxin and 27 dioxin-like compounds to the list of chemicals subject to reporting requirements (62 *Federal Register* 24887). The most recent proposals would increase reporting requirements by reducing the threshold for releases of some chemicals that must be reported (64 *Federal Register* 687-729, Jan. 5, 1999; 64 *Federal Register* 42221-42243, Aug. 3, 1999). This would ensure that reports were filed with EPA on lead compounds, dioxin, and mercury emissions, for example.

Currently, EPCRA requires facilities to report the amount of each covered chemical released into the environment or transferred offsite for treatment or disposal. In 1990, Congress enacted the Pollution Prevention Act (P.L. 101-508, title IV) requiring manufacturers and processors of toxic substances to include in their TRI annual reports additional information about source reduction and recycling. On October 1, 1996, EPA announced that it was considering whether to expand TRI information collection to include chemical use data, including "amounts of a toxic chemical coming into a facility, amounts transformed into products and wastes, and the resulting amounts leaving the facility site" (61 *Federal Register* 51321). However, due to "competing priorities," EPA has placed this project on hold and plans no activities for 1999, according to the April 1999 Regulatory Agenda (64 *Federal Register* 22013). Some chemical use data (for example, on worker exposure) may be collected under the Toxic Substances Control Act (TSCA).

In the 106th Congress, S. 1112 and H. R. 1657 would require industries to report emissions of chemicals that "may present a significant risk to children's health or the environment" due to their potential to bioaccumulate, disrupt endocrine systems, remain in the environment, or degrade into persistent or bioaccumulative and toxic (PBT) substances. It would require EPA to set threshold amounts of the chemicals to ensure reporting for at least 80% of all industrial releases of each. H.R. 1463 and S. 775 would expand TRI reporting to commercial and military airports. (For more information about the TRI and proposed legislation, see CRS Report 97-970 ENR, *Toxics Release Inventory: Do Communities Have a Right to Know More?*

Overseeing Implementation of New Requirements

Safe Drinking Water Act (by Mary Tiemann)

Congress extensively revised the Safe Drinking Water Act (SDWA) with the SDWA Amendments of 1996 (P.L. 104-182). These amendments established new programs, added new funding for federal drinking water mandates, and imposed a range of new requirements on states, EPA, and public water systems. Deadlines for several new requirements occur during the term of the 106th Congress, and EPA, states and communities will be required to implement new SDWA programs and regulations. The 106th Congress has resumed oversight of implementation progress and funding requests for the new provisions. In March 1999, the Senate Environment and Public Works Committee, Subcommittee on Fisheries, Wildlife, and Drinking Water, held an oversight hearing on SDWA implementation. In October, the House Commerce Committee, Subcommittee on Health and Environment, held a hearing focused on drinking water research resources and issues.

The SDWA (42 U.S.C. 300f-300j) is the key federal law for regulating contaminants in public water supplies. First enacted in 1974, the Act, as amended, is administered through regulatory programs that establish standards and treatment techniques for public water systems and that control the underground injection of wastes to protect groundwater. More recent provisions include programs that provide financial assistance to communities for water treatment projects, promote protection of source waters, and help public water systems improve their compliance capacity. The law authorizes states to administer and enforce SDWA programs.

The first major amendments, enacted in 1986 (P.L. 99-339), sought to increase EPA's standard-setting pace. However, the Act became widely criticized for failing to give EPA flexibility to focus on contaminants of greatest concern and for imposing an onerous regulatory schedule on EPA, states, and communities. Implementation of the 1986 amendments also worsened state and local dissatisfaction over broader issues involving regulatory flexibility and unfunded mandates.

With the 1996 amendments, Congress revised the Act to focus resources on contaminants posing the greatest risks, provide funding for drinking water mandates, improve compliance, and prevent pollution of water sources. The 1996 provisions also modified the standard setting schedule and process, directed EPA to conduct risk and cost analyses for most standards, and authorized a State Revolving Fund (SRF) program to help communities finance drinking water projects. It expanded consumer reporting requirements and added programs for source water assessment, operator certification, and compliance capacity building. (For more details, see CRS Report 96-722, *Safe Drinking Water Act Amendments of 1996: Overview of P.L. 104-182*.)

EPA and state officials are now implementing the new SDWA requirements. In the SRF program, all states have received federal capitalization grants, and as of mid-1999, states had made 637 loans from their SRFs for a total value of $1.3 billion in drinking water projects. (See CRS Report 97-677, *Safe Drinking Water Act: State Revolving Fund Program*.) In 1998, EPA issued regulations to control disinfection byproducts and *cryptosporidium*, a microbial contaminant. During 1999, EPA must evaluate state source water assessment

programs for approval, and states must meet compliance capacity development requirements; community water systems issued the first annual consumer confidence reports to their customers.

Regulating Pesticides (by Linda Schierow)

The 106th Congress is closely monitoring EPA implementation of the Food Quality Protection Act (FQPA; P.L. 104-170), which amended the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act (FFDCA) in 1996. At issue generally is the process through which EPA is implementing the new law: grower groups and the pesticide industry have complained that the implementation process is not transparent enough to allow them to plan for contingencies, while public health advocates argue that implementation is being delayed by excessive stakeholder involvement. Grower and pesticide industry groups would like EPA to implement FQPA through a notice and comment procedure, but EPA claims that scarce time and resources prevent a rulemaking approach. What primarily concerns pesticide interests is the possibility that to ensure that pesticide residues on food crops are safe for children, EPA might overestimate risks due to pesticide residues based on default assumptions and models and then revoke or restrict pesticide registrations under FIFRA for widely used pesticides. While consumer advocacy groups believe that the FQPA safety standard requires EPA to restrict use of many older pesticides, pesticide users and producers want EPA to justify such decisions based on "sound science" and measurements.

Legislation (H.R. 1334) proposed March 25, 1999, would require EPA to use "sound science" and to make a "public interest determination" before adhering to statutory deadlines for reassessment of pesticide tolerances. Other bills (H.R. 1592 and S. 1464) would require EPA to perform a "transition analysis" when proposing or promulgating a rule, risk assessment, or other document related to FQPA implementation. The analysis would specify when assumptions were used rather than data to reassess tolerances. The bill would prohibit tolerance revocation based on a preliminary risk assessment. It also would require notice and comment rulemaking to establish EPA science guidelines. Finally, a permanent advisory committee of stakeholders would be established. H.R. 1592/S. 1464 is supported by growers, pesticide producers and users, and food processors. The Natural Resources Defense Council (NRDC) has stated that it opposes the legislation because it impedes and delays FQPA implementation.

Pesticide users are concerned especially about popular organic phosphate and carbamate insecticides, which EPA is evaluating now and in the next few years, because EPA believes that they appear to pose the greatest risk to public health. (FQPA requires EPA to evaluate all standards for pesticide residues on foods (i.e., tolerances) by August 3, 2006, one-third of the standards by August 1999, and two-thirds by August 2003.) EPA recently acknowledged that it will not have completed assessments of organophosphate tolerances by this summer, although the Agency does claim to have issued decisions for one-third of all pesticide tolerances. On August 3, 1999, EPA announced cancellation of all registrations of methyl parathion, a popular organophosphate insecticide, for use on fruits. The Agency also capped production and restricted uses of azinphos methyl (i.e., guthion), which might otherwise have been used in lieu of methyl parathion on fruit crops. Nevertheless, public health advocacy groups accuse EPA of "dragging its feet." The NRDC announced August 2 that it would sue EPA for failing to meet the August 1999 FQPA deadline. For more detail

on these issues, see CRS Report RS20043, *Pesticide Residue Regulation: Analysis of Food Quality Protection Act Implementation* (updated August 1999). For more information about requirements of the FQPA, see CRS Report 96-759, *Pesticide Legislation: Food Quality Protection Act of 1996*. For more information on the status of FQPA implementation, visit the EPA World Wide Web site [http://www.epa.gov/oppfead1/fqpa/fqpa-ltr.html].

EPA regulates the use of pesticides under authority of FIFRA. FIFRA authorities are summarized in CRS Report RL30022, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*. The regulatory framework created by FIFRA includes: toxicity testing and risk assessment as a basis for registering and reregistering active ingredients of pesticides as well as commercial products; classifying and approving pesticides for specific uses; restricting or canceling uses of pesticides that pose high risks; and enforcing regulations through product labeling, record keeping and facility inspections, and applicator certification. In addition to regulating pesticide use, EPA sets allowable pesticide residue levels for food (tolerances) under authority of the FFDCA. These are enforced through food sampling by the Food and Drug Administration and the Department of Agriculture.

Surface Transportation and the Environment (by David Bearden)

The use of federal highway trust fund revenues to address the environmental impacts of surface transportation may receive attention during the 106th Congress. The second session of the 105th Congress enacted the Transportation Equity Act for the 21st Century (TEA 21, P.L. 105-178), which significantly increased funding for programs previously authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, P.L. 102-240) and established new initiatives as well. TEA 21 authorized a total of $218 billion for federal highway and mass transit programs from FY1998 to FY2003 and set aside roughly $12.5 billion for several programs to protect the environment. Congressional oversight of the implementation of these programs could focus on the types of projects selected for funding and their effectiveness in addressing environmental problems stemming from highway travel.

The majority of environmental funding under TEA 21 is reserved for air quality projects under the Congestion Mitigation and Air Quality (CMAQ) Program to assist states in complying with federal air quality standards and the Clean Fuels Formula Grant Program to assist transit systems in purchasing low-emission buses. TEA 21 also increased funding for transportation enhancements that are environmentally related and established new programs to conduct environmental research, encourage environmental technologies for motor vehicles, and support projects that integrate transportation efficiency, community preservation, and environmental protection. Other provisions addressed the operation of low-emission vehicles in high occupancy vehicle lanes, extended tax benefits for alcohol-based fuels, and required the environmental review process for highway projects to be streamlined. (CRS Report 98-646 ENR, *Transportation Equity Act for the 21st Century (P.L. 105-178): An Overview of Environmental Protection Provisions*, describes each of the above programs and indicates the amount of funding authorized for their respective activities.)

In the first session of the 106th Congress, oversight of environmental provisions under TEA 21 has focused on requirements to streamline the environmental review process for highway projects. Controversies have arisen over how to improve the efficiency of the environmental review process while not complicating it with new procedures. The

Subcommittee on Transportation and Infrastructure of the Senate Committee on Environment and Public Works has held two hearings to oversee the implementation of TEA 21's streamlining provisions, one on April 29, 1999 and the other on June 9, 1999. The Subcommittee on Ground Transportation of the House Committee on Transportation and Infrastructure also held an oversight hearing on July 27, 1999 to examine the streamlining issue. In the near future, the Federal Highway Administration and the Federal Transit Administration plan to jointly issue revised regulations and guidance on the environmental review process for highway projects, based on comments received in response to an options paper released earlier this year. The full text of the paper, *TEA 21 Planning and Environmental Provisions: Options for Discussion*, is available online at [http://www.fhwa.dot.gov/environment/tea21imp.htm]. In the meantime, the Department of Transportation and six other federal agencies have signed a memorandum of understanding which outlines several objectives intended to help make the environmental review process more efficient while continuing to protect environmental quality. Refer to the Federal Highway Administration's web site at [http://www.fhwa.dot.gov/environment/nmou4.htm] for the text of the memorandum.

Funding Environmental Protection (by Martin Lee)

Congressional action on funding for the EPA is a perennial activity. For FY1998, the President sought $7.7 billion, $846 million more than appropriated for FY1997. Appropriations Subcommittee chairs in both the House and Senate expressed concern over the proposed expansion of Superfund. The final version included $7.4 billion in funding. The conferees opted to fund the Superfund program at $1.5 billion then and up to the $2.1 billion requested later if Congress were to reauthorize the program by May 15, 1998, which it did not. For FY1999, the President requested $7.8 billion, and whether Superfund should be expanded was again a major issue. The enacted appropriations, P.L. 105-276, included $7.6 billion for the Agency and provisions authorizing $650 million more for Superfund if the program is reauthorized before August 1, 1999.

On February 1, 1999, the President requested $7.2 billion in discretionary budget authority for the Environmental Protection Agency (EPA) for FY2000, about $400,000, or 5%, less than current year funding. This includes $2.9 billion for EPA's operating program, $2.8 billion for assistance for states and localities, and $1.5 billion for Superfund. The budget also reflects a mandatory of $200 million for Superfund orphan shares. The major issue associated with this proposal is its proposed reduction of roughly $500 million for clean Water State Revolving Funds. EPA appropriations are included in the annual VA-HUD-Independent Agencies Appropriation Bill, which the House passed as H.R. 2684 (H.Rept. 106-286) on September 9, 1999. The Senate Appropriations Committee made its recommendations on September 16th in S. 1596 (S.Rept. 106-161); the full Senate passed H.R. 2684, after substituting the language of S. 1596. House and Senate versions included about $7.3 billion while the final conference version (H.Rept. 106-379) provided a total of $7.6 billion. The President signed the appropriation measure as P.L. 106-74 on October 20, 1999. (For more discussion, see CRS Issue Brief IB10038, *Environmental Protection Agency: FY2000 Budget Issues*.)

Environmental Research and Development (by Michael Simpson)

Congress, EPA, and other groups continue their concern over the quality and soundness of the EPA's research and development (R&D) administered by the Agency's Office of Research and Development (ORD). The mission of EPA is to protect human health and the natural environment. R&D activities form the building blocks of the scientific foundation of EPA's regulatory activities. Sound science in risk assessment and management, data quality and management, and research of revitalizing and sustainable development are three key issues.

Whether the issue is fine particulates, exposure of children and other vulnerable populations to environmental pollutants, climate change, or any of myriad environmental controversies, a common concern is the soundness of the science underlying the assessment and management of the risk. It is an ongoing challenge to properly involve stakeholders in the procedure while protecting privacy rights and promoting objective, full, and open peer review of the research, assumptions, and policy selection process. H.R. 574, "The Science Integrity Act," is an example of a bill on the soundness of science. (For more information on Congress and risk, see CRS Report RL30031, *Environmental Risk and Cost-Benefit Analysis*, and see the CRS Global Climate Change Briefing Book at [http://www.congress.gov/brbk/html/ebgcctop.html] for further details about climate change research and control efforts.)

Data quality and management is also a major issue associated with EPA's R&D program. Controversy exists concerning not only the condition and extensiveness of monitoring and research equipment (which impact the quality of raw and analyzed environmental data), but also the currency, completeness, appropriateness, and extensiveness of data used by EPA and that made available for use and review outside the Agency. H.R. 1657, "Children's Environmental Protection and Right to Know Act of 1999," is an example of a bill relating to the quality and management (including release) of data. (Please see GAO/T-RCED-95-174 "Environmental Protection: EPA's Problems with Collection and Management of Data" for one perspective about this controversy.)

The House Committee on Science approved two environmental authorization bills during the first session. H.R. 1742 would authorize programs of the EPA Office of Research and Development and the Science Advisory Board at $504.0 million for FY2000 and $519.9 million for FY2001. H.R. 1743 would authorize the Office of Air at $124.2 million for FY2000 and $128.0 million for FY2001. It would also authorize EPA's Climate Change Technology Initiative activities at $105.8 million for FY2000 and $109.0 million for FY2001.

As for appropriations, P. L. 106-74 provides $645.0 million for EPA's Science and Technology appropriations account for Fiscal Year 2000. This is $2.5 million more than the request of $642.5 million, which represented a 3% decrease when compared to FY1999 funding of $660.0 million. The S&T account incorporates elements of the former Research and Development account (R&D, also called extramural research) as well as EPA's in house R&D and technology efforts.